

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 9 | Issue 4

2026

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The Evolving Role of the Indian Judiciary in Environmental Constitutionalism: A Post-Godavarman Environmental Jurisprudence

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ABSTRACT

Indian environmental law has been shaped as much by judicial intervention as by legislative action. The Supreme Court of India, through public interest litigation and an expansive interpretation of Article 21 of the Constitution, transformed environmental protection from a largely statutory concern into a constitutional obligation. The landmark decision in T.N. Godavarman Thirumulpad v. Union of India marked a decisive moment in this transformation. What began as litigation concerning forest conservation in the Nilgiris developed into a continuing judicial process involving forests, wildlife, mining, protected areas, environmental clearances and ecological governance throughout India. The Godavarman litigation consequently became one of the most enduring examples of continuing mandamus in Indian constitutional history. This article argues that the post-Godavarman trajectory should not be understood merely as a story of judicial activism. Rather, it represents a movement from judicial intervention towards environmental constitutionalism and, more recently, towards an institutional environmental rule of law. The jurisprudence associated with Justice B.R. Gavai is particularly significant in understanding this transition. The continuing Godavarman proceedings, the institutionalisation of the Central Empowered Committee, the Zudpi jungle forest litigation and environmental-clearance jurisprudence together demonstrate an approach that seeks to combine ecological protection with institutional competence, scientific reasoning and statutory accountability. The article argues that the future legitimacy of judicial environmentalism lies not in the permanent expansion of judicial power but in the creation of institutions capable of protecting ecological systems through law, expertise and democratic accountability.

Keywords: *Godavarman, environmental constitutionalism, environmental rule of law, Article 21, forest conservation, judicial activism*

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I. INTRODUCTION

Environmental degradation poses a distinctive challenge to constitutional governance. Pollution, deforestation, biodiversity loss and climate change affect not merely individual litigants but communities, ecosystems and future generations. Environmental injury is also frequently irreversible. A destroyed forest or an extinct species cannot be restored through monetary compensation. These characteristics have encouraged courts across jurisdictions to develop innovative forms of environmental adjudication.¹

India provides one of the most striking examples of such judicialisation. The Supreme Court has progressively transformed environmental protection through public interest litigation, constitutional interpretation and judicially developed principles. Article 21 has been read to include the right to enjoy pollution-free water and air,² while Articles 48A and 51A(g), both introduced by the Constitution (Forty-second Amendment) Act, 1976, reinforce the constitutional commitment to environmental protection.³

The decisive turning point, however, was *T.N. Godavarman Thirumulpad v. Union of India*.⁴ The proceedings originated in a writ petition concerning the felling of timber in the Gudalur region of the Nilgiris. In its order of 12 December 1996 the Court held that the expression “forest” in section 2 of the Forest (Conservation) Act, 1980 must be understood according to its dictionary meaning, so that the Act covers all statutorily recognised forests whether designated reserved, protected or otherwise, and that “forest land” includes any area recorded as forest in government records irrespective of ownership.⁵ The Court further directed that non-forest activity in a forest area could not proceed without the prior approval of the Central Government required by the Act.⁶

The importance of *Godavarman* lies beyond this interpretation. The litigation continued for decades and expanded to cover forest diversion, mining, wildlife conservation, eco-sensitive zones, environmental clearances and the institutional arrangements for forest governance. The

¹ JAMES R. MAY & ERIN DALY, GLOBAL ENVIRONMENTAL CONSTITUTIONALISM 1-24 (Cambridge Univ. Press 2015).

² *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598, 604 (holding that the right to life under Article 21 includes the right of enjoyment of pollution-free water and air).

³ INDIA CONST. arts. 48A, 51A(g), inserted by the Constitution (Forty-second Amendment) Act, 1976.

⁴ *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267 (order dated 12 December 1996 in Writ Petition (Civil) No. 202 of 1995).

⁵ *Godavarman*, *supra* note 4, at 269 (holding that the word “forest” must be understood according to its dictionary meaning; that the description covers all statutorily recognised forests “whether designated as reserved, protected or otherwise”; and that “forest land” in section 2 includes “any area recorded as forest in the Government record irrespective of the ownership”).

⁶ The Forest (Conservation) Act, 1980, No. 69 of 1980, § 2 (India). The Act was renamed the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 by the Forest (Conservation) Amendment Act, 2023, No. 15 of 2023 (India).

Court therefore moved from adjudicating an environmental dispute to supervising an environmental regulatory field.⁷

This development raises a fundamental constitutional question: how far should a constitutional court go in governing the environment?

The answer has evolved. The early post-*Godavarman* period was marked by intensive judicial intervention. The contemporary period increasingly reflects institutionalisation. The environmental jurisprudence associated with Justice B.R. Gavai is particularly significant because it illustrates this transition from judicial activism towards an environmental rule of law.

II. THE CONSTITUTIONALISATION OF ENVIRONMENTAL PROTECTION

The constitutional foundations of Indian environmental law emerged gradually. The Constitution did not originally contain an explicit fundamental right to a healthy environment. Judicial protection began instead with the enforcement of ordinary statutory duties. In *Municipal Council, Ratlam v. Vardhichand* the Court compelled a municipality to discharge its sanitation obligations and held that a plea of want of funds could not defeat a mandatory public duty.⁸ In *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh* the Court ordered the closure of limestone quarries in the Dehradun valley after weighing the economic value of mining against the ecological damage it caused.⁹

The Court then located environmental interests within Article 21 itself. In *Subhash Kumar v. State of Bihar* it held that the right to life includes the right to the enjoyment of pollution-free water and air, and that a citizen may move the Court under Article 32 for the removal of pollution, although the petition before it was ultimately dismissed as an abuse of the public interest jurisdiction.¹⁰ Environmental quality thereby became connected to constitutional dignity rather than remaining merely a matter of administrative regulation.

The Directive Principles and Fundamental Duties strengthened this constitutional framework. Article 48A directs the State to protect and improve the environment and to safeguard forests and wildlife, while Article 51A(g) places a corresponding duty upon citizens.¹¹

The Court subsequently developed substantive environmental principles. In *M.C. Mehta v. Union of India*, arising from the escape of oleum gas from a plant in Delhi, it formulated the

⁷ For a critical account of that expansion, see Armin Rosencranz & Sharachchandra Lele, *Supreme Court and India's Forests*, 43(5) ECON. & POL. WKLY. 11 (2008).

⁸ *Municipal Council, Ratlam v. Vardhichand*, (1980) 4 SCC 162 (proceedings under section 133 of the Code of Criminal Procedure, 1973).

⁹ *Rural Litigation & Entitlement Kendra v. State of Uttar Pradesh*, 1989 Supp (1) SCC 504.

¹⁰ *Subhash Kumar*, *supra* note 2, at 604-05.

¹¹ INDIA CONST. arts. 48A, 51A(g).

rule of absolute liability for enterprises engaged in hazardous activity.¹² In *Indian Council for Enviro-Legal Action v. Union of India* it applied the polluter pays principle to require the chemical industries responsible for contaminating Bichhri to bear the cost of remediation.¹³ In *Vellore Citizens' Welfare Forum v. Union of India* the Court held that sustainable development, the precautionary principle and the polluter pays principle form part of the environmental law of the country and had acquired the character of customary international law.¹⁴ The precautionary principle was applied again in the Taj Trapezium litigation, where polluting industries around the monument were directed to switch to natural gas or relocate.¹⁵

The significance of these decisions is considerable. They demonstrate that Indian environmental law developed through a dialogue between constitutional text, judicial interpretation and international environmental principles.¹⁶

Yet constitutional environmentalism also creates institutional questions. When courts derive environmental obligations from broadly worded constitutional provisions, they exercise considerable interpretative discretion. The legitimacy of this process therefore depends upon judicial reasoning remaining connected to constitutional text, statutory purpose, scientific evidence and institutional competence.

III. GODAVARMAN AND THE JUDICIAL CONSTRUCTION OF THE FOREST

The original *Godavarman* order transformed the legal understanding of forest conservation. The Court refused to permit the protective framework of the Forest (Conservation) Act to depend entirely upon formal administrative classification. The term “forest” had to be understood according to its ordinary meaning, which prevented administrative categories from becoming a means of excluding ecologically valuable land from statutory protection.¹⁷

The decision was particularly significant in a country where the same parcel of land may be classified differently in revenue, forest and local administrative records. If legal protection depended solely upon a particular notification, ecologically valuable areas could be removed from the protective framework through bureaucratic reclassification.

¹² *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 (the Oleum Gas Leak case, laying down the rule of absolute liability for enterprises engaged in hazardous or inherently dangerous activity).

¹³ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212 (Bichhri).

¹⁴ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, 658-60.

¹⁵ *M.C. Mehta (Taj Trapezium Matter) v. Union of India*, (1997) 2 SCC 353.

¹⁶ See SHYAM DIVAN & ARMIN ROSENCRAZ, *ENVIRONMENTAL LAW AND POLICY IN INDIA: CASES, MATERIALS AND STATUTES* (2d ed., Oxford Univ. Press 2001).

¹⁷ *Godavarman*, *supra* note 4, at 269.

The Court therefore adopted a substantive approach: ecological character could not be defeated by administrative labels. The consequences were extensive. The Court required governmental authorities to obtain the approvals mandated by the Act before undertaking non-forest activity and imposed significant restrictions upon unauthorised felling and movement of timber.¹⁸ Yet the greater importance of *Godavarman* emerged through the subsequent proceedings. The Court retained jurisdiction and repeatedly issued directions relating to forests and natural resources across India. The case thus became a form of continuing mandamus.

The durability of this reasoning has since been tested. Parliament enacted the Forest (Conservation) Amendment Act, 2023, which renamed the parent statute and inserted section 1A, confining its application to land declared or notified as forest under the Indian Forest Act, 1927 or any other law and to land recorded as forest in government records on or after 25 October 1980.¹⁹ In interim orders in *Ashok Kumar Sharma v. Union of India* the Court directed the States and Union Territories to continue to act upon the dictionary meaning of “forest” laid down in the 1996 order, pending the challenge to the amendment.²⁰ The 1996 construction therefore continues to govern administrative practice even after the statutory text was narrowed.

This was a major transformation in the nature of judicial power. The Court was no longer simply interpreting legislation. It was monitoring compliance, receiving expert reports and directing governmental institutions.

IV. CONTINUING MANDAMUS AND THE PROBLEM OF JUDICIAL OVERREACH

Continuing mandamus became necessary because environmental harm is rarely resolved through a single judicial order. Pollution may continue after judgment, forests may continue to be degraded and administrative agencies may fail to implement environmental standards. Judicial supervision therefore offered an effective mechanism for converting environmental judgments into continuing obligations.

Nevertheless, this approach creates constitutional tensions. Courts are primarily adjudicatory institutions. Environmental governance, by contrast, involves technical expertise, resource allocation, administrative planning and democratic choices.

¹⁸ *Id.* at 269-70.

¹⁹ The Forest (Conservation) Amendment Act, 2023, No. 15 of 2023 (India) (renaming the Forest (Conservation) Act, 1980 and inserting section 1A, which confines the Act to land declared or notified as forest under the Indian Forest Act, 1927 or any other law and to land recorded as forest in a government record on or after 25 October 1980).

²⁰ *Ashok Kumar Sharma v. Union of India*, Order dated 19 February 2024 in Writ Petition (Civil) No. 1164 of 2023 (Supreme Court of India) (directing the States and Union Territories to act upon the dictionary meaning of “forest” laid down in *Godavarman* pending further orders); see also Order dated 4 March 2025 in the same proceedings (on the preparation of the consolidated record of forest land under the rules framed in 2023).

The longer a court supervises a regulatory field, the greater the possibility that judicial review may become judicial administration. This criticism has been pressed forcefully in the context of *Godavarman*, where commentators have argued that the Court assumed functions properly belonging to the forest administration and the legislature.²¹ The Court's environmental intervention was justified partly because administrative institutions were considered inadequate. Yet the resulting judicial structure risked creating a system in which environmental governance became dependent upon the Court itself. The constitutional challenge is therefore not whether courts should protect the environment. They clearly should. The challenge is how judicial intervention can strengthen rather than permanently replace environmental institutions. This issue becomes central in the later *Godavarman* jurisprudence.

V. FROM FORESTS TO ECOLOGICAL GOVERNANCE

Post-*Godavarman* environmental jurisprudence expanded substantially. The Court moved beyond forests to wildlife, biodiversity, mining, protected areas and eco-sensitive zones, drawing upon a statutory framework that had itself widened considerably.²²

This expansion reflects a conceptual transformation. Forests cannot be treated simply as collections of trees. They are ecological systems containing wildlife, water resources, biodiversity and interconnected habitats. Similarly, wildlife protection cannot be limited to the legal boundaries of national parks and sanctuaries, because species frequently depend upon surrounding landscapes and corridors.

The Court's eco-sensitive zone jurisprudence reflects this understanding. Protected areas require surrounding ecological protection because activities immediately outside their boundaries may undermine the ecological integrity of the protected area itself. In June 2022 the Court directed that every national park and wildlife sanctuary should have an eco-sensitive zone of at least one kilometre within which specified activities would be regulated or prohibited. In April 2023 it modified that direction, accepting that a uniform buffer was impracticable where large populations live around protected areas, while confirming that the prohibition on mining extends to the eco-sensitive zone even where the zone runs beyond one kilometre.²³

²¹ Rosencranz & Lele, *supra* note 7, at 11-14.

²² The Wild Life (Protection) Act, 1972, No. 53 of 1972 (India); The Biological Diversity Act, 2002, No. 18 of 2003 (India).

²³ *In re T.N. Godavarman Thirumulpad v. Union of India*, Judgment dated 3 June 2022 in Writ Petition (Civil) No. 202 of 1995 (Supreme Court of India), as modified by Order dated 26 April 2023 in the same proceedings (holding the uniform one-kilometre requirement impracticable in relation to areas for which draft or final eco-sensitive zone notifications had been issued, while extending the prohibition on mining to the eco-sensitive zone).

This represents a shift from a parcel-based to an ecosystem-based understanding of environmental law. It also reflects the growing influence of ecocentrism. Anthropocentric environmentalism justifies protection primarily through human interests such as health, livelihood and quality of life. Ecocentrism recognises the intrinsic ecological value of species, ecosystems and biodiversity. Indian environmental constitutionalism contains elements of both approaches. Article 21 provides a strong human-centred foundation, while forest and wildlife jurisprudence increasingly recognises ecological values independent of immediate human utility.

VI. JUSTICE B.R. GAVAI AND THE NEW PHASE OF ENVIRONMENTAL JURISPRUDENCE

Justice B.R. Gavai occupies an important position in the contemporary evolution of Indian environmental law. His judicial tenure coincided with the later stages of the *Godavarman* proceedings and with a period in which environmental governance became increasingly institutionalised. He sat on the bench that reviewed the future of the Central Empowered Committee and presided over the decision on the Zudpi jungle lands of Vidarbha.²⁴ His environmental jurisprudence is significant not merely because of individual decisions but because of the institutional questions the Court addressed through them.

Three characteristics are particularly important. First, this body of decisions demonstrates continuity with the foundational principles of *Godavarman*. Forest conservation remains a matter of national constitutional significance.

Second, it reflects institutionalisation. The Court increasingly recognises that environmental governance requires permanent institutions rather than indefinite judicial supervision.

Third, it demonstrates an ecological approach in which forests and wildlife are considered as interconnected systems. The importance of this jurisprudence therefore lies in its institutional direction. It suggests a movement from judicial environmentalism towards institutional environmental constitutionalism.

²⁴ *In re T.N. Godavarman Thirumulpad v. Union of India*, 2024 INSC 78 (Sup. Ct. India, 31 January 2024) (Narasimha, J., for a bench of Gavai, Narasimha and Mishra, JJ.); *In re Zudpi Jungle Lands (In re T.N. Godavarman Thirumulpad v. Union of India)*, 2025 INSC 754 (Sup. Ct. India, 22 May 2025) (Gavai, C.J.I., and Masih, J.).

VII. THE GODAVARMAN JUDGMENT ON THE CENTRAL EMPOWERED COMMITTEE

The judgment delivered on 31 January 2024 concerning the Central Empowered Committee represents an important stage in the institutional development of the *Godavarman* litigation.²⁵

The Committee had originated as an institution created through judicial direction. It was constituted by an order of the Court dated 9 May 2002 to monitor compliance with the Court's forest and wildlife orders and to place instances of non-compliance before it, and was to function until the Central Government constituted a statutory body under section 3 of the Environment (Protection) Act, 1986. The Government notified the Committee under section 3(3) of that Act on 17 September 2002.²⁶

After more than two decades, however, the environmental regulatory landscape had changed. India had developed additional statutory and administrative institutions concerned with environmental protection, most prominently the National Green Tribunal, which exercises original jurisdiction over civil disputes raising a substantial question relating to the environment under the enactments listed in the Schedule to its constituting statute.²⁷

The formal reconstitution of the Committee as a permanent body was effected not by the Court but by the executive, through a notification of the Ministry of Environment, Forest and Climate Change dated 5 September 2023 issued under section 3(3) of the Environment (Protection) Act, 1986. The Court took that notification as its point of departure and, instead of restoring judicial control, issued directions for the functioning of environmental regulatory bodies generally, requiring the Committee to frame guidelines governing its conduct and internal procedure, to publish agendas in advance and maintain minutes, to adopt protocols and timelines for site visits and reports, and to place its guidelines in the public domain.²⁸

The judgment is important because it demonstrates an awareness of the limitations of judicially created governance structures. The deeper constitutional significance of the decision is that it recognises a distinction between judicial supervision and environmental administration. The Court framed the functioning of environmental bodies as an aspect of the rule of law, requiring

²⁵ *In re T.N. Godavarman Thirumulpad*, 2024 INSC 78, *supra* note 24.

²⁶ See *id.*; The Environment (Protection) Act, 1986, No. 29 of 1986, § 3(3) (India).

²⁷ The National Green Tribunal Act, 2010, No. 19 of 2010, § 14 (India).

²⁸ *In re T.N. Godavarman Thirumulpad*, 2024 INSC 78, *supra* note 24 (noting the notification dated 5 September 2023 issued by the MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE under section 3(3) of the Environment (Protection) Act, 1986 reconstituting the Central Empowered Committee as a permanent body, and issuing directions on the constitution, funding, transparency and accountability of environmental regulatory bodies).

institutions that are effective, transparent and accountable and that afford the public access to information.²⁹

The judiciary can identify institutional deficiencies and require legal compliance. But environmental governance ultimately requires specialised institutions with technical expertise, administrative continuity and statutory authority.

The institutionalisation of the Committee can therefore be interpreted as an attempt to resolve the *Godavarman* paradox: judicial intervention became necessary because environmental institutions were inadequate, but sustainable environmental governance requires institutions that do not depend permanently upon judicial supervision. This is a significant shift from judicial activism towards an institutional environmental rule of law.

VIII. ZUDPI JUNGLE AND THE CONTINUING LEGACY OF GODAVARMAN

The judgment on the zudpi jungle lands, delivered on 22 May 2025, demonstrates that the foundational principles of *Godavarman* remain highly relevant.³⁰ The litigation concerned lands historically recorded as zudpi jungle in six districts of eastern Vidarbha in Maharashtra. Over time, parts of these lands had been used for agriculture, housing, schools, government colonies and other public facilities. The dispute raised the question whether their recorded forest character continued to attract the protective framework of forest law.

The Court held that zudpi jungle lands are forest land for the purposes of the Forest (Conservation) Act, 1980, directed that lands not already diverted be transferred to the forest department for afforestation and that fragmented parcels be protected under the Indian Forest Act, 1927. At the same time it permitted a one-time regularisation of allotments made before 12 December 1996 without compensatory afforestation or payment of net present value, on the footing that those allotments preceded the settled legal position. Encroachments predating 1980 may be regularised where the law otherwise permits, post-1980 commercial encroachments are to be removed within two years through district-level special task forces, and allotments made after 12 December 1996 are to be scrutinised and placed before the Central Government for approval under the Act.³¹

The judgment is therefore not a simple reaffirmation of protection. It confronts the tension between historical land classification and contemporary developmental use, and resolves it by preserving the legal character of the land while settling past transactions on defined terms. Its

²⁹ *Id.*

³⁰ *In re Zudpi Jungle Lands*, 2025 INSC 754, *supra* note 24.

³¹ *Id.*

enduring proposition is that a change in administrative use does not by itself erase the legal significance of an earlier forest classification.

The principle is broader than the particular facts of the *zudpi* jungle lands. If environmental protection could be defeated simply by successive administrative reclassification, forest law would become vulnerable to precisely the kind of regulatory evasion that *Godavarman* sought to prevent. The judgment therefore reinforces a central proposition of Indian environmental constitutionalism: ecological protection cannot be made entirely dependent upon administrative labels.

IX. VANASHAKTI AND THE PREVENTIVE CHARACTER OF ENVIRONMENTAL LAW

Contemporary environmental jurisprudence also raises questions concerning environmental clearances. Environmental impact assessment is fundamentally preventive. It requires environmental consequences to be examined before a project is authorised rather than after irreversible damage has occurred, and the Environment Impact Assessment Notification, 2006 accordingly requires prior environmental clearance for the categories of projects listed in its schedule.³²

In *Vanashakti v. Union of India* a two-judge bench held in May 2025 that *ex post facto* environmental clearance is alien to Indian environmental jurisprudence, and quashed the 2017 notification and the 2021 office memorandum by which the Central Government had sought to regularise projects operating without prior clearance.³³ That decision did not survive. It was recalled by a three-judge bench in November 2025,³⁴ and on a fresh consideration of the batch the Court held in July 2026 that section 3 of the Environment (Protection) Act, 1986 empowers the Central Government to frame time-bound amnesty schemes for non-compliant projects in supervening public interest.³⁵

A separate decision in the same litigation, delivered on 5 August 2025 by a bench presided over by Gavai, C.J.I., considered the notification of 29 January 2025 amending entry 8(a) of the 2006 notification together with the accompanying office memorandum. The Court upheld the amendment in substance but set aside the note that exempted industrial sheds, schools, colleges

³² MINISTRY OF ENVIRONMENT & FORESTS, Notification S.O. 1533(E) (14 September 2006), issued under section 3 of the Environment (Protection) Act, 1986.

³³ *Vanashakti v. Union of India*, 2025 INSC 718 (Sup. Ct. India, 16 May 2025) (Oka and Bhuyan, JJ.).

³⁴ *Confederation of Real Estate Developers of India v. Vanashakti*, 2025 INSC 1326 (Sup. Ct. India) (recalling, by majority, the judgment dated 16 May 2025).

³⁵ *Vanashakti v. Union of India*, 2026 INSC 761 (Sup. Ct. India, 29 July 2026).

and educational hostels from the requirements of the 2006 notification, holding that exemption arbitrary and unconnected to any environmental rationale.³⁶

The broader constitutional significance of this litigation lies in the recognition that environmental clearance is not merely administrative paperwork. It constitutes an institutional process for assessing environmental risk. A regulatory system that routinely permits post facto regularisation risks undermining the preventive logic of environmental law, and the unsettled course of the *Vanashakti* proceedings shows how contested that proposition remains within the Court itself.

The judiciary therefore retains an important role in ensuring that executive environmental policy remains within statutory boundaries and does not weaken environmental safeguards through administrative mechanisms lacking adequate legal authority. This illustrates a broader principle: environmental constitutionalism protects not only substantive environmental rights but also the procedural architecture through which environmental decisions are made.

X. ENVIRONMENTAL JUSTICE AND THE QUESTION OF DISTRIBUTION

The judicial protection of the environment cannot be separated from questions of social justice. Environmental decisions redistribute benefits and burdens. Restricting mining may protect forests while affecting employment. Creating protected areas may conserve wildlife while restricting access to land. Infrastructure restrictions may preserve ecosystems while delaying development needed by local communities.

The question is therefore not simply whether an environmental decision protects nature. It is also a question of who bears the cost of conservation.

This issue is particularly important for tribal and forest-dependent communities. Indian forests are not empty ecological spaces. They are social, cultural and economic landscapes inhabited and used by communities whose rights are recognised, among other instruments, under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.³⁷ Environmental constitutionalism must therefore avoid a simplistic opposition between people and nature. A more sophisticated approach recognises that communities can be participants in conservation and that ecological protection must coexist with constitutional commitments to dignity, livelihood and participation.

³⁶ *Vanashakti v. Union of India*, 2025 INSC 961 (Sup. Ct. India, 5 August 2025) (Gavai, C.J.I., and Vinod Chandran, J.) (upholding the notification dated 29 January 2025 but quashing Note 1 to entry 8(a) as arbitrary).

³⁷ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2 of 2007, §§ 3-4 (India).

Environmental justice consequently requires the integration of three dimensions: ecological protection, procedural participation and distributive fairness.

XI. JUDICIAL POWER, SCIENCE AND ENVIRONMENTAL GOVERNANCE

Environmental litigation increasingly involves scientific questions. Courts are required to consider evidence concerning biodiversity, wildlife populations, ecological damage, climate impacts, hydrology and land use. This creates an important institutional distinction. Courts possess constitutional authority but generally do not possess the specialised scientific infrastructure of environmental agencies.

The appropriate judicial role should therefore be one of scrutiny rather than scientific substitution. Courts should ask whether expert assessments are based on evidence, whether relevant factors have been considered, whether affected communities have been heard and whether governmental decisions are lawful and rational.

The reliance upon expert institutions within the later *Godavarman* proceedings is consequently significant, as is the Court's insistence that such institutions be properly constituted, adequately funded and publicly accountable.³⁸ The ideal institutional model is dialogic: experts provide scientific knowledge; administrative institutions formulate policy; communities provide local knowledge and participate in decision-making; and courts ensure legality and constitutional accountability. This model provides a more sustainable basis for environmental governance than permanent judicial management.

XII. ENVIRONMENTAL RULE OF LAW

The emerging concept of environmental rule of law provides a useful framework for understanding the contemporary phase of Indian jurisprudence. It requires environmental governance to rest upon clear legal authority, accountable institutions, scientific evidence, procedural fairness and effective judicial review, and it treats the implementation gap between enacted environmental law and its enforcement as the central problem of environmental governance.³⁹ Its objective differs subtly from judicial environmentalism. Judicial environmentalism seeks to protect the environment through judicial intervention.

Environmental rule of law seeks to ensure that the entire system of governance is capable of protecting the environment lawfully and consistently. This distinction is crucial. A mature environmental constitutional order cannot depend indefinitely upon individual judges issuing

³⁸ See *In re T.N. Godavarman Thirumulpad*, 2024 INSC 78, *supra* note 24.

³⁹ UN ENVIRONMENT PROGRAMME, ENVIRONMENTAL RULE OF LAW: FIRST GLOBAL REPORT (2019).

directions in continuing proceedings. Environmental protection must become embedded within ordinary institutional structures.

The institutional development of the Central Empowered Committee and the Court's insistence upon statutory environmental clearance procedures point in this direction.⁴⁰

XIII. FROM JUDICIAL ACTIVISM TO JUDICIAL STEWARDSHIP

The contemporary phase of Indian environmental jurisprudence may therefore be described as a transition from judicial activism towards judicial stewardship.

Judicial activism was indispensable during the formative phase of environmental law because legislative and administrative institutions frequently failed to respond effectively to ecological harm. But the permanent continuation of judicial activism risks weakening the institutional principle upon which constitutional democracy depends.⁴¹

Judicial stewardship offers an alternative. Courts remain guardians of constitutional environmental values but seek to ensure that environmental institutions themselves become effective. The distinction may be stated simply. Judicial activism asks what must be done to protect the environment. Judicial stewardship asks how institutions can be made capable of protecting the environment themselves.

The latter approach better accommodates the separation of powers while retaining meaningful judicial review, and it is closer to the role that comparative scholarship assigns to constitutional courts in environmental matters.⁴² Several of the recent environmental decisions discussed above can be understood within this transition.

XIV. CONCLUSION

The post-*Godavarman* history of Indian environmental jurisprudence represents one of the most significant experiments in constitutional environmental governance. The Supreme Court transformed environmental protection through Article 21, public interest litigation, continuing mandamus and the incorporation of sustainable development and the precautionary principle. *Godavarman* transformed the legal meaning of forests and prevented administrative classification from becoming an easy mechanism for avoiding statutory protection. But the long history of the litigation also exposed the limitations of judicial environmentalism. Courts can compel governmental action, but they cannot permanently substitute for specialised environmental institutions.

⁴⁰ *In re T.N. Godavarman Thirumulpad*, 2024 INSC 78, *supra* note 24; *Vanashakti*, 2025 INSC 961, *supra* note 36.

⁴¹ Rosencranz & Lele, *supra* note 7, at 14.

⁴² See MAY & DALY, *supra* note 1.

The 2024 judgment concerning the Central Empowered Committee points towards institutionalisation rather than indefinite judicial supervision. The 2025 judgment on the Zudpi jungle lands demonstrates that the foundational principle of forest protection remains relevant in the face of administrative reclassification and developmental pressure, even as the Court settled decades of past transactions on defined terms. The *Vanashakti* proceedings demonstrate the continuing constitutional importance of environmental clearance and preventive environmental governance, and equally the fragility of any single pronouncement upon it. Taken together, these developments suggest that Indian environmental constitutionalism is entering a new phase. The central question is no longer simply whether courts should intervene to protect the environment. The more important question is whether the judiciary can help construct an institutional system in which environmental protection becomes part of ordinary governance.

The trajectory may therefore be summarised in three propositions. First, *Godavarman* constitutionalised the forest. Second, continuing mandamus constitutionalised environmental supervision. Third, the contemporary jurisprudence is contributing to the institutionalisation of environmental constitutionalism.⁴³

The success of this transformation should ultimately be measured not by the number of environmental orders issued by the Supreme Court but by whether India's environmental institutions become capable of protecting forests, wildlife, biodiversity and ecological systems without extraordinary judicial intervention. The enduring legacy of *Godavarman* may therefore lie not in the permanent expansion of judicial power but in the creation of an environmental rule of law in which courts, legislatures, administrators, scientists and communities collectively assume responsibility for the ecological future of the Republic.

⁴³ *In re Zudpi Jungle Lands*, 2025 INSC 754, *supra* note 24; *Godavarman*, *supra* note 4.