

Beyond Article 21: Towards a Constitutional Right to Climate Dissent in the Age of ESG and Corporate Power

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*“Environmental Defenders are the new face of human rights, and their
freedom is the measure of our democracy.”*

**-UN Special Rapporteur on
Human Rights and the
Environment²**

Abstract

Seventy-five years after the adoption of the Constitution of India, judicial review has transformed Article 21 into the cornerstone of environmental rights, embedding the right to a clean and healthy environment within the constitutional framework. However, this jurisprudence has largely focused on ecological protection, while neglecting the constitutional vulnerabilities of those who defend the environment. In the contemporary era of Environmental, Social and Governance (ESG) frameworks and expanding corporate power, climate activists and humanitarian organisations increasingly face Strategic Lawsuits Against Public Participation (SLAPPs) and other legal tools aimed at silencing dissent.

This article argues that while the judiciary has creatively expanded substantive environmental rights, it has failed to evolve procedural safeguards for climate defenders. Such omissions create a constitutional asymmetry: the environment is protected in principle, but those who speak for it remain legally exposed. Drawing on Indian jurisprudence and comparative developments such as the European Union’s Anti-SLAPP Directive and the Philippines’ Writ of Kalikasan, the article proposes a doctrinal shift “beyond Article 21”. It calls for recognising a constitutional right to climate dissent, synthesising Articles 19 and 21 to ensure that freedom of speech, association, and the right to life

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² United Nations Special Rapporteur on Human Rights and the Environment, Human Rights Depend on a Healthy Biosphere, U.N. Doc. A/76/179, at 1 (2021).

collectively shield environmental defenders against corporate and state suppression.

By advancing this argument, the article situates climate justice as the next frontier of constitutional review and outlines the future obligations of the Indian Constitution in an era defined by ESG governance, ecological crises, and democratic contestation.

Key words: *Climate Dissent, Comparative Constitutional Law, Environmental Constitutionalism, ESG Accountability, SLAPP Suits.*

I. Introduction

Over the last 75 years, the Indian judiciary has emerged as the principal guardian of Constitutional promises through the tool of judicial review. In this journey, Article 21 of the Constitution has been judicially transformed from a narrow guarantee of personal liberty into the fountainhead of expansive rights, most prominently the right to a clean and healthy environment. Beginning with cases such as *Subhas Kumar v. State of Bihar*³ and extending through the *M. C. Mehta*⁴ line of decisions, the Supreme Court has read ecological concerns into the guarantee of life and personal liberty. This doctrinal expansion has positioned the Court as a global leader in environmental constitutionalism.

Yet, as the Constitution enters its 76th year, the central challenge has shifted. The question is no longer confined to pollution control, natural resource management, or balancing development with ecological protection. Instead, the new constitutional frontier lies in protecting those who defend the environment. Around the world, and increasingly in India, corporations and even States deploy Strategic Lawsuits Against Public Participation (SLAPPs), defamation claims, and regulatory restrictions to silence climate activists, journalists, and community organisations. These tactics produce a profound chilling effect on democratic participation, raising concerns not only about environmental rights but also about freedom of speech, association, and dissent.

³ *Subhas Kumar v. State of Bihar and Ors.*, (1991) 1 SCC 598 (India).

⁴ *M. C. Mehta v. Union of India (Oleum Gas Leak Case)*, (1987) 1 SCC 395 (India); *M. C. Mehta v. Union of India (Ganga Pollution Case)*, (1988) 1 SCC 3471 (India); *M. C. Mehta v. Union of India (Taj Trapezium Case)*, (1997) 2 SCC 353 (India).

This article advances the contention that Indian Constitutionalism must now evolve to recognise a right to climate dissent, a composite right that moves beyond Article 21 by synthesising it with Articles 19(1)(a) and 19(1)(c). Only by safeguarding dissenters against corporate and state suppression can the Constitution continue to fulfil its promise of justice in an era dominated by ESG frameworks, corporate governance, and intensifying ecological crises.

II. Constitutional Dimensions of Environmental Jurisprudence: a Study of Article 21

The most significant constitutional transformation in India's environmental governance has been achieved through judicial creativity under Article 21 of the Constitution, which guarantees that "*No person shall be deprived of his life or personal liberty except according to procedure established by law.*"⁵ Originally designed as a procedural safeguard against arbitrary deprivation of liberty, Article 21 has evolved through sustained judicial interpretation into a fountainhead of substantive rights. Beginning with *Maneka Gandhi v. Union of India*⁶, the Supreme Court redefined "procedure established by law" to mean one that is "fair, just and reasonable", thereby constitutionalising due process within Indian Jurisprudence. This doctrinal shift laid the foundation of expanding Article 21 beyond mere physical survival to encompass the right to live with dignity, health, and ultimately, a clean and wholesome environment.

The earliest and most explicit articulation came in the *Subhash Kumar Case*⁷ where the court declared that the right to life includes the right to pollution-free air and water. This recognition opened the door to an expanding body of jurisprudence, most prominently through the public interest litigation (PIL) movement led by *M. C. Mehta* cases⁸. In the *Oleum Gas Leak*⁹ decision, the Supreme Court imposed absolute liability on enterprises engaged in hazardous activities, situating industrial accountability alongside constitutional rights. Similarly, in the *Ganga Pollution case*¹⁰, the Court directed the closure of

⁵ INDIA CONST. art. 21.

⁶ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

⁷ *Id.* at 2.

⁸ *Id.* at 2.

⁹ *M. C. Mehta v. Union of India (Oleum Gas Leak Case)*, (1987) 1 SCC 395 (India).

¹⁰ *M. C. Mehta v. Union of India (Ganga Pollution Case)*, (1988) 1 SCC 3471 (India).

polluting tanneries, underscoring that Article 21 could compel the State to act against ecological degradation. The Taj Trapezium Case¹¹ went further, extending constitutional protection to cultural and natural heritage.

Subsequent rulings introduced international environmental law principles into Indian Constitutionalism. In *Vellore Citizens' Welfare Forum v. Union of India*¹², the Court embraced the **precautionary principle** and the **polluter pays principle**, holding them part of the law of the land. Similarly, *Indian Council for Enviro-Legal Action v. Union of India*¹³ compelled Industries to bear remediation costs, institutionalising environmental accountability.

Through these judicial interventions, the Supreme Court firmly positioned Article 21 as the fountainhead of environmental constitutionalism. Environmental rights, once considered aspirational within the Directive Principles of State Policy, were thus elevated to the status of enforceable fundamental rights. However, while these cases meticulously elaborated the substantive content of the right to the environment, defining clean air, potable water, and ecological balance as integral to the right to life, they paid scant attention to the procedural and participatory dimensions of environmental governance. In other words, the Constitution, as interpreted by the judiciary, now recognises the forest, river, and air as constitutional entities, but has not evolved corresponding safeguards for those who defend them, the forest dwellers, fisherfolk, grassroots activists, and civil society actors who bear the immediate brunt of environmental degradation.

This doctrinal silence has become increasingly problematic in the contemporary era of corporate-led development and climate governance, where dissent is frequently met with strategic litigation or regulatory retaliation. The rise of SLAPPs and other coercive legal tactics has blurred the line between environmental protection and the freedom to advocate for it. In effect, the exercise of environmental rights has become inseparable from the protection of climate dissent. The failure of judicial review to recognise this interaction marks a critical gap in Indian constitutionalism, one that undermines both substantive environmental justice and procedural democratic participation.

¹¹ M. C. Mehta v. Union of India (Taj Trapezium Case), (1997) 2 SCC 353 (India).

¹² Vellore Citizens' Welfare Forum v. Union of India (1996) 5 SCC 647 (India).

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