

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

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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).

that freedom of speech, association, and the right to life 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

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).

democratic participation, raising concerns not only about environmental rights but also about freedom of speech, association, and dissent.

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.

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).

Similarly, in the Ganga Pollution case¹⁰, the Court directed the closure of 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

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

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).

a critical gap in Indian constitutionalism, one that undermines both substantive environmental justice and procedural democratic participation.

III. The Age of ESG and the Expanding Reach of Corporate Power

“ESG, SLAPPs, and the Silencing of Climate Conscience- A Constitutional Reckoning.”

In recent decades, India’s environmental jurisprudence has entered a new phase shaped by the global rise of Environmental, Social, and Governance (ESG) frameworks. Originally conceived as voluntary corporate standards to encourage ethical and sustainable business conduct, ESG principles are now intertwined with statutory obligations and financial regulations. In India, this shift is evident through the Companies Act, 2013, which introduced Corporate Social Responsibility (CSR) Obligations, mandating qualifying companies to allocate a portion of their profits toward environmental and social welfare initiatives.¹⁴ Similarly, the Securities and Exchange Board of India (SEBI) has institutionalised sustainability disclosures through the Business Responsibility and Sustainability (BRSR), applicable to the top 1,000 listed entities. These developments reflect a formal convergence between corporate governance and environmental accountability. At the international level, ESG frameworks are promoted as vehicles for aligning corporate conduct with the goals of sustainability and climate justice.

However, the ESG era also reveals an unsettling paradox. While corporations increasingly brand themselves as climate-conscious entities, they simultaneously engage in strategic suppression of environmental dissent. Through defamation suits, injunctions, and regulatory complaints, corporations and their affiliates deploy the legal system to silence activists, journalists and community organisations that challenge their environmental claims. Such SLAPPs do not primarily seek legal victory but rather to exhaust the resources and morale of dissenters, effectively chilling public debates on environmental harms.¹⁵

¹⁴ Companies Act, No. 18 of 2013, Section 135 (India).

¹⁵ See generally *John Doe v. Univ. of Mich.*, 1990 Mich. App. LEXIS 54 (Mich. Ct. App. 1990); Directive (EU) 2022/0297 of the European Parliament and of the Council on the Protection of Persons Engaged in Public Participation from Manifestly Unfounded or Abusive Court Proceedings (“Anti-SLAPP Directive”), 2022 O.J. (L 80) 1.

The Sterlite Copper protests in Thoothukudi (2018)¹⁶ exemplify this tension between individual interests and democratic dissent. Community protests against toxic emissions from the Sterlite plant were met with disproportionate police force, legal intimidation and criminal prosecutions. Despite judicial interventions, including the Madras High Court's 2020 affirmation of the plant's closure, the broader issue, the right of communities to resist corporate environmental harm without fear of reprisal, remains constitutionally unaddressed.¹⁷

This pattern is confined to one incident. Environmental organisations such as, Greenpeace India¹⁸ and Environics Trust¹⁹ have faced severe restrictions under the Foreign Contribution (Regulation) Act, 2010, with the government alleging "anti-development activities". These regulatory actions have a chilling effect on environmental advocacy and undermine the freedom of association under Article 19(1)(c).

Comparative constitutional experiences highlight India's growing doctrinal lag. The European Union's Anti-SLAPP Directive (2022/0297)²⁰ expressly recognises vexatious litigation as a threat to public participation and mandates early dismissal procedures for such cases. The Philippines' Writ of Kalikasan²¹ provides an innovative procedural safeguard that empowers citizens and organisations to seek judicial protection for environmental rights without fear of

¹⁶ R. Akilah Lakshmi & J. Balasubramaniam, *Environmental Activism: Unveiling the Dynamics of the Anti-Sterlite Protests through Social Media Mobilization*, 15 **Global Media J. – Indian Edition** 2 (Dec. 2023), <https://globalmediajournalindia.com/> (ISSN 2249-5835).

¹⁷ *Vedanta Ltd. V. State of Tamil Nadu*, 2020 SCC Online Mad 11968 (India).

¹⁸ Sudhi Ranjan Sen, *Greenpeace's Foreign Funds Blocked, Government Says It Acted Against India's Economic Interest*, NDTV (Apr. 9, 2015), <https://www.ndtv.com/india-news/greenpeace-india-in-new-trouble-with-government-over-foreign-funds-753569>.

¹⁹ Ankita Dhar Karmakar, *Indian Government's Attacks on Nonprofits May Portend What Lies Ahead in U.S.*, Truthout (Mar. 29, 2025), <https://www.truthout.org/articles/indian-governments-attacks-on-nonprofits-may-portend-what-lies-ahead-in-us/>.

²⁰ *Foreign Contribution (Regulation) Act*, No. 42 of 2010, § 9, India Code (2010).

²¹ Writ of Kalikasan, *Wikipedia*, https://en.wikipedia.org/wiki/Writ_of_Kalikasan (last visited Oct. 09, 2025).

retaliation. These comparative examples illustrate that protecting environmental defenders is now a core component of environmental constitutionalism worldwide.

In contrast, Indian jurisprudence continues to focus predominantly on environmental degradation while overlooking the constitutional vulnerability of those who resist it. Thus, while the judiciary has extended Article 21 to protect the ecosystem, it has yet to evolve doctrines ensuring that the protectors of the environment are themselves constitutionally shielded from corporate and state suppression. This unaddressed tension between environmental rights and freedom of dissent marks a critical frontier for the next phase of constitutional evolution.

IV. Strategic Lawsuits and the Suppression of Climate Activism

“From Clear Air to Clear Voices- Expanding Article 21 for the Age of Corporate Climate Power.”

The emergence of SLAPPs represents one of the most serious procedural threats to environmental constitutionalism in contemporary India. SLAPPs are typically civil and criminal proceedings filed by powerful entities, often corporations or state authorities, against individuals or groups who speak out on issues of public concern. Their objective is not to win on merits but to intimidate, exhaust, and silence public critics through the burdens of prolonged litigation, financial depletion, and reputational harm.

a. The Constitutional Vulnerability of Dissenters

Although Article 19(1)(c) of the Indian Constitution guarantees the freedom of speech and expression, the current judicial framework offers no clear protection against vexatious litigation. Indian courts have repeatedly upheld the right to protest and express dissent as integral to democratic life. In *Re Ramlila Maidan Incident*, the Supreme Court recognised that peaceful assembly is an “essential feature of a democratic polity.”²² Similarly, in *Mazdoor Kisan Shakti Sangathan*

²² *Re Ramlila Maidan Incident v. Home Secretary, Union of India*, (2012) 5 S.C.C. 1 (India).

v. *Union of India*, the Court affirmed that citizens' right to protest is a core democratic value, though subject to reasonable restrictions under Article 19(2).²³

However, while the Court has safeguarded the content of environmental speech, it has not addressed the procedural retaliation faced by those who exercise it. When corporations or state bodies file defamation suits, injunctions, or criminal complaints to stifle climate advocacy, the Constitution remains silent on the procedural immunity of such speech-actors. As a result, environmental defenders, such as journalists, researchers, and local communities, find themselves unprotected within the existing framework of rights jurisprudence.

b. The Rise of Climate SLAPPs in India

India has witnessed a worrying escalation in climate-related SLAPPs. Activities and organisations exposing environmental violations increasingly face defamation suits, sedition charges, and regulatory harassment. The *Greenpeace India v. Union of India*²⁴, controversy epitomises this trend, where the government suspended the NGOs' FCRA license and froze their bank accounts, alleging "anti-national activities." The Delhi High Court later held that disagreement with state policy does not amount to anti-national conduct, reaffirming the legitimacy of dissent in environmental matters.

Similarly, journalists and local community leaders opposing extractive projects, such as coal mining in Hasdeo Arand (Chhattisgarh) or hydropower expansion in the North-East, have been targeted with multiple police cases, defamation notices, and digital surveillance. The criminalising of protest, as observed during the Sterlite Copper protests (2018), reveals how environmental activism is increasingly treated as a threat to "economic security" rather than an exercise of democratic citizenship.

c. Comparative Constitutional Lenses

Compared to other jurisdictions, several have developed anti-SLAPP frameworks to strike a balance between free speech and corporate accountability. The United States, under statutes such as **California's Code of Civil Procedure**, Section 425.16, enables defendants to seek early dismissal of SLAPP suits that

²³ *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 S.C.C. 324 (India).

²⁴ *Greenpeace India Society v. Union of India*, 2015 SCC OnLine Del 13932 (India).

target protected speech.²⁵ **The European Union’s Anti-SLAPP Directive (2022/0297)** mandates procedural safeguards, including early dismissal mechanisms and compensation for defendants.²⁶ **The Canadian Province of Ontario’s Protection of Public Participation Act, 2015**, similarly recognises public participation as a protected democratic activity.²⁷

These developments underscore an evolving ‘**right to resist**’ within constitutional democracies, a recognition that dissent itself must be institutionally protected. Without procedural protection, substantive environmental rights risk being hollow guarantees, exercised only by those who can afford to withstand retaliation.

d. The Indian Gap: Need for Procedural Constitutionalism

India’s environmental jurisprudence, anchored primarily in Article 21, has focused extensively on the substantive dimensions of environmental rights, such as clean air, safe water, and ecological balance. Yet, it has not evolved procedural mechanisms to protect the defenders of those rights.²⁸ The absence of judicial or legislative anti-SLAPP safeguards leaves activists vulnerable to a form of “constitutional silencing”. A structural gap between rights on paper and rights in practice.

This lacuna demands a rethinking of constitutional environmentalism in India. Just as public interest litigation (PIL) expanded standing to protect collective rights, the next doctrinal leap must protect climate dissenters as custodians of environmental democracy. Recognising a “constitutional right to climate dissent” would not merely expand Article 21 but fortify the procedural architecture of Indian constitutionalism, ensuring that those who defend the environment are themselves constitutionally defended.

²⁵ California Code of Civil Procedure, Section 425.16 (2020).

²⁶ Directive (EU) 2022/0297 of the European Parliament and of the Council on the Protection of Persons Engaged in Public Participation from Manifestly Unfounded or Abusive Court Proceedings (“Anti-SLAPP Directive”), 2022 O.J. (L 80) 1.

²⁷ Protection of Public Participation Act, S.O. 2015, c. 23 (Can.).

²⁸ UN Human Rights Council. Report on Environmental Human Rights Defenders, U.N. Doc. A/HRC/40/60 (2019).

V. Beyond Article 21: The Case for a Right to Climate Dissent

Seventy-five years of Indian constitutionalism have seen Article 21 evolve into a capacious guarantee, encompassing the right to livelihood²⁹, right to health³⁰, and right to environment³¹. Yet, the emerging challenge of corporate suppression of environmental dissent reveals the limitations of treating climate justice solely through an environmental-rights paradigm. The problem is not only pollution or ecological degradation, but the systematic silencing of those who resist it.

A constitutional right to climate dissent would represent the next doctrinal step “beyond Article 21”. It would synthesise Article 19(1)(a)³², Article 19(1)(b)³³, and Article 19(1)(c)³⁴ with Article 21’s guarantee of life and environment, recognising that without protected spaces for dissent, the substantive right to environment remains hollow. This framework would allow the judiciary to identify SLAPPs, corporate intimidation, and regulatory harassment of activists as constitutional wrongs, not merely civil disputes.

a. From Environmental Rights to Environmental Defenders

The Indian Supreme Court’s environmental jurisprudence has long evolved through a dynamic interpretation of Article 21. From *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh* (1985)³⁵, which linked the right to life with ecological preservation, to *Subhash Kumar v. State of Bihar* (1991)³⁶, which explicitly recognised the right to pollution-free water and air, the Court has expanded Article 21 from a negative liberty to a positive obligation on the State. Yet, the Court’s doctrinal focus has largely remained anthropocentric, on protecting human life from environmental degradation, rather than civic-centric, i.e., protecting those who advocate for ecological justice.

²⁹ *Olga Tellis v. Bombay Municipal Corporation*, 1985 (India).

³⁰ *Consumer Education and Research Centre v. Union of India*, 1995 (India).

³¹ *M. C. Mehta* (1987) 1 SCC 395 (India).

³² *INDIA CONST.* art. 19(1)(a).

³³ *INDIA CONST.* art. 19(1)(b).

³⁴ *INDIA CONST.* art. 19(1)(c).

³⁵ *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, 1985 Supp. S.C.C. 79 (India).

³⁶ *Subhash Kumar v. State of Bihar*, (1991) 1 S.C.C. 598 (India).

This distinction is critical in the age of corporate power and ESG governance. The defenders of the environment- activists, scholars, journalists, and indigenous communities- are now on the frontline of constitutional vulnerability. Their right to express environmental dissent, assemble peacefully, and hold corporations accountable is increasingly constrained by regulatory retaliation, criminalisation of protests, and strategic litigation. The silence of constitutional jurisprudence on these procedural harms has resulted in what can be termed “**Article 21 asymmetry**”, where the environment is constitutionally protected, but environmental dissenters are not.

b. The Doctrinal Logic of Expansion

Doctrinally, the expansion of Article 21 to encompass a right to climate dissent is consistent with India’s interpretive tradition of reading fundamental rights as mutually reinforcing. The Supreme Court has held that Articles 14, 19, and 21 form a “golden triangle”, ensuring liberty, equality, and dignity as inseparable constitutional values.³⁷ Following this principle, the freedom to dissent, protected under Article 19(1)(a) and Article 19(1)(b), must be read into Article 21 when the exercise of such dissent becomes essential to the preservation of life, health, and the environment.

The jurisprudence already provides a strong foundation for this synthesis. In *Romesh Thappar v. State of Madras* (1950), the Court declared that “freedom of speech and expression lies at the foundation of democratic organisations”.³⁸ Later, in *S. Rangarajan v. P. Jagjivan Ram* (1989), it was held that freedom of expression cannot be suppressed merely because it may be “unpalatable to some”.³⁹ Extending this logic, when environmental advocacy challenges corporate pollution or governmental negligence, it constitutes a form of life-protection speech, a speech in defence of the right to life itself.

c. Comparative Constitutional Developments

Internationally, constitutional democracies have begun integrating protections for environmental defenders as a distinct legal category. The Inter-American Court of Human Rights, in *Lakha Honhat Association v. Argentina* (2020),

³⁷ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

³⁸ *Romesh Thappar v. State of Madras*, A.I.R. 1950, S.C. 124 (India).

³⁹ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 S.C.C. 574 (India).

affirmed the collective right of indigenous communities to a “safe, clean, and sustainable environment”, linking it with participatory rights and access to justice.⁴⁰ **The Aarhus Convention (1998)** under the United Nations Economic Commission for Europe (UNECE) further recognises the right of every person to participate in environmental decision-making and access remedies without fear of persecution.⁴¹

Similarly, the *Philippines’ Writ of Kalikasan*, a constitutional innovation under **Rule 7** of its **Rules of Procedures for Environmental Cases**⁴², provides judicial protection to environmental advocates facing threats or harassment. These models demonstrate that protecting environmental dissent is not an ancillary concern but a core feature of modern environmental constitutionalism.

d. Towards Procedural Constitutionalism in India

For India, recognising a Constitutional Right to Climate Dissent would operationalise procedural environmentalism, a doctrine that ensures citizens can safely assert their environmental rights without fear of retaliation. Such a right could be anchored in three pillars:

- **Judicial Recognition:**

The Supreme Court, through its interpretive power under Article 142 and Article 32, could acknowledge the right to climate dissent as an extension of Article 21 and Article 19(1)(a).

- **Legislative Protection:**

Parliament could introduce an anti-SLAPP and Public Participation Protection Act, modelled on Canada’s and California’s frameworks, to ensure early dismissal of vexatious cases and impose costs on plaintiffs who abuse the judicial process.

⁴⁰ *Lakha Honhat Association v. Argentina*, Inter-Am. Ct. H.R. (ser.C) No. 400 (Feb. 6, 2020)

⁴¹ Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, 2161 U.N.T.S. 447.

⁴² Rules of Procedures for Environmental Cases, Rule 7, Writ of Kalikasan (Phil.)

- **Institutional Enforcement:**

The National Green Tribunal (NGT), under Section 14 of the National Green Tribunal Act, 2010⁴³ could be vested with jurisdiction to hear cases of strategic harassment against environmental actors, recognising their role as public interest participants rather than adversarial litigants.

Recognising a constitutional right to climate dissent would therefore bridge India's current doctrinal gap between environmental protection and democratic participation. It would align India with the **Paris Agreement (2015)**⁴⁴ obligations to ensure "inclusive and participatory climate action" and reflect the spirit of the Stockholm Declaration (1972), which first articulated environmental participation as a human right.

Therefore, seventy-five years after independence, India's constitutional journey reflects a progressive transformation from formal liberties to substantive entitlements. Yet, as environmental conflicts intensify under the pressure of corporate expansion and state complicity, constitutional protection must now extend beyond the environment itself to those who defend it.⁴⁵ Moving "beyond Article 21" means embracing a living constitutionalism, one that recognises dissent not as disorder, but as democracy's ecological conscience.

VI. Constitutionalism at 75 and the Future of Climate Justice

"When the Right to Life meets the Right to Dissent, the Constitution must breathe through Climate Justice."

As the Constitution of India completes seventy-five years, its legacy reflects a remarkable trajectory, from the foundational vision of social justice and democracy, to the judicial expansion of rights under Article 21, to the continuous negotiation of federalism and governance in a complex society. Yet, the future obligations of Indian constitutionalism lie in recognising that the greatest challenges of the 21st century, climate change, corporate power, and digital authoritarianism, demand new doctrinal responses.

⁴³ National Green Tribunal Act, No. 19 of 2010, India.

⁴⁴ The Paris Agreement, Dec. 12, 2015, T.I.A.S. No. 16-1104.

⁴⁵ UN Human Rights Council, Report on Environmental Human Rights Defenders, U.N. Doc. A/HRC/40/60 (2019).

The right to the environment, though robustly developed, remains incomplete without a corresponding right to climate dissent. Protecting rivers and forests in judgments will mean little if communities defending them are silenced through SLAPPs, regulatory restrictions, and corporate litigation. Judicial review, which once expanded the meaning of life and liberty, must now expand the meaning of democratic participation in the climate age.

Globally, democracies are moving towards recognising environmental defenders as essential actors in securing a liveable future. India, with its constitutional heritage of transformative justice, cannot afford to lag. A constitutional right to climate dissent would not only integrate Articles 19 and 21 into a coherent doctrine but also reaffirm the Constitution's moral compass in the ESG era, where corporations present themselves as climate champions even as they suppress opposition.

Thus, at 75, the Constitution's future obligation is clear. It must move beyond Article 21 and acknowledge dissent as the lifeblood of environmental democracy. To secure climate justice, the Constitution must protect not only nature but also those who defend it. Only then will India's constitutionalism remain faithful to its founding promise and relevant to the planetary crisis ahead.

VII. Policy Recommendations: a Call to Action

The recognition of a constitutional right to climate dissent cannot remain a purely theoretical aspiration; it demands institutional embodiments. Presently, the challenge is no longer to justify the environmental rights but to secure their enforcement through procedural and structural safeguards. The rapid corporatisation of environmental governance, fuelled by the language of ESG compliance, has altered the terrain of environmental justice, shifting power from public institutions to private entities. In this changing context, dissent has become both the ethical and procedural core of constitutional democracy.

Therefore, policy intervention must move beyond declaratory rights and create operational mechanisms to protect those who defend environmental justice. Such reforms must strengthen judicial, legislative and regulatory frameworks to prevent the misuse of law as an instrument of silencing. The following policy recommendations seek to institutionalise the right to climate dissent through an integrated approach, constitutional interpretation, legislative innovations, and

administrative accountability, to ensure that environmental advocacy remains both protected and participatory in the era of corporate dominance.

- **Reclaiming the Constitutional Spirit after 75 Years**

Seventy-five years after the Constitution's enactment, India's environmental constitutionalism stands at a decisive crossroads. Over decades, the judiciary has transformed Article 21 from a procedural safeguard against State excess into a living guarantee of human dignity, encompassing the right to clean air, safe water, and ecological balance. Yet, as the frontiers of environmental law expand. A deeper paradox emerges. The Constitution protects nature but not those who protect nature. The challenge of the next constitutional generation lies not merely in reaffirming environmental rights, but in institutionalising the right to climate dissent, the right to speak, assemble, and resist environmental degradation without fear of retaliation.

This call is consistent with the founder's vision. The debates of the Constituent Assembly reflected an understanding that liberty would remain hollow without the capacity to challenge authority. As B. R. Ambedkar cautioned, "Constitutional morality is not a natural sentiment. It has to be cultivated." The cultivation of such morality today demands constitutional courage to defend dissent, especially when it confronts corporate power and state complicity in environmental harm.

- **Towards a New Generation of Environmental Rights**

The future of environmental constitutionalism in India must evolve from substantive rights to procedural justice. Recognising a constitutional right to climate dissent would mark the third generation of environmental rights, moving beyond (i) protection of nature; (ii) access to environmental justice, toward (iii) protection of environmental defenders. This transition is vital to sustain democratic legitimacy in the age of ESG capitalism, where corporate actors increasingly shape policy outcomes under the guise of sustainability.

Just as the PIL revolution of the 1980s transformed cases to justice for the poor, the next constitutional wave must secure safe civic participation for environmental defenders. Such protection is not a threat to economic development but a precondition for legitimate governance and climate accountability.

- **Institutional and Legal Reforms**

To operationalise this constitutional vision, India must undertake targeted institutional and legal reforms:

(a) Judicial Recognition of Climate Dissent:

The Supreme Court of India, under Article 142, should recognise the right to climate dissent as implicit in Article 19(1)(a), 19(1)(b), and 21, ensuring that environmental defenders enjoy procedural immunity against SLAPPs and retaliatory actions.

(b) Anti-SLAPP Legislation:

Parliament should enact an anti-SLAPP and Public Participation Protection Act, modelled on global precedents such as California’s Code of Civil Procedure, Section 425.16⁴⁶ and the EU Anti-SLAPP Directive (2022/0297)⁴⁷. Such a statute should provide for early dismissal of vexatious suits, cost penalties for abusive litigants, and compensation for victims of legal harassment.

(c) Expanded Jurisdiction of the National Green Tribunal (NGT):

Amendments to the National Green Tribunal Act, 2010, could empower the NGT to hear petitions alleging intimidation or suppression of environmental defenders, recognising their participation as a matter of “environmental justice” under Section 20.⁴⁸

(d) Strengthened Civil Society Protections:

Amendments to the Foreign Contribution (Regulation) Act, 2010⁴⁹ should introduce safeguards preventing the arbitrary cancellation of NGO registrations engaged in environmental advocacy.

- **Constitutional Future and Democratic Ecology**

The right to climate dissent represents not only a new constitutional entitlement but also a moral obligation of democratic governance. As India navigates the

⁴⁶ California Code of Civil Procedure, Section 425.16 (2020).

⁴⁷ EU Directive 2022/0297, Anti-SLAPP Directive, O.J. (L 80) (2022).

⁴⁸ National Green Tribunal Act, No.19 of 2010, India.

⁴⁹ Foreign Contribution (Regulation) Act, No. 49 of 2010, India.

twin crisis of climate change and corporate dominance, constitutionalism must evolve to preserve the democratic ecology envisioned by its framers, an ecology where participation, protest, and principle coexist as constitutional virtues.

In this sense, the next seventy-five years of the Indian Constitution will be judged not by how well it protects the State from dissent, but by how faithfully it protects dissent from the State. The recognition of a constitutional right to climate dissent would reaffirm India's commitment to transformative constitutionalism, a vision where liberty and sustainability are not competing ideals, but mutually sustaining imperatives.

VIII. Conclusion

Seventy-five years after its adoption, the Indian Constitution stands as a living testament to democratic renewal, yet its environmental jurisprudence remains incomplete. Through judicial innovation, Article 21 has evolved from a narrow procedural guarantee into the foundation of environmental rights. However, the constitutional imagination that once expanded to embrace rivers and forests has not yet extended protection to the defenders of those ecosystems. In the contemporary landscape of ESG-driven capitalism, where corporations adopt the language of sustainability while deploying SLAPP suits, regulatory harassment, and criminal intimidation to silence critics, this omission has become a structural threat to democratic ecology.

To move "beyond Article 21" is therefore to recognise that environmental justice cannot exist without climate dissent. A constitutional right to climate dissent would integrate Articles 14, 19, and 21, ensuring that those who challenge environmental degradation enjoy procedural and substantive protection. It would align India with comparative frameworks such as the EU Anti-SLAPP Directive, Canada's Public Participation Acts, and the Philippines' *Writ of Kalikasan*, affirming that public participation is integral to environmental governance.

As India enters its next constitutional epoch, safeguarding dissenters is not an act of defiance but of fidelity to the Preamble's promise of justice, liberty, and dignity. Embedding a constitutional guarantee for climate dissent will preserve the spirit of transformative constitutionalism, a Constitution that protects not only the environment but also those who defend it, ensuring that democracy and sustainability endure together in the century of the climate crisis.