

JUDICIARY AND ENVIRONMENTAL GOVERNANCE IN INDIA: FROM CONSTITUTIONAL INTERPRETATION TO JUDICIAL POLICY-MAKING

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ABSTRACT

Commentators routinely credit the Indian judiciary with having built, almost single-handedly, the doctrinal edifice of the country's environmental law. Starting from a generous reading of Article 21 and the procedural innovation of public interest litigation, the Supreme Court and the High Courts carried the precautionary principle, the polluter-pays principle and the public trust doctrine into Indian law and, through the continuing mandamus issued in *T.N. Godavarman Thirumulpad*, took on what now functions as an ongoing regulatory role over the nation's forests. This article offers a critical, doctrine-based examination of that trajectory, arguing that judicial involvement in Indian environmental governance is not a single, undifferentiated phenomenon. Rather, it spans a spectrum: from legitimate constitutional interpretation, through purposive gap-filling made necessary by legislative and executive inaction, to what is more accurately termed judicial policy-making — the assumption of continuing, executive-style regulatory functions for which courts possess neither institutional competence, accountability, nor reversibility. Adopting a doctrinal and analytical method, the article follows the case law chronologically, from *Rural Litigation and Entitlement Kendra* (1985) to the *Kaziranga mining orders* of 2019, locates this trajectory within the separation-of-powers debate, and proposes a framework for telling interpretation apart from policy-making. It concludes that although judicial creativity addressed a genuine accountability vacuum left by weak regulatory machinery, the long-term entrenchment of judicial oversight — through monitoring committees, continuing mandamus, and judicially created bodies such as the Central Empowered Committee — has generated governance that lacks commensurate democratic accountability, and it proposes doctrinal and institutional correctives.

KEYWORDS: Environmental constitutionalism; public interest litigation; precautionary principle; polluter-pays; judicial activism; separation of powers; National Green Tribunal; continuing mandamus; Article 21; sustainable development.

I. INTRODUCTION

India's environmental jurisprudence holds an unusual position within comparative constitutional law. In many other jurisdictions, environmental protection grew primarily out of detailed statutory codes administered by dedicated agencies; in India, by contrast, the foundational doctrines — the precautionary principle, the polluter-pays principle, the public trust doctrine, and the recognition of a right to a healthy environment itself — were not the product of parliamentary enactment. They were announced by the Supreme Court, which read them into the due-process guarantee of Article 21 and the directive principle contained in Article 48A.

This article poses a narrower and more contestable question than simply asking whether the judiciary has protected the environment. It asks whether, and at what point, judicial engagement with environmental matters in India stopped being an exercise in interpreting open-textured constitutional and statutory language and instead became policy-making that properly belongs to the executive and the legislature. That distinction is consequential because interpretation and policy-making rest on different institutional foundations: interpretation draws its legitimacy from the judiciary's constitutional mandate to give content to fundamental rights and to test executive action against legal standards, whereas policy-making — of the sort involved in fixing emission timelines, relocating industries, or administering a nationwide programme of forest clearance through a court-appointed committee — derives its legitimacy, in a constitutional democracy, from electoral accountability and specialised executive expertise.

The argument unfolds in three stages. It first maps the constitutional foundations on which the judiciary built environmental doctrine. It then traces the case law in chronological sequence to show how the doctrinal innovations of the 1980s and 1990s gradually took on an administrative character during the 2000s, a shift most visible in the Godavarman forest litigation and the orders that followed it. Finally, it tests this trajectory against separation-of-powers theory and proposes a framework — built around reversibility, institutional competence, and the availability of a workable legislative or executive alternative — for separating legitimate judicial gap-filling from judicial policy-making that ought to be curtailed or, where it has already taken root, gradually wound down.

II. RESEARCH PROBLEM AND RESEARCH GAP

Existing scholarship on Indian environmental law is substantial but tends to cluster into two distinct strands. One is doctrinal case-law writing, of the kind that traces how principles such as precaution and polluter-pays have evolved over time¹; this literature generally catalogues doctrinal development without systematically asking whether particular judicial applications crossed the line from interpretation into administration. The other strand is public-law scholarship on judicial activism and the separation of powers²³, which theorises the legitimacy of public interest litigation at a general level but rarely tests that theory rigorously against the specific, long-running institutional arrangements — monitoring committees, continuing mandamus, judicially created regulatory bodies — that now define Indian environmental adjudication in particular.

A research gap follows from this: the literature lacks a doctrinally precise, case-by-case account of where on the interpretation-to-policy-making spectrum specific environmental decisions actually sit, and of why that placement matters for democratic accountability. This article addresses that gap by building an explicit analytical framework and applying it chronologically to the leading decisions, rather than treating judicial environmental intervention as one undifferentiated category to be praised or condemned wholesale.

A third gap, less often noticed, is temporal rather than doctrinal. Much of the activism literature was written in the 1990s and early 2000s, when the National Green Tribunal did not yet exist and the case for judicial improvisation was correspondingly stronger. Relatively little of it has been revisited in light of the NGT's creation in 2010, even though that institutional change is precisely the sort of development that, on the framework advanced here, should prompt a fresh look at whether continuing mandamus proceedings begun decades earlier still meet the institutional-necessity test that originally justified them. This article treats that revisiting as one of its central tasks.

III. OBJECTIVES

- (a) To trace the constitutional foundations of environmental protection in India, with particular attention to how Articles 21, 32, 48A and 51A(g) interact.
- (b) To provide a chronological, doctrinally grounded analysis of the leading Supreme Court decisions that built Indian environmental jurisprudence.
- (c) To examine the judicial development of the precautionary principle, the polluter-pays principle, sustainable development, and the public trust doctrine.
- (d) To develop and apply an analytical framework that distinguishes constitutional interpretation from judicial policy-making in the environmental context.
- (e) To evaluate this trajectory against separation-of-powers theory, institutional competence, and democratic accountability, and to identify doctrinal and institutional correctives.

IV. RESEARCH QUESTIONS AND HYPOTHESIS

i. Research Questions

RQ1: How did the Indian judiciary derive substantive environmental doctrines from the open-textured language of Articles 21 and 48A?

RQ2: At what points in the chronological development of the case law did judicial intervention shift from interpreting existing legal standards to creating and administering new regulatory arrangements?

RQ3: What institutional and doctrinal factors — legislative default, executive non-compliance, the absence of specialised tribunals before 2010 — account for this progression?

RQ4: Does the continuing-mandamus model exemplified by the Godavarman proceedings amount to a sustainable and constitutionally legitimate form of environmental governance?

ii. Hypothesis

The article advances the following hypothesis: judicial intervention in Indian environmental governance began as legitimate, rights-based constitutional interpretation, responding to a genuine regulatory and accountability vacuum, but — in the absence of a dedicated environmental tribunal until 2010⁴ and amid continuing executive non-compliance — gradually hardened into open-ended, judicially administered policy-making that now sits uneasily alongside separation-of-powers principles and democratic accountability, notwithstanding the substantively pro-environment outcomes it has produced in individual cases.

V. METHODOLOGY

This article follows a doctrinal, black-letter method, supplemented by analytical and historical-institutional analysis. Its primary sources are the Constitution of India, the relevant environmental statutes⁵, and the judgments of the Supreme Court of India (and, where relevant, the National Green Tribunal), read from official or otherwise authoritative reported citations. Its secondary sources consist of peer-reviewed scholarship on Indian environmental law and on judicial activism and the separation of powers. The case law is examined chronologically so as to trace doctrinal evolution, and every major decision is tested against a threefold analytical framework set out in Part X below:

(i) the extent of textual and doctrinal warrant for the Court's holding; (ii) whether the remedy ordered was time-bound and self-executing, or open-ended and administrative in character; and (iii) whether a legislative or executive mechanism with the relevant institutional competence existed but had simply failed to act. The study is limited to the reported constitutional and statutory case law; it does not draw on empirical fieldwork or interviews, and its observations on the regional position in Assam and North-East India are confined to the reported record rather than offered as a comprehensive regional survey.

VI. CONSTITUTIONAL FOUNDATIONS OF ENVIRONMENTAL PROTECTION

i. Article 21 and the Judicial Construction of an Environmental Right

The bare constitutional text is silent on ecology: Article 21 states only that "no person shall be deprived of his life or personal liberty except according to procedure established by law"⁶. Environmental protection is nowhere mentioned. Two decisions gave that silence content. In the Dehradun quarrying dispute, *Rural Litigation and Entitlement Kendra v State of UP*⁷, limestone operators in the Mussoorie hills were shut down on ecological grounds. A few years later, *Subhash Kumar v State of Bihar* went further and folded pollution-free air and water into the meaning of 'life' itself⁸. Between them, these two rulings converted a due-process guarantee that on its face protects only against arbitrary state deprivation of liberty into a freestanding environmental entitlement — a considerable act of constitutional construction achieved without a single word of amendment.

It is worth pausing on how unusual this manoeuvre is by comparative standards. Most constitutions that recognise an environmental right do so expressly, through a dedicated provision (South Africa's Constitution and Brazil's are commonly cited examples). India instead arrived at a functionally similar guarantee by judicial inference from a due-process clause originally aimed at physical liberty and criminal procedure. That path dependency matters for everything that follows in this article: because the right was judge-made rather than legislated, its content, scope and enforcement mechanism have also remained substantially judge-controlled, with none of the drafting compromises, legislative debate or amendment procedure that ordinarily discipline the creation of a new constitutional entitlement. This interpretive move can be defended as an instance of purposive, rights-expanding construction of a kind Indian courts had already practised in other settings following *Maneka Gandhi v Union of India*⁹ (1978), which required that 'procedure established by law' be fair, just and reasonable rather than merely enacted. It is harder to defend once its institutional consequences are considered, because unlike most Article 21 rights — which impose chiefly negative, prohibitory obligations on the state — the environmental right recognised in *Subhash Kumar* carries extensive positive regulatory obligations: standard-setting, monitoring and enforcement across industries and sectors that the judiciary is not equipped to sustain on an ongoing basis.

ii. Article 32 and Epistolary Jurisdiction

Textually, Article 32 does something narrower: it confers "the right to move the Supreme Court by appropriate proceedings for the enforcement" of the rights conferred by Part III¹⁰. Two standing decisions turned that narrow textual guarantee into something much broader in practice. *S.P. Gupta v Union of India*¹¹ and, soon after, *Bandhua Mukti Morcha v Union of India*¹² relaxed the ordinary requirement that a petitioner show a personal, direct stake in the outcome, allowing any public-spirited person to move the Court on behalf of those who could not approach it themselves. Once that relaxation was in place, Article 32 stopped functioning merely as an individual remedy and became the procedural doorway through which environmental public interest litigation entered the Indian legal system. Consider what this made possible: M.C. Mehta, a public-interest lawyer with no personal stake in the Ganga, in Delhi's air quality, or in the condition of the Taj Mahal, was able single-handedly to place the regulatory failures of entire industrial sectors before the Court, and to keep each matter open indefinitely by filing successive applications within one continuing proceeding — something ordinary standing doctrine, applied strictly, would never have permitted.

iii. Articles 48A and 51A(g): Directive Principles and Fundamental Duties as Interpretive Aids

Two further provisions, neither directly enforceable on its own, complete the constitutional picture. Article 48A commits the State to "endeavour to protect and improve the environment and to safeguard the forests and wild life of the country"¹³, while Article 51A(g) places a mirror-image duty on every citizen "to protect and improve the natural environment"¹⁴. Neither can found a claim by itself: Article 37 expressly strips Part IV directive principles of justiciability, and Part IVA duties create no independent cause of action against anyone. Where they matter is as interpretive aids. The Supreme Court has repeatedly reached for Articles 48A and 51A(g) when reading Article 21, using them to insist that environmental protection is not merely aspirational government policy but part of the substantive content of the right to life. That interpretive technique — borrowing meaning from a non-justiciable provision to enrich a justiciable one — is orthodox and well-precedented as a mode of constitutional construction. It is also, on closer inspection, the doctrinal hinge on which everything that follows in this article turns. Article 48A speaks the language of state policy and planning, not of individual

entitlement; smuggling that policy-language into Article 21 necessarily smuggles policy-type obligations into what nominally remains an exercise in rights adjudication. The seeds of judicial policy-making, in other words, are already present at the interpretive stage, well before the institutional machinery discussed in Parts VIII and X below is ever put in place.

VII. PUBLIC INTEREST LITIGATION AND THE JUDICIAL CONSTRUCTION OF ENVIRONMENTAL DOCTRINE

Environmental PIL cannot be understood apart from its procedural ancestry. S.P. Gupta¹⁵ and Bandhua Mukti Morcha¹⁶ established that the Supreme Court could treat a letter, telegram or newspaper report as a writ petition, dispensing with strict standing requirements wherever the petitioner sought to vindicate the rights of a disadvantaged class unable to approach the courts on its own behalf. Environmental litigation was a natural, arguably inevitable, extension of this innovation, given that environmental harm is typically diffuse, cumulative, and borne by persons — downstream villagers, future generations, non-human species — with no realistic means of organising conventional litigation.

The Court's early environmental PIL decisions follow a recognisable pattern: a narrow factual trigger — illegal quarrying, tannery effluent, a gas leak — becomes the occasion for announcing a general principle that reaches well beyond the facts before it. In *M.C. Mehta v Union of India* (the *Oleum Gas Leak case*), which arose from a leak at Shriram Foods' Delhi plant, the Court declined to apply the nineteenth-century English rule in *Rylands v Fletcher* and instead announced a new, more stringent Indian doctrine of absolute liability for enterprises engaged in hazardous activity, stating explicitly that it was not bound by earlier precedent and was free to develop a rule suited to Indian conditions.¹⁷ This is judicial law-making in the ordinary common-law sense — legitimate, and unremarkable in a mixed jurisdiction — but it foreshadows a pattern that recurs, in a more institutionally significant form, in the forest and pollution-control cases considered below, where a specific dispute becomes the vehicle for general regulatory rule-making.

VIII. CHRONOLOGICAL DEVELOPMENT OF LANDMARK ENVIRONMENTAL JURISPRUDENCE

i. The Founding Phase (1985-1991): Establishing the Constitutional Basis

In *Rural Litigation and Entitlement Kendra v State of UP*¹⁸, limestone quarrying in the Mussoorie-Dehradun hills had triggered landslides and broader ecological degradation. Treating a letter as a writ petition, the Hon'ble Supreme Court ordered a number of quarries closed, weighing ecological preservation against the economic interests of quarry operators and workers by directing afforestation and alternative-employment schemes. The case matters less for its reasoning — the Court did not set out a developed constitutional theory — than for showing that the Supreme Court was prepared to invoke Article 32 to shut down lawfully licensed economic activity on environmental grounds, and to do so before any statutory environmental-protection framework existed (the Environment (Protection) Act 1986 followed only afterwards, partly in response to the Bhopal gas disaster).

The *Oleum Gas Leak case* that followed¹⁹ and the *Ganga Pollution case*, in which the Court ordered the closure of Kanpur tanneries discharging untreated effluent into the Ganga²⁰, together established a pattern of direct judicial orders against polluting industry, enforced through the Court's own contempt jurisdiction rather than through any specialised regulator. Subhash Kumar²¹ then supplied the constitutional label — the Article 21 right to a pollution-free environment — for what had, in substance, already been under way for roughly six years.

ii. The Doctrinal Consolidation Phase (1996-1999): Precaution, Polluter Pays and the Public Trust

The decisions of the mid-1990s form the doctrinal core of Indian environmental law. In *Indian Council for Enviro-Legal Action v Union of India* (the *Bichhri case*), which concerned chemical-industry pollution of groundwater in Rajasthan, the Hon'ble Supreme Court held the polluting industries absolutely liable to remedy the environmental damage and compensate the affected villagers, thereby articulating, for the first time in clear terms, the polluter-pays principle as part of Indian law.²² In *Vellore Citizens Welfare Forum v Union of India*, concerning tannery pollution of the Palar river in Tamil Nadu, the Hon'ble Apex Court went further still, holding that the precautionary principle, the polluter-pays principle and the concept of sustainable development form part of the customary international law that, absent conflicting domestic legislation, is part of Indian municipal law, and are impliedly part of Article 21.²³ Both principles can be traced to the Stockholm and Rio Declarations.²⁴ In *M.C. Mehta v Kamal Nath*, concerning the diversion of a river for a private resort in Himachal Pradesh, the Hon'ble Supreme Court imported the American public trust doctrine, holding that certain natural resources are held by the State in trust for public use and cannot be diverted to private, commercial purposes.²⁵ Together, this trilogy completed the doctrinal apparatus: a constitutional right (Article 21), a set of substantive principles constraining industrial and developmental activity (precaution, polluter-pays, public trust), and a procedural mechanism for enforcing them (PIL together with continuing supervision).

It was also during this period, in *M.C. Mehta v Union of India* (the *Taj Trapezium case*), that the Hon'ble Supreme Court directed roughly 292 industries in Agra to switch to natural gas or relocate, on pain of closure, in order to protect the Taj Mahal from sulphur-dioxide-induced marble discolouration.²⁶ That order was precise, time-bound and grounded in expert technical reports — arguably still within the interpretive register, since it applied established pollution-control standards to a defined set of facilities rather than creating an ongoing regulatory apparatus. The Delhi CNG case that followed shortly afterwards, in which the Court progressively directed conversion of the entire Delhi public transport fleet to compressed natural gas, sits closer to the boundary: it demanded continuing judicial supervision of vehicle-conversion

timelines, fuel-supply infrastructure and compliance across an entire metropolitan transport sector — functions ordinarily discharged by a transport regulator and a pollution-control board acting under statutory powers, rather than by a court exercising writ jurisdiction.²⁷ Commentators have observed that the Delhi vehicular-pollution litigation, in effect, required the Court to set city-wide industrial and transport policy over a period of years.²⁸

iii. The Institutional Phase (1996-present): T.N. Godavarman and Continuing Mandamus

The clearest instance of the shift from interpretation to policy-making is T.N. Godavarman Thirumulpad v Union of India, a writ petition filed in 1995 concerning illegal timber felling in the Nilgiris, which the Hon'ble Supreme Court converted into a continuing mandamus over the whole of India's forest law.²⁹ The Court broadened the statutory definition of 'forest' under the Forest (Conservation) Act 1980 to cover any area recorded as forest in government records regardless of ownership or classification, directed the constitution of the Central Empowered Committee (CEC) — an expert body appointed by, and answerable to, the Court rather than to any minister or legislature — to monitor compliance, and has continued for close to three decades to issue binding directions on forest clearance, mining in forest areas, and wildlife corridors within the same proceeding.³⁰ The 2019 order restraining mining in elephant and tiger corridors adjoining Kaziranga National Park in Assam, discussed in Part XII below, was itself issued as an interlocutory application within this very proceeding — meaning that a matter of Assam forest and mining policy was resolved not through fresh constitutional adjudication but through an administrative-style application filed in a decades-old, judicially supervised case file.³¹

The Godavarman proceedings display all three markers of judicial policy-making identified in the methodology above: first, the Court's holding — that 'forest' means whatever the Court, on expert advice, determines it to mean for regulatory purposes — rests on weak textual warrant in the 1980 Act, which nowhere defines the term so expansively; second, the remedy is neither time-bound nor self-executing but takes the form of an indefinitely continuing supervisory jurisdiction, now administered largely by the CEC rather than by the Bench itself; and third, an institutionally competent alternative did exist in principle — the Ministry of Environment, Forest and Climate Change, together with State forest departments — but had, in the Court's assessment, failed to prevent large-scale illegal deforestation. That is precisely the kind of persistent executive default that public-law scholarship treats as the trigger for expanded judicial review, though it does not, by itself, resolve the accountability problem that arises once the judiciary itself becomes the ongoing administrator.³²³³

A similar arc unfolded in Almitra H. Patel v Union of India in the municipal solid-waste sector: a petition originally about waste-dumping in Delhi grew, across more than two decades of orders, into a nationwide judicially supervised programme for solid-waste management, again discharged substantially by court-appointed committees rather than by the statutory pollution-control boards.³⁴

IX. THE PRECAUTIONARY PRINCIPLE, POLLUTER PAYS AND SUSTAINABLE DEVELOPMENT: APPLICATION AND LIMITS

The precautionary principle — the idea that the absence of full scientific certainty should not be used as a reason to postpone measures preventing environmental degradation — received a distinctively Indian formulation in A.P. Pollution Control Board v Prof M.V. Nayudu, where the Court reversed a decision permitting a chemical industry to operate near a reservoir supplying drinking water. It held that the burden of proving an activity environmentally benign falls on the party proposing it, and recommended the establishment of environmental courts staffed with both judicial and scientific expertise.³⁵ That recommendation was itself an acknowledgment, from within the judiciary, that ordinary courts lack the scientific and technical competence to apply the precautionary principle reliably on a case-by-case basis — an institutional admission that anticipated, and helped justify, the eventual creation of the National Green Tribunal in 2010.³⁶

The polluter-pays principle, articulated in Indian Council for Enviro-Legal Action³⁷ and reaffirmed in Vellore Citizens³⁸, requires the polluter to bear the cost of remedying environmental damage and compensating victims, and has since fed into the 'environmental compensation' mechanism used by the NGT — visible, in a North-Eastern context, in the compensation imposed on illegal stone-mining operations in Meghalaya found to be aggravating flooding in Guwahati.³⁹ Sustainable development, defined by reference to the Brundtland formulation and endorsed in Vellore Citizens⁴⁰ and Narmada Bachao Andolan⁴¹, is the least determinate of the three principles: it names a balance to be struck between development and conservation without specifying how that balance is to be struck in any given case, which leaves adjudicating courts with very wide, largely unreviewable discretion.

It is instructive to set Vellore Citizens against Narmada Bachao Andolan v Union of India, concerning the Sardar Sarovar dam on the Narmada river.⁴² There, a differently constituted Bench, applying the very same sustainable-development framework, declined to interfere with the executive's decision to proceed with dam construction, holding that questions about the wisdom, viability and priority of a developmental project belong to the executive and expert bodies, and that courts should not sit in appeal over such decisions absent a clear legal violation. Read together, the two cases show that 'sustainable development' does not by itself dictate an outcome; it merely marks out the terrain on which either restraint or intervention can be — and has been — justified, depending on the particular Bench's own assessment of institutional competence. This inconsistency is itself telling: it suggests that the principle, as applied, functions less as a determinate legal rule than as a discretionary policy-balancing standard of the kind ordinarily entrusted to the executive.

A sceptic might respond that all balancing standards — reasonableness in administrative law, proportionality in rights adjudication — exhibit some Bench-dependent variation, and that this alone cannot distinguish 'sustainable development' as uniquely problematic. The response understates the difference in degree. Proportionality analysis typically proceeds through articulated sub-tests (suitability, necessity, balancing *stricto sensu*) that at least discipline the reasoning even where outcomes vary. Nothing comparable structures the sustainable-development inquiry in Indian environmental case law: neither Vellore Citizens nor Narmada Bachao Andolan sets out the factors a future Bench should weigh, in what order, or with what relative importance, which is precisely why the doctrine can point in opposite directions on materially similar facts without either decision being wrong on its own terms.

X. FROM INTERPRETATION TO POLICY-MAKING: AN ANALYTICAL FRAMEWORK

Building on the chronological analysis above, this article proposes that judicial environmental intervention in India can be placed along a spectrum using three criteria, applied cumulatively.

First, textual and doctrinal warrant: does the decision give content to language already present in the Constitution or a statute (as with reading 'life' in Article 21 to include health), or does it instead supply an operative definition or standard the text itself does not contain (as with the redefinition of 'forest' in Godavarman)?

Second, the character of the remedy: is it a specific, time-bound order capable of being executed and then closed (the closure of named polluting units, a conversion deadline), or an open-ended supervisory jurisdiction that requires indefinite institutional machinery (continuing mandamus, standing monitoring committees)?

Third, the institutional alternative: did a competent legislative or executive mechanism exist and simply fail to act, justifying temporary judicial gap-filling — or does the matter instead require ongoing scientific, budgetary or administrative capacity that only the executive can sustain, counselling judicial restraint or, at most, a time-limited mandate with a clear handover?

Applying this framework: the Article 21 environmental right recognised in Subhash Kumar⁴³, the absolute liability doctrine from the Oleum Gas Leak case⁴⁴, and the precautionary and polluter-pays principles in Vellore Citizens and Indian Council for Enviro-Legal Action⁴⁵ sit predominantly on the interpretation side of the spectrum — each gives nary adjudication, and does not require the Court itself to administer an ongoing programme. The Taj Trapezium order⁴⁷ is a transitional case: a specific, ultimately closeable remedy, but one that required years of supervised compliance. The Godavarman forest proceedings⁴⁸ and the Almitra Patel solid-waste proceedings⁴⁹ sit clearly on the policy-making side of the spectrum: they supply operative regulatory definitions absent from statute, remain open-ended and institutionally self-perpetuating through court-appointed committees, and have persisted for two to three decades notwithstanding the creation, since 2010, of a specialised statutory tribunal — the NGT — that could plausibly now discharge much of this function under ordinary legislative accountability.⁵⁰

XI. JUDICIAL ACTIVISM, SEPARATION OF POWERS AND DEMOCRATIC ACCOUNTABILITY

The separation-of-powers objection to judicial environmental policy-making is not that courts lack constitutional authority to review executive action for legality — Article 32 plainly confers that authority — but that continuing, open-ended judicial administration of a regulatory sector lacks the features that make executive regulation democratically accountable: legislative control over the budget, answerability to a minister who may be questioned in Parliament or a State Assembly, periodic electoral sanction, and administrative reversibility through ordinary rule-making.⁵¹ A court exercising continuing mandamus is, by contrast, functionally insulated from these mechanisms: Article 141 provides that "the law declared by the Supreme Court shall be binding on all courts within the territory of India"⁵², yet nothing in that provision subjects the composition of the Bench, the pace of hearings, or the substance of interim directions to the kind of legislative override that would apply to a statute or an executive notification.

This asymmetry is worth stating plainly rather than leaving implicit. An executive regulator that oversteps its mandate can be reined in by a budget cut, a change of minister, an adverse question in the legislature, or, ultimately, an election. A standing committee exercising delegated judicial supervision faces none of these correctives; the only route to altering its mandate runs back through the very Court that created it. That is not necessarily illegitimate — courts have always possessed inherent powers to shape their own procedure — but it does mean that the ordinary vocabulary of democratic accountability does not translate cleanly onto continuing mandamus, and commentary that treats judicial and executive oversight as merely two interchangeable flavours of 'regulation' understates the difference.

Scholars sympathetic to Indian PIL, Upendra Baxi prominent among them, have defended this expansion as 'social action litigation' responding to the structural failure of ordinary political and administrative processes to protect the poor and the voiceless — environmental victims very often being both.⁵³ S.P. Sathe's more measured account accepts that judicial activism filled a genuine institutional vacuum, but cautions that its legitimacy is conditional and diminishes as it becomes routine rather than exceptional.⁵⁴ Geetanjoy Sahu's empirical study of Supreme Court environmental litigation reaches a similar conclusion, finding that outcomes have often turned more on the individual inclinations of particular Benches than on any stable, principled doctrine — precisely the inconsistency visible in the contrast between Vellore Citizens and Narmada Bachao Andolan noted above.⁵⁵

A further, distinctly institutional objection concerns bodies such as the Central Empowered Committee in the Godavarman proceedings: an expert body appointed by, and reporting to, the Court, exercising what are in substance regulatory

functions — site inspection, clearance recommendations, compliance monitoring — over subjects such as mining and forest clearance that fall within the State and Concurrent Lists of the Seventh Schedule and are ordinarily the responsibility of State governments and forest departments answerable to State legislatures.⁵⁶ The CEC's role in the Kaziranga mining matter, discussed in Part XII below, illustrates how a matter squarely within State executive competence — and touching also on the autonomous district council powers of the Karbi Anglong Autonomous Council under the Sixth Schedule — came to be resolved through a judicially constituted committee reporting to the Supreme Court in a proceeding now three decades old, rather than through State environmental clearance procedures.

Defenders of continuing judicial oversight point, in response, to persistent executive non-compliance even after judicial orders have been made: the Karbi Anglong Autonomous Council's own submissions record that some quarry permits it had cancelled were subsequently allowed to resume by a 2025 High Court order notwithstanding the Supreme Court's 2019 restraint, prompting the CEC to flag the discrepancy afresh.⁵⁷ This, they argue, evidences that without continuing judicial supervision, executive and sub-national authorities will simply revert to non-compliance once judicial attention shifts elsewhere. The dilemma is genuine rather than decisively resolved either way: it suggests that the underlying problem is less the initial judicial intervention than the absence of a durable, non-judicial enforcement mechanism to which the judiciary could hand over supervision — precisely the gap the NGT was created to fill, but has not yet been fully permitted to fill, in matters still tied to the pre-existing Supreme Court proceeding.⁵⁸

XII. REGIONAL REFLECTIONS: ASSAM AND NORTH-EAST INDIA

Two episodes from Assam and the wider North-East, both arising within or alongside the Godavarman proceedings, illustrate the institutional dynamics described above rather than calling for a separate regional doctrine. The first is the Kaziranga mining litigation: following representations by RTI and wildlife activist Rohit Choudhury and a Central Empowered Committee investigation that found extensive illegal stone quarrying in the Karbi Anglong hills adjoining Kaziranga National Park without the mandatory clearances required under the Forest (Conservation) Act 1980, the Supreme Court, by order dated 12 April 2019, restrained mining and construction activity in identified elephant and wildlife corridors adjoining the park.⁵⁹ The matter proceeded not as a fresh writ petition but as an interlocutory application within the decades-old Godavarman file, with the CEC — rather than any Assam or Karbi Anglong Autonomous Council authority — acting as the investigating and reporting body. This is judicial forest policy-making operating, in real time, on a specific North-Eastern landscape, and it sits within the autonomous district council framework of the Sixth Schedule, adding a further layer of federal complexity that the Godavarman proceedings, framed at the level of pan-Indian forest policy, are not well designed to accommodate.

The second episode concerns the National Green Tribunal's proceedings on illegal stone mining in the Meghalaya hills bordering Assam, initiated on a petition alleging that unregulated quarrying was aggravating flood conditions in Khanapara and other parts of Guwahati; these proceedings resulted in the Meghalaya government reporting environmental compensation exceeding ₹153 crore imposed on 133 illegal mining and crushing units.⁶⁰ This represents a comparatively successful instance of the polluter-pays principle being operationalised through the NGT's statutory compensation jurisdiction rather than through open-ended Supreme Court supervision. Precisely because it proceeds through a specialised tribunal with a defined mandate, rather than a continuing writ proceeding, it offers a more institutionally sustainable model than the Godavarman pattern for addressing comparable environmental harms elsewhere in the region, including within Assam itself.

Beyond these two episodes, the available reported record does not support broader generalisations about a distinctively North-Eastern environmental jurisprudence, and this article does not attempt to construct one. The Sixth Schedule's allocation of land and forest management powers to autonomous district councils, and its interaction with pan-Indian forest-conservation litigation of the Godavarman type, would repay dedicated future research beyond the scope of the present article.

Even so, the two episodes together make a point that a purely pan-Indian account of Godavarman and Almitra Patel would miss: the institutional cost of continuing mandamus is not evenly distributed across India's federal structure. A committee headquartered in Delhi and reporting to the Supreme Court necessarily works at one remove from local institutions — the Karbi Anglong Autonomous Council, the Assam state pollution-control machinery — that possess constitutionally allocated competence and, in principle, greater on-the-ground knowledge of the terrain. The Meghalaya NGT proceeding suggests what the alternative can look like: a statutory body with a defined jurisdiction and a compensation mechanism that a State government itself reports on and implements, rather than a standing committee whose findings are addressed upward to a Bench in New Delhi. Whether that model can be extended to forest-clearance and mining matters currently locked inside the Godavarman file is precisely the kind of question Suggestion (d) below is meant to prompt.

XIII. THE ASSAM COUNTER-EXAMPLE: STATE-LED FOREST GOVERNANCE AND THE AFR–FRA HARMONISATION QUESTION

i. Judicial Overreach Reconsidered

The chronological account offered in Parts VI to XII above supports a further, more pointed observation about the trajectory of Indian environmental jurisprudence, one that goes beyond the accountability-vacuum thesis developed so far. In its earliest phase, the Supreme Court's environmental interventions filled a genuine gap: no comprehensive statute

existed, no specialised tribunal existed, and State pollution-control machinery was demonstrably weak, so that judicially crafted guidelines and directions were, at the time, close to the only workable response to a real regulatory failure. Over time, however, the pattern identified in Parts VIII.iii and X above shows something more troubling than gap-filling: the Court's continuing-mandamus jurisprudence began to encroach on legislative and executive domain even in areas where a statutory or policy framework already existed, or where the Court's own foundational jurisprudence had already been laid down and needed only routine application rather than fresh judicial administration. This pattern persisted, and in some respects intensified, after the creation of the National Green Tribunal in 2010 specifically to monitor and enforce environmental law and to give effect to the Supreme Court's own environmental jurisprudence. Rather than progressively handing over supervisory control to the NGT and other statutory regulatory and adjudicatory bodies, as Suggestion (a) below urges it to do, the Supreme Court has continued, in proceedings such as *Godavarman* and *Almitra Patel*, to perform what are in substance policy-making functions. Read together with the institutional critique developed in Part XI above, this continuation is best described, without overstatement, as judicial overreach: a form of institutional entrenchment that persists less because the underlying accountability vacuum still exists than because no mechanism has yet forced its winding down.

One consequence of this sustained judicial enthusiasm, worth naming directly, is an impression — not necessarily intended by the Court, but nonetheless conveyed by the pattern of its interventions — that State and Union governments are largely passive actors on environmental questions, unwilling or unable to take proactive initiatives of their own and requiring continual judicial prodding to frame and implement pro-environment policy. The record examined in this article, particularly the *Godavarman* and *Almitra Patel* proceedings, undeniably supplies evidence for that impression in specific sectors. It does not, however, follow that the impression holds uniformly across India's federal structure, and the remainder of this Part examines a recent instance from Assam that complicates it.

ii. Assam's State-Led Response: The Reserve Forest Notifications of 2026

The State of Assam has, in fact, made a considerable case for suo motu, proactive environmental protection undertaken without the intervention of the Supreme Court or the National Green Tribunal. On 31 July 2026, the Assam State Cabinet approved notification of the Rakhyasini (also recorded as Raikhushni) Proposed Reserve Forest and the Tharko Nalbari Proposed Reserve Forest, both in Goalpara district, as Reserved Forests under Regulation 17 of the Assam Forest Regulation, 1891 (as amended)⁶¹⁶². Pursuant to that Cabinet decision, the two areas were notified as Reserved Forests by separate notifications dated 1 August 2026, with the Rakhyasini/Raikhushni Reserved Forest spread over 2205.7 hectares and the Tharko Nalbari Reserved Forest comprising 156.6 hectares⁶³⁶⁴.

The protection that attaches to land notified under Regulation 17 of the AFR, 1891 is substantial: it extends to stopping any public or private watercourse within the forest⁶⁵; penalising trespass, the pasturing of cattle, and damage caused by negligent felling, cutting or dragging of timber⁶⁶; setting fire to the forest⁶⁷; quarrying of stone and the burning of lime or charcoal⁶⁸; and clearing of forest land for cultivation or any other purpose⁶⁹. Two consequences follow. First, this is a State government, acting through its own Cabinet and its own century-old forest regulation, choosing to expand legally protected green cover without any writ petition, continuing mandamus, or Central Empowered Committee direction compelling it to do so. Second, the notifications sit comfortably within the doctrinal vocabulary this article has used throughout: they are specific, self-executing, and administered by the ordinary State forest bureaucracy under a statute of general application, rather than open-ended and dependent on an ongoing judicially constituted supervisory body.

iii. Traditional Knowledge, Forest Villages, and the FRA, 2006

As with most forested land in India, communities are found to have lived within the Rakhyasini and Tharko Nalbari forests for generations, accessing forest produce for their subsistence. Protecting green cover while remaining cognisant of the legitimate rights of such traditional dwellers also serves the further objective of sustainable use of forest resources and the preservation of the traditional knowledge these communities hold by virtue of their sustained interaction with the forest ecosystem. The World Intellectual Property Organization describes traditional knowledge as a living body of knowledge developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity⁷⁰, and as including knowledge, know-how, skills, innovations and practices passed between generations in a traditional context that form part of the traditional lifestyle of indigenous and local communities acting as their guardians or custodians⁷¹.

The AFR, 1891 itself recognises this reality and provides for the constitution of Forest Villages for the benefit of a village community or group of village communities⁷², allowing such communities to access forest produce and pasture subject to a corresponding duty to protect and improve the forest⁷³, and further provides a mechanism for settlement of the rights of such communities⁷⁴. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 addresses the same underlying concern from a different statutory direction: its Preamble records that forest rights on ancestral lands and habitats were not adequately recognised during the consolidation of State forests in the colonial period or in independent India, resulting in historical injustice to forest-dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the survival and sustainability of the forest ecosystem⁷⁵, and the Act accordingly seeks to recognise and vest forest rights and occupation in forest land in such communities whose rights could not previously be recorded⁷⁶. The constitutional validity of the 2006 Act has been upheld by the Supreme Court in *Orissa Mining Corp'n Ltd v Ministry of Environment & Forests*, which described the statute as a social welfare or remedial enactment⁷⁷.

The State of Assam has, in other words, taken a genuine positive step toward protecting its natural resources by notifying these reserved forests under the AFR, 1891. What remains to be seen is whether it is equally proactive in recognising and protecting the legitimate rights of the Scheduled Tribes and other forest dwellers who reside within these forests, as vested in them under the FRA, 2006. That requires harmonising the prescriptions of Regulations 29 to 31 of the AFR, 1891 with the mandate of Section 3 and the recognition procedure set out in the FRA, 2006. Section 13 of the FRA, 2006 is instructive on the kind of evidence that should inform this harmonisation: it accepts customs or traditions, documented by a reputed institution, that illustrate the enjoyment of forest rights having the force of customary law⁷⁸, traditional structures such as wells, burial grounds and sacred places establishing antiquity of occupation, and statements of elders other than the claimants reduced to writing⁷⁹; and, for establishing rights over reserved forests as a Community Forest Resource to which forest-dwelling communities had traditional access, an earlier classification of the current reserve forest as protected forest and evidence of earlier or current traditional agricultural practice are treated as sufficient⁸⁰.

iv. Towards a Residual Judicial Role

Read together with the analytical framework developed in Part X and the institutional critique developed in Part XI, the Assam episode points toward a more precise account of what the Supreme Court's future role in Indian environmental governance should look like. The Court is no longer required to enter actively into policy-making by encroaching on legislative and executive domain, because it has already laid the bedrock of Indian environmental jurisprudence — the Article 21 environmental right, the precautionary and polluter-pays principles, and the public trust doctrine — since the earliest days of the case law traced in Parts VI to IX above. Its role, going forward, should be limited to intervening only in serious infractions where even the NGT has failed adequately to penalise defaulting governments, order proportionate compensation, or otherwise secure compliance with the prevailing law of the State or the settled jurisprudence of the Court itself. Harmoniously reading the AFR and the FRA, so that forest-dwelling tribes and communities who have long acted as protectors of forest ecosystems through their traditional knowledge are permitted to access forest resources subject to a reciprocal duty of protection and preservation, is precisely the kind of sustainable-development balance that a State government, its forest department, and where necessary the NGT are institutionally better placed to achieve on an ongoing basis than a Supreme Court exercising continuing mandamus from New Delhi. If the State of Assam succeeds in attending to both dimensions of this task — expanding reserved forest cover under the AFR, 1891 while giving full effect to the rights vested by the FRA, 2006 — it will have shown, more persuasively than argument alone could, that the impression of governments as reluctant, passive actors in environmental governance is not the whole of the present picture.

XIV. CRITICAL ANALYSIS: WEIGHING JUDICIAL INTERVENTION

The overall picture that emerges is one of genuine, but partial and increasingly costly, success. On the positive side of the ledger, judicial intervention supplied — well before Parliament enacted a comprehensive statutory framework — the constitutional vocabulary of a fundamental right, precaution, polluter-pays and public trust, without which the subsequent legislative and regulatory framework [the Environment (Protection) Act 1986⁸¹, and later the National Green Tribunal Act 2010⁸²] would have lacked a settled doctrinal foundation. It also produced concrete, verifiable environmental gains: the closure of grossly polluting tanneries and industries, the protection of the Taj Mahal from further acid-rain damage⁸³, and, in the Kaziranga matter, a specific, geographically defined restraint on mining that a State-level regulatory process, left to itself, had for years failed to enforce.⁸⁴

On the other side of the ledger, the entrenchment of continuing mandamus — most starkly in *Godavarman*⁸⁵ and *Almitra Patel*⁸⁶ — has produced a form of governance that is neither fully judicial nor fully executive: decisions of considerable economic and social consequence (which lands count as forest; which quarries may operate; how a city manages its waste) are taken through court-appointed committees whose members are unelected, unanswerable to any legislature, and whose proceedings, while more transparent than much ordinary bureaucratic decision-making, lack the formal accountability mechanisms attached to either judicial adjudication (open, reasoned judgments subject to appeal) or executive rule-making (subject to legislative oversight, budgetary control and, ultimately, electoral sanction). The doctrinal inconsistency between *Vellore Citizens*⁸⁷ and *Narmada Bachao Andolan*⁸⁸ further suggests that 'sustainable development' functions, in practice, as a discretionary standard whose application depends heavily on the composition of the particular Bench — an unpredictability that sits uneasily with the rule-of-law values the judiciary's intervention was originally meant to serve.

The fair conclusion, then, is not that judicial intervention in Indian environmental governance was mistaken, but that it has outrun its original justification. The accountability vacuum that justified judicial gap-filling in 1985 — no environmental statute, no specialised tribunal, weak pollution-control boards — has narrowed considerably since 2010 with the creation of the NGT, yet the Supreme Court's own long-running proceedings, and the committees they have spawned, have not been correspondingly wound down or handed over. The problem, in other words, lies less in the original exercise of judicial creativity than in the absence of an institutionalised exit strategy.

XV. FINDINGS

(a) The foundational doctrines of Indian environmental law — the environmental content read into Article 21, the precautionary principle, the polluter-pays principle and the public trust doctrine — were judicially constructed through purposive interpretation of open-textured constitutional and statutory language, and fall within legitimate constitutional interpretation on the framework developed in this article.

(b) The shift from interpretation to policy-making is most clearly marked in proceedings involving continuing mandamus and court-appointed regulatory committees, exemplified by T.N. Godavarman Thirumulpad (see Part VIII.iii above) and Almitra H. Patel (see Part VIII.iii above), where the Court has, for two to three decades, performed functions of ongoing sectoral administration.

(c) Application of the sustainable-development standard has been doctrinally inconsistent across cases with comparable fact patterns, indicating that the standard operates as a discretionary policy balance rather than as a determinate legal rule.

(d) The creation of the National Green Tribunal in 2010 has not been accompanied by a corresponding transfer of long-running Supreme Court environmental proceedings to the Tribunal, leaving parallel and overlapping structures of judicial environmental governance in place.

(e) Regional evidence from Assam and Meghalaya shows both models operating side by side: Supreme Court continuing-mandamus supervision (the Kaziranga mining matter) and NGT statutory compensation jurisdiction (Meghalaya stone mining), with the latter offering a more institutionally bounded and arguably more sustainable template.

(f) Assam's 2026 notification of the Rakhyasini/Raikhushni and Tharko Nalbari Reserved Forests under the Assam Forest Regulation, 1891 demonstrates that State governments are capable of proactive, *suo motu* environmental protection independent of judicial or NGT compulsion, qualifying the impression, sometimes conveyed by the case law examined in this article, that governments act only under judicial prompting.

(g) Harmonising the Assam Forest Regulation, 1891 with the Forest Rights Act, 2006 remains an unresolved task for the State: the Regulation's forest-village mechanism and the Act's recognition procedure address overlapping ground but have not yet been read together in a single administrative protocol for the newly notified reserved forests.

XVI. SUGGESTIONS

(a) Long-running continuing-mandamus proceedings such as Godavarman should be subject to periodic, structured review — for instance, every five years — at which the Supreme Court expressly considers whether specific supervisory functions can be transferred to the National Green Tribunal or to statutory regulators, with clear benchmarks set for doing so.

(b) Court-appointed monitoring bodies such as the Central Empowered Committee should be placed on a clearer statutory footing, with defined terms of reference, reporting obligations to Parliament or State legislatures in addition to the Court, and sunset clauses, so as to align their *de facto* regulatory role with formal accountability structures.

(c) Future invocations of 'sustainable development' should be accompanied by an explicit, case-specific statement of the institutional-competence factors the Bench has weighed, so as to reduce the doctrinal unpredictability identified in this article and to render the standard more genuinely reviewable as law rather than as an unarticulated policy preference.

(d) Parliament should consider clarifying, by legislation, the National Green Tribunal's jurisdiction to receive matters currently proceeding by way of continuing mandamus before the Supreme Court, particularly forest-clearance and mining-related applications of the kind now filed as interlocutory applications within the Godavarman proceeding.

(e) Where environmental matters intersect with Sixth Schedule autonomous district council powers, as in the Karbi Anglong mining episode, future proceedings should build in a formal consultative role for the relevant autonomous council, both to respect constitutionally allocated competence and to improve compliance on the ground.

(f) The Government of Assam should issue a clear administrative protocol harmonising Regulations 29 to 31 of the Assam Forest Regulation, 1891 with the recognition and vesting procedure under Section 3 and the evidentiary framework under Section 13 of the Forest Rights Act, 2006, so that the rights of Scheduled Tribes and other traditional forest dwellers within the newly notified Rakhyasini/Raikhushni and Tharko Nalbari Reserved Forests are settled alongside, rather than after, the notification of those forests.

(g) Consistently with Findings (f) and (g) above, the Supreme Court's residual role in Indian environmental governance should now be understood as confined to serious infractions where the National Green Tribunal has itself failed to secure adequate penalties, compensation or compliance, rather than as a general licence for continuing supervisory intervention in matters where State governments are already acting, and where the Court's own foundational jurisprudence supplies a sufficient doctrinal basis for such action to be tested through ordinary statutory channels.

XVII. CONCLUSION

The Indian judiciary's environmental jurisprudence is neither the unambiguous triumph of a purposive, rights-protecting court nor a straightforward usurpation of executive power. It is both of these things, at different points along a single continuous history, and the central task for scholarship — and for the judiciary itself — is to draw a clear line between the two, rather than treating 'judicial activism' or 'judicial restraint' as a single, undifferentiated evaluative label. The constitutional interpretation that produced the environmental right under Article 21, together with the precautionary and polluter-pays principles, remains, on the analysis offered here, sound and defensible constitutional law. The continuing, open-ended administration of forest policy, waste management and mining clearance through court-supervised committees is a different matter, sustained today less by continuing necessity than by institutional inertia. Three decades after Godavarman began, and more than fifteen years after the National Green Tribunal was created precisely to supply the specialised environmental adjudicatory capacity the Supreme Court itself had once said was missing⁸⁹, the unfinished task of Indian environmental constitutionalism is not further judicial creativity but a deliberate, structured transition from

judicial policy-making back to accountable regulatory governance — one that does not sacrifice the substantive protections the judiciary's interpretive innovations first made possible.

That reallocation of institutional responsibility is not merely theoretical. Assam's 2026 notification of the Rakhyasini/Raikhushni and Tharko Nalbari Reserved Forests under the Assam Forest Regulation, 1891, discussed in Part XIII above, shows a State government exercising exactly the kind of suo motu environmental initiative whose supposed absence has long supplied part of the justification for continuing judicial supervision. It does not follow that governments are, in general, sitting ducks awaiting judicial prompting before they will act to protect the environment; it follows only that where governments do act, they should be permitted to administer the resulting framework — including the harmonisation of forest-protection measures such as the AFR, 1891 with forest-dwellers' rights under the FRA, 2006 — through ordinary statutory and administrative channels, with the Supreme Court and the National Green Tribunal held in reserve for the serious infractions that those channels fail to correct.

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