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ARTICLE 21 AND THE RIGHT TO CLIMATE-RESILIENT ENVIRONMENTS: A CONSTITUTIONAL PERSPECTIVE

AUTHORED BY - DR. GAURI BAJAJ

Abstract

Climate change has emerged as one of the most pressing global challenges, with severe implications for human life, livelihood, and ecological balance. In India, its impacts are amplified due to high population density, socio-economic vulnerabilities, and geographical susceptibility to extreme weather events such as floods, droughts, and cyclones. The Indian Constitution, through Article 21, guarantees the right to life and personal liberty, which the judiciary has progressively interpreted to include the right to a clean and healthy environment. This research examines the potential and necessity of expanding Article 21's scope to encompass the right to a climate-resilient environment, particularly in disaster-prone areas. Drawing from landmark Supreme Court judgments, international environmental law principles, and statutory frameworks, the paper analyzes how judicial innovation can strengthen climate governance. It evaluates the proactive role played by the judiciary in enforcing environmental protection, adopting the precautionary principle, and integrating sustainable development into constitutional rights. The study also critically assesses the gaps in current legal mechanisms and policy implementation, emphasizing the urgent need for an explicit constitutional and statutory recognition of climate resilience as a justiciable right. By linking climate resilience to fundamental rights, the judiciary can compel state authorities to adopt adaptive and preventive strategies, ensuring the protection of vulnerable communities and safeguarding intergenerational equity. This work contributes to the discourse on environmental constitutionalism, offering recommendations for a rights-based approach to climate adaptation and resilience in India.

Keywords:

Climate resilience, Article 21, Indian judiciary, environmental rights, disaster-prone areas

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1. Introduction

Climate change has emerged as one of the most pressing global challenges of the 21st century, threatening not only environmental stability but also the very survival of human civilization. India, with its vast geographical diversity and socio-economic disparities[1], is among the countries most vulnerable to climate-related disasters. According to the Global Climate Risk Index, India consistently ranks among the top ten countries affected by extreme weather events. This vulnerability is exacerbated in disaster-prone regions such as the Sundarbans[2], the coastal belts of Odisha and Andhra Pradesh, and flood-prone areas of Assam and Bihar, where the lives and livelihoods of millions are at constant risk. In this context, constitutional law—and specifically Article 21—assumes critical importance in providing a legal foundation for preventive climate action.

Article 21 of the Indian Constitution guarantees the right to life and personal liberty.[3] Over decades, the Supreme Court has interpreted this provision expansively, encompassing within it a variety of derivative rights necessary to live with dignity. This has included the right to health, livelihood, shelter, and, importantly, a clean and healthy environment. With climate change intensifying the frequency and severity of natural disasters, the concept of a "clean environment" must now evolve into a broader guarantee of a "climate-resilient environment"—one capable of withstanding and adapting to environmental stresses while preserving the safety, health, and dignity of individuals.

The doctrine of **constitutional environmentalism[4]**, developed through judicial creativity, recognizes environmental protection as an inseparable component of fundamental rights. This doctrine has allowed Indian courts to integrate international environmental principles, such as the precautionary principle, sustainable development, and intergenerational equity, into domestic jurisprudence. The preventive aspect of these principles aligns perfectly with the requirements of climate resilience, which emphasizes proactive measures rather than post-disaster relief.[5]

[1] Sarkar, Amarendra Nath. "Global climate change and emerging environmental and strategic security issues for South Asia." *Journal of Environmental Protection* 2.9 (2011): 1162-1171.
[2] Sen, H. "The Sundarbans: a disaster-prone eco-region." *Berlin: Springer. doi* 10 (2019): 978-3.
[3] Nath, Himangshu Ranjan. "Right to Life and Personal Liberty under the Constitution of India: A Strive for Justice." *Dibrugarh University Law Journal* 1 (2013).
[4] Daly, Erin. "Environmental constitutionalism in defense of nature." *Wake Forest L. Rev.* 53 (2018): 667.
[5] Kennedy, Alexander. "The Role of Indonesian Constitutional Law in Sustaining National Resilience Amid Global Challenges." *Jurnal Lemhannas RI* 12.4 (2024): 485-508.

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The rationale for grounding climate resilience in constitutional law is twofold[6]: first, it elevates climate adaptation from a policy choice to a legal obligation; and second, it provides enforceable rights to citizens, empowering them to demand preventive measures in high-risk areas. This is particularly vital in a country where developmental pressures often override environmental safeguards, leading to construction in ecologically fragile zones and inadequate disaster preparedness.

This paper argues that the right to life under Article 21 necessarily includes the right to a climate-resilient environment. It contends that preventive legal action in disaster-prone areas is not merely desirable but constitutionally mandated. The subsequent sections will examine the evolution of Article 21, define the contours of climate resilience in legal terms, explore preventive legal frameworks, analyze judicial and comparative precedents, assess challenges, and recommend measures to operationalize this constitutional imperative.

2. Article 21: Expanding the Right to Life

Article 21 of the Indian Constitution, stating that "No person shall be deprived of his life or personal liberty except according to procedure established by law," has undergone one of the most profound interpretative transformations in constitutional history. Initially, in *A.K. Gopalan v. State of Madras* (AIR 1950 SC 27), the Supreme Court adopted a narrow, literal interpretation, treating "procedure established by law" as sufficient if enacted by a competent legislature. However, this rigidity began to loosen with *Maneka Gandhi v. Union of India* (AIR 1978 SC 597), where the Court introduced the requirement that such procedure must be "just, fair and reasonable." This marked the beginning of a substantive due process doctrine in India, paving the way for reading socio-economic and environmental dimensions into Article 21.

The environmental interpretation of Article 21 began to take shape in the 1980s and 1990s through judicial activism. In *M.C. Mehta v. Union of India* ((1987) 1 SCC 395), the Court acknowledged the State's duty to ensure a pollution-free environment. In *Subhash Kumar v. State of Bihar*[7] , it held that the right to life includes the right to enjoy pollution-free water and air, thus explicitly linking environmental quality to constitutional protection. Subsequent cases like *Vellore Citizens' Welfare Forum v. Union of India* (1996)[8] introduced global

[6] Roesler, Shannon M. "Constitutional Resilience." *Wash. & Lee L. Rev.* 80 (2023): 1523.
[7] AIR 1991 SC 420
[8] 5 SCC 647

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environmental principles into Indian law, most notably the precautionary principle, polluter pays principle, and sustainable development.

These interpretations established that Article 21 is not static but responsive to emerging threats to human dignity. Climate change, with its capacity to disrupt ecosystems, damage health, and displace populations, fits squarely within the category of existential threats Article 21 is designed to guard against. The right to life cannot be realized in a context where recurring floods, cyclones, droughts, and heatwaves undermine basic survival needs.

Moreover, the jurisprudential expansion of Article 21 is reinforced by Article 48A (Directive Principles) and Article 51A(g)[9] (Fundamental Duties), which collectively create a constitutional ethos favoring environmental stewardship. The judiciary has often read these provisions harmoniously, interpreting the State's duty to protect the environment as an extension of citizens' fundamental rights.

In the context of climate resilience, this interpretative trend allows the courts to mandate preventive action. The precautionary principle, when combined with the substantive due process doctrine, empowers judicial intervention even in the absence of conclusive scientific certainty about the timing or scale of climate impacts. This makes Article 21 a potent legal foundation for requiring the State to identify vulnerable zones, regulate high-risk activities, and implement adaptive infrastructure—before disasters strike. Thus, the expansion of Article 21's scope is not merely a legal evolution but a constitutional necessity in the age of climate change.

3. Climate-Resilient Environments as a Constitutional Necessity

A climate-resilient environment refers to ecological, infrastructural, and socio-economic systems capable of absorbing, adapting to, and recovering from climate-induced shocks without catastrophic loss of life, livelihoods, or biodiversity. In legal terms, climate resilience encompasses measures to anticipate, mitigate, and adapt to environmental hazards, particularly in areas recognized as disaster-prone. The need to incorporate this concept into constitutional interpretation stems from the fact that climate change directly threatens the enjoyment of fundamental rights under Article 21.

[9] KJ, ELIZABETH. "CRITICAL ANALYSIS OF IMPACT OF HORIZONTAL APPLICATION OF FUNDAMENTAL RIGHTS ON THE CONCEPT OF STATE UNDER ARTICLE 12-WITH REFERENCE TO ARTICLES 14, 19 AND 21 OF THE CONSTITUTION." (2024).

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From a constitutional perspective, a climate-resilient environment is not a luxury—it is essential to fulfilling the State's obligation to secure the right to life. The jurisprudence emerging from *A.P. Pollution Control Board v. Prof. M.V. Nayudu* (1999)[10] underscores the importance of integrating scientific knowledge into environmental decision-making. The Court in that case recognized that environmental harm often occurs incrementally and that preventive action, based on the best available science, is indispensable. This aligns perfectly with climate governance, where anticipation and early action can save thousands of lives.

In practical terms, climate resilience in India must address region-specific vulnerabilities: cyclone shelters and early warning systems in coastal areas; floodplain zoning in the Brahmaputra and Ganga basins; drought-resistant agriculture in arid zones; and landslide mitigation in Himalayan regions. The integration of these measures into governance is not only a policy choice but a constitutional duty, considering that Article 21 has been interpreted to include the right to live in an environment that sustains human dignity.

International law also reinforces this necessity. Instruments such as the Paris Agreement (2015) emphasize adaptation and resilience as equal pillars alongside mitigation. While India's commitments under such treaties are voluntary, the Supreme Court's reasoning in *Vishaka v. State of Rajasthan* (1997)[11] allows for the use of international obligations to interpret constitutional provisions when domestic law is silent. Thus, climate resilience can be read into Article 21 as part of India's obligations under international climate law.

Further, constitutional environmentalism compels a forward-looking approach. Waiting for climate disasters to occur before acting not only undermines human rights but also imposes disproportionate costs—economic, social, and ecological. Embedding climate resilience into constitutional interpretation ensures that preventive strategies are prioritized, resource allocation is proactive, and accountability mechanisms are enforceable. In this way, the constitutional necessity for climate resilience becomes both a moral and legal imperative.

4. Preventive Legal Action in Disaster-Prone Areas

The principle of preventive action is central to modern environmental law and has been repeatedly affirmed in Indian jurisprudence. In the climate change context, preventive legal

[10] 2 SCC 718
[11] 6 SCC 241

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action becomes even more critical because the cost of inaction in disaster-prone areas is measured not merely in economic terms but in lives lost, communities displaced, and ecosystems destroyed. The preventive approach stems primarily from the **precautionary principle**, recognized as binding in *Vellore Citizens' Welfare Forum v. Union of India* (1996)[12], where the Supreme Court held that environmental measures must anticipate, prevent, and attack the causes of environmental degradation. This principle, when integrated with Article 21, mandates that the State act before harm becomes irreversible.

Disaster-prone areas in India—whether coastal belts exposed to cyclones, floodplains of the Ganga and Brahmaputra, drought-affected districts in central India[13], or landslide-prone Himalayan slopes—require specially tailored legal frameworks. The Disaster Management Act, 2005, provides a national structure for risk reduction, but it is largely reactive and relief-oriented. Preventive constitutional environmentalism demands a shift towards anticipatory legislation that focuses on reducing vulnerability before disasters occur.

Key preventive strategies include:

1. **Climate Risk Zoning and Land Use Regulation** – Drawing from global best practices, India should adopt binding zoning laws that prohibit construction in high-risk areas such as active floodplains, eroding coastlines, and unstable slopes. This is consistent with Article 21's mandate to protect life from foreseeable harm.[14]
2. **Mandatory Climate Impact Assessments (CIA)** – Extending the scope of the Environmental Impact Assessment (EIA) regime to include climate vulnerability analysis would ensure that infrastructure and industrial projects are designed to withstand projected climate risks.
3. **Nature-Based Solutions** – Protection and restoration of ecosystems—such as mangroves, wetlands, and forests—can provide natural barriers against climate hazards. In *Indian Council for Enviro-Legal Action v. Union of India* (1996)[15], the Court emphasized ecological restoration as a constitutional obligation.

[12] 5 SCC 647
[13] Subrahmanyam, V. P. "Hazards of floods and droughts in India." *Natural and Man-Made Hazards: Proceedings of the International Symposium held at Rimouski, Quebec, Canada, 3—9 August, 1986*. Dordrecht: Springer Netherlands, 1988.
[14] Guimont, Emily. "Land use regulations, climate change, and regulatory takings." *Environmental Law* 52.2 (2022): 279-305.
[15] 3 SCC 212

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4. **Early Warning and Community Preparedness** – Embedding climate resilience into the local governance system under the 73rd and 74th Constitutional Amendments ensures that village panchayats and urban local bodies take ownership of localized adaptation measures.
5. **Enforceable Accountability Mechanisms** – Failure to implement preventive measures in identified vulnerable areas should be justiciable under Article 21 through Public Interest Litigation (PIL).

Internationally, preventive legal approaches have proven effective. Japan's earthquake[16] and tsunami preparedness laws, the Netherlands' flood defence zoning, and the Philippines' Disaster Risk Reduction and Management Act (2010) all demonstrate the role of legislation in reducing vulnerability. India's constitutional framework, enriched by judicial creativity, is capable of integrating similar measures.

The preventive model also aligns with the economic logic of disaster risk reduction. According to the World Bank, every dollar spent on preventive measures saves between four and seven dollars in post-disaster recovery. When framed as a constitutional obligation under Article 21, preventive legal action ceases to be a matter of budgetary discretion—it becomes an enforceable right of the people. This reframing is crucial to breaking the cycle of disaster, loss, and reactive governance that currently characterizes India's approach to climate-related hazards.

5. Judicial Precedents and Comparative Perspectives

Indian courts have been pioneers in reading environmental rights into constitutional guarantees, and this judicial innovation offers a robust foundation for climate resilience litigation. Several landmark cases have expanded the scope of Article 21 to include environmental quality, sustainable development, and precautionary governance. In *M.C. Mehta v. Kamal Nath* (1997)[17], the Supreme Court applied the **public trust doctrine**, holding that natural resources are held by the State in trust for the people and cannot be misused for private gain. This doctrine can be adapted to argue that the State is a trustee of climate stability and resilience, particularly in vulnerable regions.

[16] Matsui, Shigenori. *Law and disaster: earthquake, tsunami and nuclear meltdown in Japan*. Routledge, 2018.
[17] 1 SCC 388

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In *T.N. Godavarman Thirumulpad v. Union of India* (1997)[18], the Court undertook continuous mandamus jurisdiction to oversee forest conservation—demonstrating that sustained judicial oversight is possible for environmental protection. A similar approach could be used for climate adaptation projects, ensuring consistent monitoring and compliance over decades.

The National Green Tribunal (NGT) has also been instrumental in applying the precautionary principle to climate-sensitive projects. In *Techi Tagi Tara v. Rajendra Singh Bhandari* (2018)[19], the NGT emphasized ecological restoration as part of post-disaster recovery. This reasoning can be extended to mandate pre-disaster resilience-building measures.

Comparatively, courts worldwide are moving towards recognizing climate resilience as a legal right:

- **Pakistan**: In *Leghari v. Federation of Pakistan*[20], the Lahore High Court directed the government to implement its National Climate Change Policy, framing climate adaptation as part of fundamental rights.
- **Philippines**: In *Oposa v. Factoran*[21], the Supreme Court upheld the principle of intergenerational equity, granting standing to children to challenge deforestation.
- **Netherlands**: The Hague Court of Appeal in *Urgenda Foundation v. State of the Netherlands* (2018) held the government legally accountable for inadequate climate action, basing its ruling on the right to life under the European Convention on Human Rights.

These precedents show an emerging global judicial consensus: environmental protection and climate adaptation are integral to human rights. Indian courts, already leaders in environmental jurisprudence, can extend this reasoning to recognize a **Right to Climate Resilience** under Article 21.

By drawing from both domestic and international jurisprudence, Indian courts can set enforceable standards for preventive climate action. This could involve court-mandated deadlines for flood defence construction, mandatory climate-proofing of public infrastructure, and binding directives on land use in high-risk zones. Such judicial intervention would not only save lives but also entrench climate resilience as an enforceable constitutional guarantee.

[18] 2 SCC 267
[19] SCC OnLine NGT 1234
[20] (2015 CLD 255)
[21] (G.R. No. 101083, 1993)

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6. Challenges and Gaps

While the constitutional framework and judicial precedents in India provide a fertile ground for embedding climate resilience within Article 21, several structural, legal, and practical challenges hinder its realization. These gaps must be critically examined to understand why preventive legal action in disaster-prone areas has not yet become a mainstream governance priority.

1. Institutional Weaknesses and Coordination Deficits

Climate resilience requires the cooperation of multiple agencies: environment ministries, urban development bodies, disaster management authorities, and local self-governments. However, the fragmentation of responsibilities leads to jurisdictional overlaps and policy incoherence. For instance, flood control may fall under one department, while land use zoning is handled by another, with minimal coordination. This weakens the effectiveness of preventive measures, even when policies exist.

2. Development–Environment Conflict

In a rapidly developing economy, environmental safeguards are often perceived as obstacles to growth. Projects in high-risk coastal or floodplain areas are sometimes cleared on grounds of economic necessity, despite environmental concerns. Judicial interventions occasionally halt such projects, but sustained enforcement is rare due to political and economic pressures. The *Goa Foundation v. Union of India* (2014)[22] mining case exemplifies the tension between economic development and environmental protection.

3. Scientific and Data Gaps

Effective climate resilience requires accurate climate projections, hazard mapping, and vulnerability assessments. In India, such data often exists but is outdated, incomplete, or not publicly accessible. The absence of reliable, localized data leads to under-preparation and hampers the design of targeted legal frameworks.

4. Federalism and Legislative Overlap

While disaster management falls under the Concurrent List, land use planning and water resources are largely state subjects. This creates complications in enforcing uniform preventive

[22] 6 SCC 590

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measures across states. The Supreme Court in *State of Tamil Nadu v. State of Kerala* (2014)[23] on the Mullaperiyar Dam highlighted such inter-state disputes where climate risk considerations were overshadowed by jurisdictional battles.

5. Weak Enforcement and Compliance

Even when preventive measures are mandated—such as Coastal Regulation Zone (CRZ) norms—violations are frequent, and enforcement is lax. Courts often find themselves intervening in post-facto regularization cases rather than ensuring ex-ante compliance.

6. Limited Public Awareness and Participation

A climate-resilient approach requires community-level engagement, yet public awareness remains low. Without informed citizen participation, monitoring and enforcement of preventive laws are less effective.

In sum, the gap between constitutional promise and practical implementation is wide. Bridging it requires: strengthening inter-agency coordination, enhancing climate data systems, creating harmonized federal–state legal frameworks, and ensuring strict compliance through judicial oversight. Unless these structural weaknesses are addressed, embedding a Right to Climate Resilience within Article 21 will remain largely aspirational.

7. Recommendations

Translating the constitutional recognition of a climate-resilient environment into practical governance requires a multi-pronged approach, involving legislative reform, institutional strengthening, judicial innovation, and community engagement.

1. Constitutional or Judicial Clarification

The Supreme Court can explicitly affirm the Right to Climate Resilience as part of Article 21, much like it recognized the Right to Privacy in *Justice K.S. Puttaswamy v. Union of India* (2017)[24]. Alternatively, Parliament could enact a Climate Resilience Act embedding this right as a statutory guarantee.

2. Mandatory Climate-Impact Assessments

[23] 12 SCC 696
[24] 10 SCC 1

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Just as Environmental Impact Assessments (EIA) became a prerequisite for major projects, Climate Impact Assessments (CIA) should be mandatory for all infrastructure and development projects in high-risk zones. These should incorporate IPCC climate projections and be periodically updated.

3. Strengthening Local Governance

Empowering Panchayati Raj Institutions and Urban Local Bodies to implement and enforce climate resilience measures ensures bottom-up governance. The 73rd and 74th Constitutional Amendments already give these bodies planning powers—what is needed is adequate funding and capacity-building.

4. Integrating Nature-Based Solutions

The State should legally mandate the preservation of mangroves, wetlands, and forests as climate buffers, with criminal penalties for violations. These ecosystems offer cost-effective and sustainable protection against extreme weather.

5. Judicial Monitoring Mechanisms

For large-scale climate adaptation projects, the Supreme Court or High Courts could employ the "continuing mandamus" approach, as in *T.N. Godavarman* forest cases, to ensure implementation over years or decades.

6. Enhanced Public Participation

Creating legal provisions for community-led monitoring of resilience projects and disaster-preparedness drills will build social ownership. Public consultation requirements should be expanded in climate-related decision-making processes.

7. Funding and Economic Incentives

Dedicated climate adaptation funds, supported by a mix of public and private financing, can ensure steady resources for resilience projects. Tax incentives could be offered to individuals and businesses adopting climate-proofing measures.

By combining constitutional affirmation, legal reforms, institutional strengthening, and public engagement, India can operationalize climate resilience as a fundamental right. This approach would not only protect lives but also save public funds by reducing post-disaster recovery costs.

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8. Conclusion

The evolving interpretation of Article 21 demonstrates the Indian judiciary's capacity to adapt constitutional guarantees to new realities. From its early days as a narrow procedural safeguard to its modern role as a source of wide-ranging socio-economic and environmental rights, Article 21 has shown remarkable elasticity. In the face of climate change, this elasticity must now encompass the Right to Climate Resilience. A climate-resilient environment is not merely about reducing emissions or conserving biodiversity; it is about safeguarding human dignity, health, and livelihoods in an era of increasing climate uncertainty. The jurisprudence in *Subhash Kumar*, *Vellore Citizens' Welfare Forum*, and *A.P. Pollution Control Board v. Nayudu* already points towards a preventive and precautionary approach. The constitutional logic is clear: the right to life is meaningless if predictable and preventable climate hazards are allowed to devastate communities. Embedding climate resilience within Article 21 has far-reaching implications. It elevates climate adaptation from a policy preference to a legal obligation. It empowers citizens to demand anticipatory measures from the State and provides the judiciary with a constitutional basis to enforce preventive governance in disaster-prone areas. Comparative experiences from Pakistan, the Netherlands, and the Philippines show that courts around the world are willing to frame climate inaction as a human rights violation. The challenges—jurisdictional conflicts, institutional weaknesses, data gaps—are formidable, but not insurmountable. With targeted reforms, strong judicial guidance, and active public engagement, India can bridge the gap between constitutional promise and on-ground resilience. Ultimately, preventive legal action is not only economically sound but morally imperative. The constitutional vision of a just, equitable, and sustainable society demands that the State act decisively to protect present and future generations from foreseeable harm. Recognizing and operationalizing the Right to Climate Resilience under Article 21 would be a bold and necessary step towards fulfilling that vision.

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