EXPANDING ENVIRONMENTAL HUMAN RIGHTS BEYOND WESTERN LEGAL ETHICS: AN ANALYSIS OF INDIA'S ENVIRONMENTAL JURISPRUDENCE

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I. INTRODUCTION

The Universal Declaration of Human Rights ("UDHR") of 1948 is one of the most formative statements of ethics and serves as a guideline for international human rights,[1] including the right to a healthy environment. The UDHR carries unparalleled influence, as evidenced by its translation into 360 languages—making it the most translated document in the world.[2] The UDHR consists of thirty articles, functioning as a set of interrelated principles that adhere to an overarching commitment to freedom, justice, and peace.[3] The purpose of the UDHR is to establish "a common standard of achievement for all peoples and nations" that "every individual and every organ of society" should strive to respect and promote.[4] The articles are considered capacious enough to allow for culturally nuanced interpretations without straying from protecting fundamental rights.[5]

While the UDHR does not explicitly set forth the right to a clean environment, it has been interpreted as protecting this right by guaranteeing "the right to life, liberty, and the security of person" and "the right to a standard of living adequate for health and well-being."[6] Following the United Nations General Assembly's adoption of the UDHR, the human rights field has advanced by developing environmental human rights standards and emphasizing environmental protection.

As the international community has strengthened its recognition of environmental human rights, many countries have incorporated protections of these rights into their constitutions.[7] Constitutional protections are highly significant because human rights are ultimately protected and enforced at the state level. As of 2017, 150 countries have incorporated environmental

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[1] Antoon de Baets, *The Impact of the Universal Declaration of Human Rights on the Study of History*, 48 HIST. & THEORY 20, 20 (2009).

[2] *Id.*

[3] Mary A. Glendon, *Knowing the Universal Declaration of Human Rights*, 73 NOTRE DAME L. REV. 1153, 1162–63 (1998).

[4] G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

[5] Glendon, *supra* note 3, at 1175.

[6] G.A. Res. 217 (III) A, *supra* note 4, at 72, 76.

[7] United Nations Env't Programme, Environmental Rule of Law: First Global Report, at viii, 140 (2019).

protection or the right to a healthy environment into their constitutions.[8] Although most countries have included environmental provisions in their constitutions, the United Nations recognizes that there is a prominent implementation gap between these principles and effective enforcement at the varying levels of government.[9] To address the factors that contribute to the implementation gap in a particular state, it is necessary to first analyze that state's environmental ethics and relevant legal framework.

This Note will argue that comprehensively analyzing a country's environmental human rights legal framework requires factoring in a country's cultural normative background in relation to the environment. International law is rooted in Western economic, cultural, and political order, and despite the emergence of alternative theories, Western perspectives arguably remain dominant.[10] This Note will propose taking a broader and more culturally focused approach to environmental human rights ethics and will analyze India's environmental jurisprudence through this alternative framework. India notably has a separate federal environmental court, the National Green Tribunal ("NGT" or "the Tribunal").[11] In evaluating the influences on the NGT, I turn to a discussion of the foundational principles of international environmental law, the structure of the NGT, the cultural history of India's relationship with the natural environment, the scope of environmental degradation in India, the country's relevant constitutional protections, and an analysis of two landmark NGT cases.

II. PRIMARY PRINCIPLES IN INTERNATIONAL ENVIRONMENTAL LAW

The National Green Tribunal Act ("NGT Act"), which established the NGT, mandates the court to apply the principle of sustainable development, the precautionary principle, and the polluter pays principle when issuing any orders or awards.[12] The Tribunal has also referenced anthropocentrism and ecocentrism, two prominent branches of environmental ethics that offer different justifications for environmental protection, and it endorsed ecocentrism.

A. SUSTAINABLE DEVELOPMENT

The principle of sustainable development combines the concepts of economic development, social equity, and environmental protection.[13] In its landmark report "Our Common Future," the World Commission on Environment and Development ("the Commission") declared the purpose of sustainable development as being "to ensure that [development] meets the needs of the present without compromising the ability of future generations

[8] *Id.*
[9] *Id.* at 140.
[10] B.S. Chimni, *Customary International Law: A Third World Perspective*, 112 AM. J. INT'L L. 1, 6 (2018).
[11] *See, e.g.*, *Green Tribunal*, WORLD WILDLIFE FUND INDIA, https://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal (last visited Jan. 1, 2022).
[12] National Green Tribunal Act, 2010, §20 (India).
[13] Gitanjali N. Gill, *The National Green Tribunal of India: A Sustainable Future Through the Principles of International Environmental Law*, 16 ENV'T L. REV. 183, 195 (2014).

to meet their own needs."[14] The United Nations General Assembly called upon the Commission to address both the urgent dilemma of incorporating environmental and social consideration into economic progress and the need to increase cooperation among countries positioned in varying stages of development.[15] Before sustainable development was formally recognized, authorities tended to dismiss irreversible damage to the environment in the name of public interest-oriented economic progress.[16] Sustainable development replaces that outdated, narrow view with an interdisciplinary approach that implores the global community to meet its citizens' basic needs and improve their quality of life.[17] The Commission emphasized that environmental protection is inherent in the concept of sustainable development, urging policymakers to ensure that growing economies remain grounded in ecological values in order to support sustainable long-term growth.[18] The integral theme of balancing present and future needs that underlies sustainable development applies to all countries, regardless of wealth. Pollution may originate in one country, but its life-endangering effects can be felt worldwide. Sustainable development functions as an overarching concept that includes the precautionary principle and the polluter pays principle.[19]

B. PRECAUTIONARY PRINCIPLE

The precautionary principle endorses policies that protect the environment and public health in the face of uncertain risks.[20] The four main components of the precautionary principle are: (1) "taking preventive action in the face of uncertainty," (2) "shifting the burden of proof to the proponents of an activity," (3) "exploring a wide range of alternatives to possibly harmful actions," and (4) "increasing public participation in decision making."[21] This principle allows advocates to address serious or potentially irreversible harm to the environment despite a degree of scientific uncertainty pertaining to that harm.[22] The Supreme Court of India has endorsed the precautionary principle as an essential feature of sustainable development and stated three specific conditions of the principle that have been accepted in Indian environmental law:[23]

1. The state government and statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

[14] Gro Harlem Brundtland, World Comm'n on Env't and Dev., Rep. of the World Comm'n on Env't and Dev.: Our Common Future, U.N. Doc. A/42/427, at 24 (1987) [hereinafter Our Common Future].
[15] *Id.* at 11.
[16] *See* Gill, *supra* note 13, at 197.
[17] Our Common Future, *supra* note 15, at ch. 2, §1, ¶4.
[18] *Id.* at ch. 1, §2, ¶50.
[19] Karnataka Indus. Areas Dev. Bd. v. Kenchappa, (2006) 6 SCC 371, 384 (India); Vellore Citizens Welfare F. v. Union of India, (1996), 5 SCC 647, 658 (India).
[20] David Kriebel et al., Commentary, *The Precautionary Principle in Environmental Science*, 109 ENV'T HEALTH PERSPS. 871, 871 (2001).
[21] *Id.*
[22] Gill, *supra* note 13, at 197.
[23] Karnataka, 6 SCC at 384; Vellore Citizens Welfare F. 5 SCC at 658.

> 2. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
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> 3. The 'onus of proof' is on the actor or the developer/industrialist to show that his actions are environmentally benign.[24]

Adopting the precautionary principle could have numerous beneficial effects, as it allows environmental cases that relate to novel or understudied areas to proceed while the relevant science continues to develop. The precautionary principle is especially influential in tribunals exclusively ruling on environmental matters.

The NGT, as a separate venue dedicated to environmental matters, emphasizes the importance of conducting environmental impact assessments before developing a project and the need for thorough evaluations that take into account potential effects on the ecosystem and human health.[25] The Tribunal recognizes the value of prevention in environmental matters and uses the precautionary principle to guide its rulings.[26] Along with the precautionary principle, the polluter pays principle is an integral facet of sustainable development.[27]

C. POLLUTER PAYS PRINCIPLE

The polluter pays principle designates the polluting entity as the source of compensation for the cost of pollution prevention, control, and reduction.[28] In Indian jurisprudence, compensation includes environmental costs along with direct costs to people or property.[29] The NGT expanded the Supreme Court's precedent in *Vellore Citizens Welfare Forum v. Union of India*, stating that "[r]emediation of the damaged environment is part of the process of 'Sustainable Development' and as such [the] polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."[30] Section 15 of the NGT Act confers power to the Tribunal to "pass any order for the 'relief and compensation' to the victims of pollution and for the 'restitution and restoration' of the degraded environment."[31] The NGT uses the polluter pays principle both as a punitive measure, such as providing compensation to victims and restitution to the environment, and as a preemptive measure, typically in the form of a tax or long-term policy measure.[32]

There are four critical points to consider when implementing this principle: (1) the classification of a polluter, (2) the elements of pollution, (3) to whom the payments should be made, and (4) how much the polluter should pay. In its case law, the NGT has considered corporations,

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[24] Gill, *supra* note 13, at 197.
[25] *Id.* at 197–98.
[26] *See e.g.*, Vellore Citizens Welfare F., 5 SCC at 658; Mehta v. Union of India, (1997), 2 SCC 353 (1996) (India).
[27] Karnataka, 6 SCC at 384; Vellore Citizens Welfare F., 5 SCC at 658.
[28] Gill, *supra* note 13, at 199.
[29] *Id.*
[30] Vellore Citizens Welfare F., 5 SCC at 658.
[31] Usha Tandon, *Green Justice and the Application of Polluter-Pays Principle: A Study of India's National Green Tribunal*, 13 OIDA INT'L J. SUSTAINABLE DEV. 35, 37 (2020).
[32] *Id.* at 37.

government entities, and individuals to be polluters.[33] The Tribunal has adopted a broad approach in categorizing pollution by acknowledging pollution in matters not limited to deforestation, water contamination, emissions, and the destruction of biodiversity.[34] While the Tribunal has also evaluated which entities or individuals are entitled to compensation, it lacks a normative framework to assess the amount of compensation to order from polluters.[35] The Tribunal will gain credibility if it has clear methods for computing payment and is consistent in enforcing the damages.[36]

D. ANTHROPOCENTRISM

Anthropocentrism is a branch of environmental ethics that "aims at protecting the environment in view only of the direct and indirect interests of mankind."[37] The value of other organisms is considered to depend on the harm or benefit they provide to human beings.[38] Anthropocentrism endorses a hierarchy among life forms in which humans are the most important and, therefore, their interests are prioritized.[39] Anthropocentrism embraces a utilitarian approach by determining that nature has value based on the amount it contributes to the human satisfaction.[40]

While the term "anthropocentrism" was officially coined in the 1860s,[41] the belief that humans are morally superior to other beings dates back thousands of years and is documented in Christian tradition.[42] The Book of Genesis endorses an anthropocentric hierarchy and advocates humans' dominion over other beings:

> And God blessed Noah and his sons and said to them, "Be fruitful and multiply and fill the earth. The fear of you and the dread of you shall be upon every beast of the earth and upon every bird of the heavens, upon everything that creeps on the ground and all the fish of the sea. Into your hand they are delivered. Every moving thing that lives shall be food for you. And as I gave you the green plants, I give you everything."[43]

Some scholars consider Christianity to be one of the most anthropocentric major religions, whereas others claim that the Bible's use of the word "dominion" should be understood instead as "stewardship."[44] In more recent history, Pope John-Paul II and Pope Francis expanded on this

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[33] *Id.* at 42.
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] Ph. Bourdeau, *The Man-Nature Relationship and Environmental Ethic*s, 72 J. ENV'T RADIOACTIVITY 9, 12 (2004).
[38] Katherine V. Kortenkamp & Colleen F. Moore, *Ecocentrism and Anthropocentrism: Moral Reasoning About Ecological Common Dilemmas*, 21 J. OF ENV'T PSYCHOL. 261, 262 (2001).
[39] *Id.*
[40] Suzanne C. Gagnon Thompson & Michelle A. Barton, *Ecocentric and Anthropocentric Attitudes Toward the Environment*, 14 J. ENV'T PSYCHOL. 149, 150 (1994).
[41] Kortenkamp & Moore, *supra* note 38, at 262.
[42] Bourdeau, *supra* note 37, at 10.
[43] *Genesis* 9:1–3.
[44] Bordeau, *supra* note 37, at 11.

notion by promoting the belief that Christians have a moral duty to take care of the earth.[45]

Ultimately, anthropocentrism supports conserving natural resources to advance human comfort, quality of life, and health.[46] For example, anthropocentrism would regard cutting down rainforests to be unethical because rainforests contain potential cures for human diseases,[47] whereas ecocentrism would reason that causing the extinction of plant and animal species is sufficient justification.[48]

E. ECOCENTRISM

In contrast to anthropocentrism, ecocentrism advocates preserving nature regardless of the economic or lifestyle implications of doing so because of the belief that all beings have intrinsic value.[49] Ecocentrism does not depend on a connection between environmental preservation and positive human impact when assessing the need for ecological protection.[50] An ecocentric would believe that even if there were no tangible human benefit, "nature is worth preserving because of the transcendental dimension."[51] Nature should receive moral consideration in its own right, independent of human-based needs or wants.[52]

As with anthropocentrism, the term "ecocentrism" was officially developed in the twentieth century, but its underlying beliefs have existed for millennia.[53] Varying degrees of ecocentrism can be found in Eastern religions—such as Hinduism, Buddhism, Taoism, and Shintoism[54]—as well as in the indigenous traditions of the Americas.[55] These cultures recognize the interdependency between human and nonhuman lifeforms and believe that nature has inherent value.[56]

The NGT has addressed both branches of environmental ethics and formally endorsed ecocentrism in the case *In re Tribunal at its Own Motion v. Secretary of State*.[57] The NGT found that ecocentrism aligns with the principles of international environmental law and the guarantee of the right to life found in India's Constitution.[58]

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[45] Emma Green, *The Pope's Moral Case for Taking On Climate Change*, THE ATLANTIC (June 18, 2015), https://www.theatlantic.com/international/archive/2015/06/pope-francis-encyclical-moral-climate-change/396200.

[46] Gagnon Thompson & Barton, *supra* note 40, at 149.

[47] *Id.*

[48] Kortenkamp & Moore, *supra* note 38, at 262.

[49] Gagnon Thompson & Barton, *supra* note 40, at 150.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] Kortenkamp & Moore, *supra* note 38, at 262.

[54] Bourdeau, *supra* note 37, at 12.

[55] Haydn Washington, Bron Taylor, Helen Kopnina, Paul Cryer & John J. Piccolo, *Why Ecocentrism is the Key Pathway to Sustainability*, 1 ECOLOGICAL CITIZEN 35, 35 (2017).

[56] Bourdeau, *supra* note 37, at 12.

[57] *In re* Tribunal at its Own Motion v. Ministry of Env't & Forests, 16/2013 of 2014, decided on Apr. 4, 2014 (SC), ¶ 32–33 (National Green Tribunal) (India).

[58] *Id.*

III. THE NATIONAL GREEN TRIBUNAL: ITS HISTORY, STRUCTURE, SUCCESSES, AND CHALLENGES

The NGT was established to alleviate the litigation burden on the country's highest courts and to increase resources for addressing environmental crises and injustices.[59] In 2010, the Indian Parliament passed the NGT Act with the purpose of achieving significant environmental justice results—more specifically, "for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto."[60]

The NGT Act takes into account the commitments that India made to the international community in the Stockholm Declaration of 1972 and at the Rio Conference of 1992, in which India committed to "take appropriate steps for the protection and improvement of the human environment and provide effective access to judicial and administrative proceedings, including redress and remedies."[61] While the right to a healthy environment was not explicitly established nor endorsed in either United Nations instruments, the Preamble to the NGT Act recognizes that the right to a healthy environment falls within the right to life, which is guaranteed by the Indian Constitution.[62] In order to effectively administer justice, the NGT has several benches throughout the country.

Figure 1: Location of the Benches of the National Green Tribunal[63]

[59] Nayva Jannu, *India's National Green Tribunal: Human Rights and the Merits of an Environmental Court*, 46 ENV'T L. REP. 10474, 10474 (2016).

[60] National Green Tribunal Act, 2010 (India).

[61] GITANJALI NAIN GILL, ENVIRONMENTAL JUSTICE IN INDIA: THE NATIONAL GREEN TRIBUNAL 66 (2017).

[62] National Green Tribunal Act, 2010 (India).

[63] Rita Brara, *Courting Resilience—The National Green Tribunal, India* 3 (U.N. Research Inst. for Soc. Dev., Working Paper No. 2018–4).

The principal bench of the NGT is situated in the capital city of New Delhi, and the remaining regional benches represent the central, western, eastern, and southern areas of the country.[64] The principal bench covers the northern zone and exercises jurisdiction in the states of Uttar Pradesh, Uttarakhand, Haryana, Himachal Pradesh, and Punjab, along with the National Capital Territory of Delhi and Union Territory of Delhi.[65] The central zone is headquartered in Bhopal and covers the states of Madhya Pradesh, Rajasthan, and Chattisgarh.[66] Pune is the base of the western zone, which covers the states of Gujarat, Maharashtra, and Goa, along with the Union Territory of Dadra and Nagar Haveli and Daman and Diu.[67] The eastern zone is located in Kolkata and serves Odisha, West Bengal, Bihar, Jharkhand, and Sikkim, along with the seven northeastern states, Andaman, and the Nicobar Islands.[68] The fifth zone is situated in the southern city of Chennai and is responsible for Tamil Nadu, Andhra Pradesh, Kerala, Karnataka, and the Union Territories of Puducherry and Lakshadweep.[69]

The Tribunal was created by the NGT Act, which provides the framework for its jurisdiction over environmental matters. Section 14 of the NGT Act empowers the Tribunal to address original complaints covering civil matters arising from previously enacted statutes listed in Schedule I.[70] Examples of legislation enumerated in Schedule I are the Water (Prevention and Control of Pollution) Act of 1974, the Water (Prevention and Control of Pollution) Cess Act of 1977, the Forest (Conservation) Act of 1980, the Air (Prevention and Control of Pollution) Act of 1981, the Environment (Protection) Act of 1986, the Public Liability Insurance Act of 1991, and the Biological Diversity Act of 2002.[71] Section 14 grants original jurisdiction for civil cases, excluding any criminal matters that would be governed by the provisions of the Criminal Procedure Code.[72] Section 16 of the NGT Act allows an individual to file an appeal before the Tribunal, which transfers the initial case from a lower court to the Tribunal for review.[73]

Section 18(2) of the NGT Act outlines how an applicant can satisfy the requirements for standing. The underlying requirement is that a case involve a substantial question relating to the environment, which entails a real and tangible impact but does not necessarily have to be a strictly quantitative assessment.[74] Section 2(m) classifies the phrase "substantial question relating to environment" under two branches: first, where there is a direct violation of a statutory duty or environmental obligation which is likely to affect the community and, second, where the environmental consequences relate to a specific activity or point of origin.[75] Furthermore, a person must satisfy one of the following requirements: (1) have sustained an injury, (2) be

[64] Gill, *supra* note 61, at 66.
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] National Green Tribunal Act, 2010, §14 (India).
[71] Sridhar Rengarajan et al., *National Green Tribunal of India—An Observation from Environmental Judgements*, 25 ENV'T SCI. POLLUTION RSCH. 11313, 11313 (2018).
[72] National Green Tribunal Act, 2010, §14 (India).
[73] *Id.* at § 16.
[74] Gill, *supra* note 61, at 80–81.
[75] *Id.*

the owner of property that has been damaged, (3) be the legal representative in a case of death resulting from environmental damage, (4) be a duly authorized agent or representative of a state agency, or (5) be an aggrieved person, which includes any representative body or organization.[76]

The Tribunal has added additional clarity to its standing requirements, noting that individuals have the right to approach the Tribunal regardless of whether they reside in an affected area or have been directly affected by the actions of a business, government, or other institution.[77] Millions of Indians reside in rural areas and lack the resources and education to challenge environmental projects that harm them, but the broad standing requirement allows any individual to challenge the project.[78] In addition to the above-mentioned liberal interpretation of standing requirements, the Tribunal has also decided that the term "person" may refer to any individual regardless of whether or not they are an Indian national.[79] It is sufficient for an applicant to claim "that the environment of the area has been adversely [affected], the protection of which, is of his or her interest."[80] Overall, the NGT has adopted an expansive interpretation of "plaintiff."

The NGT is composed of judicial and scientific experts, thereby reflecting the acknowledgment of the interdisciplinary nature of the issues that the court faces.[81] The judicial members are all current or former judges on the Supreme Court of India or the country's High Courts.[82] The scientific experts must come with fifteen years of relevant experience in their respective fields within reputable national or state-level institutions.[83] The NGT enlists experts from the fields of "life sciences, physical sciences, engineering, [and] technology."[84] Scholars have viewed the rigorous qualification and selection process that the NGT imposes as ensuring that "there is expertise, transparency and accountability in Tribunal membership."[85]

As with any judicial body, the NGT faces challenges that prevent it from operating at maximum efficiency while adhering to principles of justice and fairness. The sheer volume of judgments from the NGT confirms the need for an environmental court. The Tribunal entered 28 orders in 2011, its preliminary year, which grew to 821 orders in 2015.[86] Furthermore, the Tribunal intended to increase accessibility to all individuals, regardless of economic status, by requiring a relatively low filing fee of 1,000 Rupees (equivalent to about $13.51 USD) if they seek compensation.[87] If they do not seek compensation, the Tribunal requires a fee of 1% of the total compensation claimed. In cases in which an applicant falls below the poverty line determined by the central or state government, the Tribunal waives the

[76] *Id.* at 75.
[77] *Id.* at 76.
[78] *Id.*
[79] *Id.*
[80] *Id.* at 77.
[81] *Id.* at 74.
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *Id.* at 75.
[86] Rengarajan et al., *supra* note 71, at 11315.
[87] National Green Tribunal Act, 2010, (India).

filing fee regardless of whether the individual seeks compensation.[88] There is insufficient data on how often the court has waived the filing fee in practice and what proportion of applicants are eligible for the waiver. Given India's struggle with bureaucracy causing widespread inefficiency, this area should be investigated in order to ensure equal access to the court regardless of socioeconomic class.

India's bureaucratic agencies are inhibited by extreme inefficiency, and the NGT is no exception. One of the main challenges that the NGT faces is administrative delay, which leads to inaction and ultimately jeopardizes environmental justice.[89] In Nevatia v. State of Maharashtra, the applicant claimed that vehicles with multi-toned horns were emitting sounds that far exceeded regulatory limits.[90] In its judgment on January 1, 2013, the NGT directed the Maharashtra Pollution Control Board, in consultation with the Central Pollution Control Board, to "prescribe noise standards for [the] use of sirens and multi-toned horns."[91] While the NGT's judgment was driven by just intentions to control noise pollution and improve public health, the ordered meeting did not take place until more than a year after the judgment.[92] The NGT must address the issues of delay and avoidance by directing additional resources toward the enforcement of its decisions.

In addition to the rules listed in the NGT Act, the Tribunal is bound by the law of the Indian Constitution and places particular focus on the articles related to environmental human rights.

IV. INDIA'S CONSTITUTIONAL PROTECTION OF THE RIGHT TO LIFE

With the passing of the Indian Independence Act of 1947, the British Crown relinquished its formal governance over India, ending its colonial rule and leaving the new country with the monumental task of writing a constitution.[93] Provincial legislatures appointed nearly 300 representatives from 41 provinces and princely states to the Constituent Assembly.[94] A majority of its members belonged to the Hindu-dominant Indian National Congress Party, with the remainder representing minority demographics such as Sikhs, Christians, Muslims, Parsis, and indigenous communities.[95] Pandit Jawaharlal Nehru guided the assembly with his overarching vision of cooperation between international standards and domestic law, and he gave the following message at the Constituent Assembly Debates on January 27, 1947:

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[88] NATIONAL GREEN TRIBUNAL, INFORMATION RELATING TO NATIONAL GREEN TRIBUNAL UNDER SECTION 4(1)(B) OF THE RIGHT TO INFORMATION ACT, 2005 at 23 (2017).

[89] Gill, *supra* note 13, at 191.

[90] Nevatia v. State of Maharashtra, (2013) 202/2013 (National Green Tribunal) (India).

[91] *Id.* at ¶ 20(1).

[92] Gill, *supra* note 13, at 191.

[93] BIDYUT CHAKRABARTY, INDIAN POLITICS AND SOCIETY SINCE INDEPENDENCE: EVENTS, PROCESSES AND IDEOLOGY 1 (Routledge London ed., 2008).

[94] *Constituent Assembly Membership*, PARLIAMENT OF INDIA: RAJYA SABHA, COUNCIL OF STATES, https://rajyasabha.nic.in/rsnew/constituent_assembly/constituent_assembly_mem.asp (last visited May 3, 2022).

[95] K.P. Singh, *Role of the Congress in the Framing of India's Constitution*, 51 INDIAN J. POL. SCI. 153, 157–58 (1990).

> The only possible real objective that we, in common with other nations, can have is the objective of co-operating in building up some kind of world structure, call it 'One World', call it what you like. The beginnings of this world structure have been laid down in the United Nations Organization . . . . And India has pledged herself to cooperate in that work.[96]

The assembly first formally convened on December 9, 1946 to initiate the process of drafting the country's constitution.[97] Three years later, the Constituent Assembly adopted its final draft, and on January 26, 1950, the Constitution of India officially went into effect.[98] The formation of the United Nations slightly preceded the drafting of the Indian Constitution, and, as a result, India was heavily influenced by the United Nations' framework principles.[99]

The framers of the Indian Constitution were strongly influenced by the UDHR, which was adopted by the United Nations General Assembly on December 10, 1948.[100] The United Nations General Assembly viewed the UDHR as the common standard of respect and rights for all peoples and states to promote.[101] Indian representatives were involved in the discussions and drafting process of the UDHR, and India voted in favor of its adoption by the United Nations General Assembly.[102] Hansa Mehta, from the western state of Gujarat, served as India's representative to the United Nations Commission on Human Rights and was a member of the Constituent Assembly, within which she served on the Fundamental Rights Subcommittee.[103] Mehta noted that no legal action could be taken against a violation of the UDHR's provisions, which motivated her to embed the UDHR into the Fundamental Rights section of India's Constitution to create actionable rights on par with the international standard.[104] Both the UDHR and the Indian Constitution acknowledge the freedom of speech, peaceful assembly, movement, religion, and conscience, in addition to the protection of life and liberty.[105] The UDHR states in Article 3 that "everyone has the right to life, liberty and the security of person."[106] Similarly, Article 12 of India's Constitution articulates that "no person shall be deprived of his life or personal liberty except according to procedure established by law."[107]

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[96] Manu Bhagavan, *A New Hope: India, the United Nations and the Making of the Universal Declaration of Human Rights*, 44 MOD. ASIAN STUD. 311, 327 (2008).

[97] *First Day in the Constituent Assembly*, LOK SABHA PARLIAMENT OF INDIA, http://164.100.47.194/loksabha/constituent/facts.html (last visited May 3, 2022).

[98] *Key Timeline of India's Constitutional* Process, CORO INDIA (Nov. 26, 2019), http://coroindia.org/blog/key-timeline-of-indias-constitutional-process.

[99] Bhagavan, *supra* note 96, at 312.

[100] Gyanendra Kumar Sahu, *An Overview of Article 21 of the Indian Constitution*, 3 INT'L J.L., 98, 98 (2017).

[101] TARUN JAIN, INFLUENCE OF UNIVERSAL DECLARATION ON THE JUDICIAL INTERPRETATION OF FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES IN THE CONSTITUTION OF INDIA 3 (2004).

[102] G.A. Res. 217 (III) A, *supra* note 4, at 72.

[103] Bhagavan, *supra* note 96, at 312.

[104] *Id.* at 334.

[105] G.A. Res. 217 (III) A*, supra* note 4, at 72, 74–75*;* India Const. art. 15; India Const. art. 19; India Const. art. 21.

[106] G.A. Res. 217 (III) A, *supra* note 4, at 3.

[107] India Const. art. 21.

Article 21 falls within the set of articles that form the "fundamental rights" provided by the Indian Constitution. These fundamental rights are guaranteed legal protection and enforcement through the Supreme Court, as outlined in Article 32.[108] One of the earliest cases that deemed environmental protection to fall within Article 32's governance over fundamental rights was *Rural Litigation and Entitlement, Dehradun v. State of Uttar Pradesh*, heard in 1983.[109] The complainants alleged that illegal mining in the northern Dehradun region had disturbed the surrounding ecosystem and contaminated the perennial water springs.[110] The Court directed its clerk to "treat the letter as a writ petition under Article 32," which governs remedies for violations of fundamental rights.[111] While the Court did not explicitly state that environmental protection is considered a fundamental right, the assignment of this case to Article 32 implied that the matter involved the infringment of a fundamental right.[112] *Rural Litigation and Entitlement* paved the path for the development of environmental human rights jurisprudence in India.[113]

Article 21, a brief article in the Indian Constitution, has been subject to extensive analysis and interpretation by academics, jurists, and politicians.[114] Case law has sufficiently established that the right to life is not limited to the physical necessities of life, such as nutrition, clothing, and shelter, but also refers to human dignity and the enjoyment of life.[115] *Charan Lal Sahu v. Union of India* expanded the right to life to include environmental protection, in which the Supreme Court held that "[t]he right to life and liberty also includes the right to [a] healthy environment free from hazardous pollutants."[116] Additional cases have expanded on the interpretation of environmental rights guaranteed under Article 21. In *Narmada Bachao Andolan v. Union of India*, for instance, the Supreme Court held that access to water is part of the fundamental right to life, and in *Mehta v. Union of India*, the Court held that vehicular emissions violate the right to life.[117] The Court's expansion of the right to life and clarification of the degree of environmental protection that it provides were monumental in propelling further environmental public interest litigation. The NGT has since reaffirmed that environmental rights fall under the right to life and addressed the debate between anthropocentrism and ecocentrism.

In 2014, the NGT argued against an anthropocentric approach to interpreting Article 21 with the following reference from the Supreme

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[108] India Const. art. 32.

[109] *See* Kyle Burns, *Constitutions & the Environment: Comparative Approaches to Environmental Protection and the Struggle to Translate Rights into Enforcement*, HARV. ENV'T. L. REV. (Nov. 14, 2016), https://harvardelr.com/2016/11/14/constitutions-the-environment-comparative-approaches-to-environmental-protection-and-the-struggle-to-translate-rights-into-enforcement.

[110] *Id.*

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *See, e.g.*, Vrinda Narain, *Water as a Fundamental Right: A Perspective from India*, 34 VT. L. REV. 917 (2010); P.P. Craig & S.L. Deshpande, *Rights, Autonomy and Process: Public Interest Litigation in India*, 9 OXFORD J. LEGAL STUD. 356 (1989); Neepa Jani, *Article 21 of Constitution of India and Right to Livelihood*, 2 VOICE RSCH. 61 (2013); Rehan Abeyratne, *Socioeconomic Rights in the Indian Constitution: Toward a Broader Conception of Legitimacy*, 39 BROOK J. INT'L L. 1 (2014).

[115] *See, e.g.*, Mullin v. Administrator, Union Territory of Delhi, (1981) SC 746 (India); Singh v. State of Uttar Pradesh, (1963) SC 1295 (India).

[116] Charan Lal Sahu v. Union of India, (1990) AIR 1480, ¶ 41 (1989) (India).

[117] ARJUN PAL, THE EVOLUTION OF INDIA'S ENVIRONMENTAL JURISPRUDENCE AND THE ROLE OF THE JUDICIARY 4 (2018).

Court's 1997 decision in *Centre for Environment Law, WWF-I v. Union of India*:

> Anthropocentrism is always human interest focussed [sic] thinking that non-human has only instrumental value to humans, in other words, humans take precedence and human responsibilities to non-human are based on benefits to humans. Eco-centrism is nature-[centered], where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Eco-centrism is, therefore, life-[centered], nature-[centered] where nature includes both humans and non-humans . . . . Article 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a species becoming extinct, conservation and protection of environment is an inseparable part of right to life.[118]

This recognition of judicial standing in nonhuman lifeforms is not the norm in courts around the world, but it does reflect the cultural norms of India. The Supreme Court extended the right to life to all species, stating in *Animal Welfare Board of India v. Nagaraja* that animals have honor and dignity as humans do.[119] According to the Supreme Court, "subject to the exception provided out of necessity," animals are to be protected from unlawful attacks and treated respectfully.[120] The Indian Parliament has frequently amended the Constitution, thereby expanding its environmental protections.

In the 1970s, a decade marked by an increased global consciousness for environmental protection, the Indian Parliament, under the leadership of Prime Minister Indira Gandhi, enacted the 42nd Amendment to the Constitution.[121] This Amendment introduced Article 48(A) and Article 51(A)(g) to Part IV of the Constitution, titled "Directive Principles of State Policy." The Articles categorized as "directive principles" differ significantly from those considered fundamental rights, in that the directive principles are nonjusticiable. The fundamental rights create legal obligations on the part of the state and are thus enforceable, whereas directive principles represent only moral obligations of the state and are therefore not enforceable, according to Article 37.[122] Article 37 states, "The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."[123]

Article 48(A) dictates that "[t]he State shall [endeavor] to protect and improve the environment and to safeguard the forests and wild life of the

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[118] Tribunal at its Own Motion v. Ministry of Env't & Forests (2014) 16/2013 ¶ 32–33 (National Green Tribunal) (India).

[119] Animal Welfare Bd. of India v. Nagaraja, (2014) 7 SCC 547 ¶ 51 (India).

[120] *Id.*

[121] *Constitutional Provisions for the Protection of Environment with Relevant Case*, INDIAN BAR ASS'N (2013).

[122] India Const. art. 37.

[123] *Id.*

country."[124] Article 48(A) creates a moral obligation for the central and state governments to protect the country's biodiversity, elevating the cause of environmental preservation but lacking justiciability that the fundamental rights carry.

Article 51(A)(g) complements Article 48(A)'s directive on the government. Article 51(A), Clause (g), outlines that "it shall be the duty of every citizen of India . . . to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."[125] In *Mehta v. State of Orissa*, the Indian Supreme Court designated these articles as a base for environmental protection jurisprudence, holding that "the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wildlife and to have compassion for living creatures."[126]

In sum, Indian jurisprudence has evolved to clearly recognize environmental rights as fundamental human rights under Articles 12 and 32 of the Constitution and explicitly imposes a duty on the government and citizens to protect the natural environment. The wide-reaching legal protections for the environment reflect the region's cultural and religious values.

V. HINDU PERSPECTIVE: CULTURAL VALUES RELATED TO NATURE

India has a rich history as the birthplace of four major religions: Hinduism, Buddhism, Jainism, and Sikhism,[127] each with its own set of cultural values and unique relationship to the natural environment. According to the 2011 Census, nearly 80% of the population is Hindu, resulting in Hinduism having a substantially greater influence on Indian society than the other most-practiced faiths.[128] However, each state has a distinct demographic breakdown in that not all states are predominantly Hindu.[129] Therefore, in order to thoroughly assess India's cultural history pertaining to the natural environment, it is necessary to review India's different religious traditions. However, given the scope of this analysis, this Note will expand only on the Hindu perspective and its environmental belief system.

Among the earliest recorded literary texts from the Indus Valley civilization are the *Vedas*, four volumes of scriptures that are of the utmost sacrality in Hindu tradition. The *Rig Veda*, composed between circa 1800 and 800 B.C.E., contains hymns of admiration toward natural phenomena

[124] India Const. art. 48, § A.
[125] India Const. art. 51, § A, cl. g.
[126] Mehta v. State of Orissa, AIR 1992 SC ¶ 7 (India).
[127] EMILIANO UNZER, A BRIEF HISTORY OF INDIA 1 (2019).
[128] Press Information Bureau, *RGI Releases Census 2011 Data on Population by Religious Communities*, MINISTRY OF HOME AFFS. (Aug. 25, 2015), https://pib.gov.in/newsite/printrelease.aspx?relid=126326.
[129] "Hindus make up 1 per cent of the population of Ladakh, 2.75 per cent in Mizoram, 2.77 per cent in Lakshadweep, 4 per cent in Kashmir, 8.74 per cent in Nagaland, 11.52 per cent in Meghalaya, 29 per cent in Arunachal Pradesh, 38.49 per cent in Punjab and 41.29 per cent in Manipur." *'Minority' Plea on Hindus in 9 States*, TELEGRAPH ONLINE (Aug. 29, 2020), https://www.telegraphindia.com/india/minority-plea-on-hindus-in-9-states/cid/1790366.

depicted as deities.[130] Surya represents the sun, Apas is the waters, Maruts are the storm spirits, and Prhtvi is the earth, "praised as sustaining the world and all that dwells upon her."[131] The *Vedas* also treat the Yamuna, Saraswati, Indus, and Ganges Rivers as sacred, and there are still ancient temples standing along these riverbanks today.[132] The *Yajurveda* continues with the theme of deities in nature by stating that

> The whole universe is full of energy in which the sun is at the [center] and the ultimate source of energy for all living organisms on earth. The net energy flows from the point of production to the point of consumption through the plants, animals, human beings, the air, water and land, and is completely under the control of [the] Almighty.[133]

Scholars who have studied these historic texts in depth have highlighted the belief that the universe is understood as a living organism in which each of its parts is related to the life of the entire system.[134] Inherent in Hindu culture, which is not reflected by most Western cultures, is the foundational concept that aspects of the natural world carry religious significance.

Following the *Vedas* are the *Upanishads*, which are seen as supplementing the Vedic hymns with answers to philosophical questions.[135] Two themes in the *Upanishads* are the presence of God in air, water, fire, and plants, and that mankind should revere each embodiment of the Almighty.[136] The *Upanishads* were compiled between 800 and 600 B.C.E. and are still referenced frequently in present-day society.[137] In the 2014 case *Animal Welfare Board of India*, the Supreme Court quoted the *Isha-Upanishads* in its opinion: "The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."[138] These historic Indian texts convey the view of ecocentrism in contrast to the anthropocentrism that typically dominates Western ethics and philosophy.

Along with the ancient Vedic texts, the two grand epics titled *Mahabharata*[139] and *Ramayana*[140] are principal pillars of influence in Indian culture. It is difficult to overstate their integration into Indian culture, as these epics are foundations from which Indian society has drawn its morals and principles. One of the primary motifs in these pieces of literature is the concept of dharma.

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[130] George Alfred James, *Environment and Environmental Philosophy in India*, *in* ENVIRONMENTAL PHILOSOPHY IN ASIAN TRADITIONS OF THOUGHT 3, 7 (J. Baird Callicott & James McRae eds., 2014).
[131] *Id.*
[132] *Id.*
[133] R. Renugadevi, *Environmental Ethics in the Hindu Vedas and Puranas in India*, 4 AFR. J. HIST. & CULTURE 1, 2 (2012).
[134] James, *supra* note 130, at 8.
[135] *Id.*
[136] *Id.*
[137] *Id.*
[138] Animal Welfare Bd. of India v. Nagaraja, (2014) 7 SCC 547 ¶ 44 (India).
[139] *See Mahabharata*, ENCYC. BRITANNICA, https://www.britannica.com/topic/Mahabharata (last visited Jan. 1, 2022).
[140] *See Ramayana*, ENCYC. BRITANNICA, https://www.britannica.com/topic/Ramayana-Indian-epic (last visited Jan. 1, 2022).

The Sanskrit word "dharma" is often translated into English as simply "duty" or "religion," but the formative texts of Indian culture provide much more depth into the meaning of this fundamental word.[141] A more expansive, yet still succinct, description of this concept comes from the famous Indian monk Paramahansa Yogananda, who wrote in his translation of the *Bhagavad Vita*, "It is a comprehensive term for the natural laws governing the universe and man, inherent in which are prescribed duties applicable to given circumstances. Broadly speaking, man's dharma is to adhere to that natural righteousness that will save him from suffering and lead him to salvation."[142]

One of the most significant aspects of dharma with respect to its impact on environmental ethics is that it recognizes ecocentrism because every form of life is viewed as having dharma.[143] The *Mahabharata* states that "dharma exists for the welfare of all beings," which is a central theme of the Hindu faith.[144] Dharma inculcates respect for all life forms and advocates against killing animals for consumption, which is why the integrity of environmental protection, according to Indian ethics, depends on the consideration of all organisms.[145]

The ecocentric approach was also reflected in the work and speeches of India's twentieth-century civil rights leader, Mohandas Karamchand Gandhi, or Mahatma Gandhi. From the early 1900s until his assassination in 1948, Gandhi led the Indian civil rights and independence movements, revitalizing central Hindu values that had been marginalized during the British rule.[146] Gandhi spent time in the United Kingdom and South Africa before returning to India in 1914, during which he dedicated his years to studying law and Hindu philosophical traditions.[147] Upon returning to India, Gandhi began his world-famous movement of civil disobedience against British colonization. He based his ethics on five yamas, or Hindu yogic rules of abstention.[148] Out of all five yamas, the most important principle that he championed was ahimsā.[149]

Gandhi is recognized for having transformed the ancient rule of ahimsā, or nonviolence, from one of personal importance to one of broader social, political, economic, and environmental significance.[150] Gandhi acknowledged the value of nonhuman lifeforms and recognized the interdependence of sentient and non-sentient beings. In Gandhi's words, "[I]t is an arrogant assumption . . . to say that human beings are lords and masters of the lower creatures."[151]

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[141] Iván Kovács, *The Concept of Dharma and its Significance in the Mahabharata*, 8 ESOTERIC Q. 29, 31 (2012).
[142] *Id.*
[143] M.S. Sundaram, *The Natural Law in the Hindu Tradition*, 5 NAT'L L. INST. PROCEEDINGS 67, 75 (1951).
[144] *Bhumi Devi Ki Jai! A Hindu Declaration on Climate Change 2015*, INT'L ENV'T F. (2015), https://iefworld.org/hindu_cc#2015.
[145] S. Radhakrishnan, *The Hindu Dharma*, 33 INT'L J. ETHICS 1, 13 (1922).
[146] James, *supra* note 130, at 15.
[147] *Id.* at 15–16.
[148] *Id.* at 16.
[149] *Id.*
[150] *Id.*
[151] *Id.*

In sum, Hindu-oriented Indian culture has a thorough religious and literary history that is deeply contemplative of the human relationship with the natural world. In anticipation of the 2015 United Nations Paris Climate Conference, members of the global Hindu community published the Hindu Declaration on Climate Change, which references the above-mentioned ancient texts in its arguments.[152] The Declaration invokes the foundational principle of dharma and reinforces its applicability to all living beings.[153] The *Bhagavata Purana*, a set of Hindu texts from the ninth century, states that "[e]ther, air, fire, water, earth, planets, all creatures, directions, trees and plants, rivers and seas, they are all organs of God's body."[154] With this philosophy in mind, the Declaration links the religious beliefs to righteous action.

> Knowing this, Hindus strive for ahimsā, to [minimize] the harm we cause through our actions in our ordinary, day-to-day lives. As Hindus we revere all life, human, non-human, plant, and animal. Our rivers are all goddesses; our mountains are gods. The landscape as a whole is seen as being full of divinity.[155]

The Declaration applies ahimsā to mankind's relationship with the natural environment and states that climate change creates pain, suffering, and violence, which the Hindu community must strive to prevent.[156] The traditional Hindu scriptures instill in its adherents an active duty to reform their usage of natural resources in alignment with the foundational religious traditions of dharma and ahimsā. Although Hindu texts establish a reverence of nature and a duty to protect it, some could argue that the effects of the caste system severely contradict the core principles of environmental conservation.

An aspect of Hindu culture that inhibits the success of environmental justice is the caste system. Despite India's Constitution outlawing caste discrimination, caste is highly relevant in modern-day India and impedes equal access to legal resources and protection under the law. The earliest reference to these societal classifications is found in the ancient Hindu text of the *Rig Veda*.[157] The *Rig Veda* depicts the four castes as originating from different body parts of the Lord, with each caste having a function to sustain the "social body" of civic life.[158] The Brahmins are considered the highest class and consist of priests and teachers, the Kshatriyas are warriors, the Vaishyas promote commerce and agriculture, and the Shudras are artisans.[159] In 500 B.C.E., a prominent Hindu sage named Manu was credited with developing the fifth group, the Dalits, who fall outside of the caste system as the lowest category.[160] Dalits have been designated as untouchables,

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[152] INT'L ENV'T F., *supra* note 144.
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] Madhusudana Rao Vallabhaneni, *Indian Caste System: Historical and Psychoanalytic Views*, 75 AM. J. PSYCHOANALYSIS 361, 363 (2015).
[158] *Id.*
[159] *Id.*
[160] *Id.* at 363, 365.

associating Dalits with dirtiness.[161] The perpetuation of the caste system relies on the concept of karma, or past actions and rebirth, in that one's karma from the previous life affects their caste placement in the following life.[162] The caste system has had immeasurable impacts on South Asian society, one of which is the exclusion of lower castes from environmental politics.[163]

The caste system prevents upward mobility and effectively traps the lower castes in poverty,[164] which limits the fulfillment of their environmental human rights such as access to clean water, air, and health services. Caste has a strong correlation with poverty levels, with upper-caste Hindus experiencing a 12% poverty rate and Dalits experiencing a 32% poverty rate as of 2005.[165] In addition to substantially higher rates of poverty, Dalits have been shown to escape poverty at lower rates than upper-caste Hindus. A 2003 study tracked the economic status of 3,139 rural households and found that 63% of the upper-caste families who were poor between 1970 and 1971 were no longer in poverty a decade later, whereas Dalit households escaped poverty at a rate of 37%.[166] Poverty corresponds with lack of access to education, healthcare, water, and sanitation services,[167] which impedes the ability to participate in politics and shape public policy. Scholars have attempted to fill the research gap on the Dalit relationship with environmental politics, focusing on the question of "why Dalits are away from environmentalism and its discourse, when it is close to the lives of so many of them."[168] Dalits have an extensive history of being suppressed and exploited, which the present-day environmental movement must recognize and take action to correct in order to safeguard Dalits' rights. Indian officials must work diligently to dismantle discrimination at all levels of government in order to promote environmental human rights justice. This call to action is urgent, as India faces some of the world's gravest environmental crises.

VI. THE SCOPE OF INDIA'S ENVIRONMENTAL DEGRADATION

India's rapid economic growth over the past twenty-five years has come at a high cost in terms of environmental degradation and adverse health consequences, causing alarm within local and international communities.[169] The accelerated rate of industrialization has exposed systemic inadequacies in urban planning, regulatory measures, and enforcement mechanisms. India gained notoriety for having some of the worst environmental conditions in the global community, including severe air pollution, water contamination,

[161] *Id.* at 365.
[162] *Id.* at 364.
[163] MUKUL SHARMA, CASTE AND NATURE: DALITS AND INDIAN ENVIRONMENTAL POLITICS 3 (2017).
[164] Amit Thorat Reeve Vanneman, Sonalde Desai & Amaresh Dubey, *Escaping and Falling into Poverty in India Today*, 93 WORLD DEV. 413, 413 (2017).
[165] *Id.*
[166] *Id.* at 414.
[167] Anand Kumar, *Political Sociology of Poverty in India: Between Politics of Poverty and Poverty of Politics*, *in* CHRONIC POVERTY IN INDIA 144, 186 (2003).
[168] Sharma, *supra* note 163, at 256.
[169] Mahesh Chandra, *Environmental Concerns in India: Problems and Solutions*, 15 J. INT'L BUS. & L. 1 (2015).

groundwater depletion, biodiversity loss, improper sewage treatment, and overall waste mismanagement.[170]

The Yale Center for Environmental Law & Policy curates an Environmental Performance Index ("EPI") for 180 countries by using 32 performance indicators across 11 issue categories, including pollution emissions, sanitation, and environmental health.[171] The EPI rankings are meant to indicate the relative environmental performance of each country and assess which countries are best addressing common environmental challenges that nations face.[172] India's ranking, which is based on data from 2017 and 2018—thus not reflecting any effects from the pandemic—is 177 out of 180.[173] Among the 11 issue categories, India has the lowest scores for air quality, environmental health, and water and sanitation.[174]

According to IQAir's data from 2019, 21 of the top 30 most air polluted cities in the world were in India.[175] Air quality is typically evaluated according to the amount of coarse and fine particulate matter in the air, referring to particles with a diameter of ten microns (PM_{10}) or 2.5 microns ($PM_{2.5}$), respectively.[176] Particulate matter consists of both solid and liquid particles of both organic and inorganic matter, such as sulfate, nitrates, ammonia, sodium chloride, black carbon, mineral dust, and water.[177] While both types of particles are detrimental to human health because they can penetrate internal organs, fine particulate matter is considered to pose far more serious risks due to its ability to penetrate the lung barrier and enter the bloodstream.[178] Chronic exposure to elevated amounts of particulate matter increases both morbidity and mortality, potentially leading to the development of cardiovascular disease, respiratory disease, and lung cancer.[179] Each city in the top thirty category has an annual fine particulate matter count of above 75 $\mu g/m^3$, which drastically exceeds the World Health Organization's air quality guideline of 10 $\mu g/m^3$.[180] "Air quality goes hand in hand with poverty," as almost 60% of the Indian population in 2016 still relied on burning biomass, such as wood, charcoal, or animal dung, for cooking.[181] India's alarming air quality is also affected by slash-and-burn argiculture, vehicular emissions, and industrial effluents.[182] Ultimately, India needs to aggressively reduce its reliance on coal and redirect its focus toward

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[170] *Id.* at 1–3.

[171] Z.A. WENDLING ET AL., YALE CTR. FOR ENV'T L. & POL'Y, ENVIRONMENTAL PERFORMANCE INDEX 2020: GLOBAL METRICS FOR THE ENVIRONMENT: RANKING COUNTRY PERFORMANCE ON SUSTAINABILITY ISSUES II (2020).

[172] *About the EPI*, YALE CTR. FOR ENV'T. L. & POL'Y (2020), https://epi.yale.edu/about-epi.

[173] *Country Profile INDIA*, YALE CTR. FOR ENV'T. L. & POL'Y (2020), https://epi.yale.edu/epi-results/2020/country/ind.

[174] *Id.*

[175] Helen Regan, *21 of the World's 30 Cities with the Worst Air Pollution are in India*, CNN (Feb. 25, 2020), https://edition.cnn.com/2020/02/25/health/most-polluted-cities-india-pakistan-intl-hnk/index.html.

[176] *Ambient (Outdoor) Air Pollution*, World Health Org. [WHO] (2018), https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health.

[177] *Id.*

[178] *Id.*

[179] *Id.*

[180] *Id.*

[181] *India: Environmental Issues*, EUROPEAN UNION (2019), https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637920/EPRS_BRI(2019)637920_EN.pdf.

[182] Chandra, *supra* note 169, at 3.

developing the necessary infrastructure and adopting the appropriate technology to meet its energy demands with renewable energy sources.

India's water crisis is also of grave concern, as it causes widespread health and socioeconomic harms throughout the population. An estimated 70% of the country's groundwater sources are contaminated by biological, toxic, organic, and inorganic pollutants and are therefore unfit for consumption.[183] Two of many factors that contribute to water pollution are inadequate sewage treatment systems and a lack of access to plumbing. It is estimated that 15% of the Indian population practices open defecation,[184] contributing to widespread illness such as cholera and typhoid.[185] Even in cities with sewage treatment facilities, India's Central Pollution Control Board reports that 63% of urban sewage, about 62 billion liters a day, enters rivers untreated.[186] India's water crisis is aggravated by fragile water security, as cities are facing the imminent reality of resource depletion. As of June 2019, nearly 65% of India's reservoirs were running dry.[187] The New Delhi based Center for Science and Environment attributes the water crisis to "a toxic mix of bad governance and climate change."[188] Rainfall has become more unpredictable, and India has faced a series of severe droughts and heatwaves.[189] It is urgent for the Indian government to reform its water usage policies and industrial regulations to alleviate the country's dire environmental crises.

The crucial concept that India must embrace is that economic growth and environmental sustainability are not mutually exclusive. The Indian government must work with the industrial sector, nongovernmental organizations, and, ultimately, its constituents in order to reform its approach to combatting pollution.[190] In pursuing its goal of increasing access to electricity, India should bypass the carbon-reliance stage of industrialization and instead power its growth through renewable energy sources. Ultimately, many of the principal factors that prevent effective environmental regulation, such as corruption and a lack of enforcement mechanisms, are the same factors that stymie continuous economic growth. India's economy also suffers when its citizens, who constitute its workforce, suffer from increased morbidity and mortality due to grave levels of pollution. Instead of viewing the goals of economic and environmental progress as incompatible, the Indian government should recognize the common ground between them and formulate a comprehensive strategy accordingly. However, India has a

[183] M.N. Murty & Surender Kumar, *Water Pollution in India, An Economic Appraisal*, *in* INDIA INFRASTRUCTURE REP. 285, 285 (2011).

[184] *India's Water and Sanitation Crisis*, WATER.ORG, https://water.org/our-impact/where-we-work/india (last visited May 3, 2022).

[185] Ben Fox Rubin & Suruchi Kapur-Gomes, *India Spent $30 Billion to Fix its Broken Sanitation. It Ended Up with More Problems*, CNET (Sept. 11, 2020, 8:22 AM), https://www.cnet.com/news/india-spent-30-billion-to-fix-its-broken-sanitation-it-ended-up-with-more-problems.

[186] Vaishnavi Chandrashekar, *Dying Waters: India Struggles to Clean Up Its Polluted Urban Rivers*, YALE SCH. ENV'T (Feb. 15, 2018), https://e360.yale.edu/features/dying-waters-india-struggles-to-clean-up-its-polluted-urban-rivers.

[187] Kasha Patel, *Water Shortages in India*, NASA EARTH OBSERVATORY (2019), https://earthobservatory.nasa.gov/images/145242/water-shortages-in-india.

[188] Sushmita Pathak, *No Drips, No Drops: A City of 10 Million is Running Out of Water*, NPR (June 15, 2019), https://www.npr.org/sections/goatsandsoda/2019/06/25/734534821/no-drips-no-drops-a-city-of-10-million-is-running-out-of-water.

[189] *Id.*

[190] Chandra, *supra* note 169, at 9.

record of sacrificing environmental compliance and health standards for the possibility of greater economic prosperity.

A. THE BHOPAL GAS LEAK DISASTER

The Bhopal disaster of 1984 brought to light several of India's most precarious issues, primarily how the government prioritized business growth over ensuring adequate environmental public safety. The Indian government had implemented polices to encourage foreign companies to invest in local industries, but these policies allowed companies to cut corners by bypassing zoning laws and safety standards.[191] The massive toxic gas leak from Union Carbide Corporation's chemical plant is one of the worst industrial accidents in history.[192]

Bhopal is a city in the centrally located state of Madhya Pradesh. At the time, Bhopal had an estimated population of 800,000, of which 200,000 residents were exposed to the gas.[193] Union Carbide Corporation ("UCC") manufactured Sevin, a pesticide commonly used throughout Asia.[194] The company chose to produce the pesticide in Bhopal because of the city's access to transportation infrastructure.[195] Against government advice to construct the plant in an industrial zone located twenty-five kilometers from the main city, UCC constructed its plant less than one kilometer from the railroad station and three kilometers away from two major hospitals.[196] This specific site was zoned for light industry and commercial use, not for hazardous industrial activity involving potent chemicals.[197] Despite the highly sensitive nature of the chemicals used to formulate the pesticide, UCC handled its production line carelessly and failed to maintain proper safety devices.[198] Among other acts of negligence, the company failed to keep the toxic chemicals refrigerated, had non-functioning scrubbers, lacked an emergency tank, and understaffed its facility.[199]

As a result of numerous preventable high-risk conditions, nearly 30 metric tons of dense methyl isocyanate ("MIC") gas escaped the plant after midnight, killing 5,000 people within two days and ultimately reaching a death toll of 20,000 people.[200] The odorless MIC gas causes immediate irritation in the eyes as well as difficulty breathing, and it mirrors the effects of severe acute respiratory syndrome ("SARS").[201] The city of Bhopal awoke to the jarring sight of denuded trees and thousands of lifeless humans, buffalos, cows, and dogs in the streets.[202] Approximately four years after this tragedy, the Indian Supreme Court mediated a settlement ordering UCC to

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[191] Edward Broughton, *The Bhopal Disaster and its Aftermath: A Review*, 4 ENV'T HEALTH: A GLOB. ACCESS SCI. SOURCE 6 (2005), https://ehjournal.biomedcentral.com/articles/10.1186/1476-069X-4-6.
[192] *Id.*
[193] Roli Varma & Daya R. Varma, *The Bhopal Disaster of 1984*, 25 BULL. SCI. TECH. & SOC'Y 37, 37 (2005).
[194] Broughton, *supra* note 191.
[195] *Id.*
[196] Varma & Varma, *supra* note 193, at 40.
[197] Broughton, *supra* note 191.
[198] Varma & Varma, *supra* note 193, at 40–41.
[199] *Id.*
[200] *Id.* at 38.
[201] *Id.* at 42.
[202] *Id.*

accept moral responsibility and pay $470 million to the Indian government to be distributed to the claimants.[203] The settlement amount is considered to be substantially inadequate.[204] For example, UCC was a defendant in the asbestos litigation in the United States, as the company mined asbestos from 1963 to 1985.[205] If the Bhopal disaster claimants had been paid at the same rate as asbestos victims in the United States, the settlement would have been valued at more than $10 billion.[206]

In the aftermath of the Bhopal gas leak, the Indian government passed the Environmental Protection Act in 1986 and has taken other steps toward enacting environmental policies, but it continues to prioritize industrial growth over enforcing environmental and public health regulations.[207] India's desire to join the tier of global economic superpowers has resulted in heavy reliance on domestic coal without adequate emissions and waste-management regulations.[208]

A primary way that India has begun addressing the growing number of environmental complaints and grievances in the country is by creating the NGT. Two of the most formative NGT cases are *Alvares v. State of Goa* and *Save Mon Region Federation v. Union of India*.

VII. LANDMARK ENVIRONMENTAL HUMAN RIGHTS CASES IN THE NATIONAL GREEN TRIBUNAL

A. *ALVARES V. STATE OF GOA* (2014)

The NGT strengthened India's environmental human rights obligations through its landmark decision in *Alvares v. State of Goa* by protecting noncitizens' right to life. The Tribunal adopted a plain-meaning approach to the NGT Act's definition of a "person" in Section 2(j), which includes any individual, regardless of whether they are a national or noncitizen of India.[209] The Respondents contended that Alvares, a noncitizen, was not an "aggrieved person" and therefore did not have the right to claim Article 21 protection, however, the Tribunal found that Alvares met the standing requirements as there was a "substantial question relating to environment and such question arises out of implementation of enactments specified in Schedule-I" of the NGT Act.[210] The NGT held that the Constitution's Article 21 right to life "is not restricted to guarantee [] life only to a citizen of India."[211]

The relatively short, twelve-paragraph judgment had a profound effect on Indian human rights jurisprudence. The NGT expanded the Supreme Court's precedent of including the right to a healthy environment under Article 21's protection of the right to life by extending this right to noncitizens. This decision reformed NGT precedent by permitting any

[203] Broughton, *supra* note 191, at 3.
[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.* at 4.
[208] *Id.*
[209] Alvares v. State of Goa, 33/2014, decided on Feb. 14, 2014 ¶ 7 (India).
[210] *Id.*
[211] *Id.* at ¶ 4.

individual to advance an environmental claim that meets its standing requirements, thereby tipping the scale toward the advancement of justice.

B. *SAVE MON REGION FEDERATION V. UNION OF INDIA* (2016)

The Tribunal's decision in *Save Mon Region Federation v. Union of India* defends human rights, environmental rights, and indigenous rights. Save Mon Region Federation ("SMRF") is an organization based in the Tawang district of the northern state of Arunachal Pradesh, which borders Bhutan and China. SMRF consists of members of the Monpa indigenous community who advocate environmentally and culturally sensitive development in their region, which is considered geologically fragile due to high seismic activity.[212] SMRF filed suit to contest the environmental clearance granted by the Ministry of Environment and Forests ("MoEF") for a hydroelectric project on the Naymjang Chhu River, located in the region.[213] The proposed location of the dam was one of the few wintering sites for the black-necked crane, an endangered species revered by the Monpa indigenous community as the incarnation of the Sixth Dalai Lama.[214] The government did not faithfully evaluate the environmental and cultural impacts of this hydroelectric project, as evidenced by MoEF's assessments.[215] The primary issues in this case concerned insufficient environmental assessments, a lack of public access to clearance reports, and a lack of consultation with the local indigenous community. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 1998, referred to as the Aarhus Convention, provides guidance on the disclosure requirements between public authorities and the public in general.[216] The Aarhus Convention is a multilateral agreement that addresses procedural justice in environmental matters by designating public access to information and public participation as necessary for just legal outcomes.[217] Although the Aarhus Convention is within the United Nations Economic Commission for Europe,[218] and India is not a signatory, the convention provides a set of internationally agreed-upon principles to be adopted at the state level.

The Tribunal looked to the domestic legal regulations on environmental clearance orders, which addressed the need to inform the heads of local and municipal governmental bodies about the project[219] and reflected the themes present in the Aarhus Convention. The regulations also required public circulation of the announcement in the vernacular of the concerned locality, addressing the linguistic diversity in India and assuring that community

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[212] *Save Tawang*, SAVE MON REGION FED'N (2020), http://www.savetawang.org.

[213] *In re* Save Mon Region Fed'n, 39/2012 of 2012, decided on Apr. 7, 2012 (National Green Tribunal) ¶ 2.

[214] *Id.* at ¶ 15.

[215] *Id.* at ¶ 5(i)–(iii).

[216] U.N. Econ. Comm'n for Eur. Convention on Access to Info., Public Participation in Decision-Making and Access to Justice in Environmental Matters, *opened for signature* June 25, 1998 (entered into force Oct. 30, 2001), https://unece.org/DAM/env/pp/documents/cep43e.pdf.

[217] Czeslaw Walek, *The Aarhus Convention and its Practical Impact on NGOs: Examples of CEE and NIS Countries*, INT'L J. NOT-FOR-PROFIT L. (Sept. 2000), https://www.icnl.org/resources/research/ijnl/the-aarhus-convention-and-its-practical-impact-on-ngos-examples-of-cee-and-nis-countries.

[218] *See id.*

[219] *In re* Save Mon Region Fed'n, 39/2012 at ¶ 12.

members will properly receive notice.[220] Here, the community alleged that MoEF granted clearance for the hydroelectric power plant without sufficient environmental review and through a faulty public consultation process.[221] In response, the NGT ordered a new environmental assessment that would take the black-neck crane into consideration and incorporate public consultation, especially from those directly impacted, followed by a resubmission to MoEF for legal compliance.[222] The NGT's decision emphasizes the need for a transparent environmental clearance process that provides the public a fair opportunity to challenge the relevant project.

This case also stands out for its thorough approach to evaluating public process and strong commitment to sustainable development. The Tribunal emphasized that the construction of the dam must embody the principles of sustainable development, preventing any irretrievable loss to the environment.[223] While India has made significant strides in the pursuit of environmental justice, the country has been steadily neglecting to uphold the human rights of its population.

VIII. COMPARING INDIA TO THE GLOBAL COMMUNITY

India faces a paradox as it attempts to reconcile its strong constitutional and judicial environmental protections with the reality of performing poorly with respect to human rights, environmental preservation, and public health. India ranked 119th out of 165 countries in the Cato Institute's Human Freedom Index ("HFI") for 2019, dropping 5 spots from its position in the 2018 index.[224] The definition of "freedom" according to the HFI is "a social concept that recognizes the dignity of individuals and is defined by the absence of coercive constraint."[225] The HFI reviewed 82 distinct indicators of personal and economic freedom and scored each country on a scale from 0 to 10, with 10 signifying the most freedom.[226] These indicators relate to the following categories: rule of law, security and safety, size of government, access to sound money, and regulation of credit, along with freedom of movement, religion, assembly, expression, identity, and to trade internationally.[227] The average score in the 2019 report was 7.12, and India scored below average at 6.39.[228] India's lowest-scoring category was rule of law, which refers to procedural, civil, and criminal justice, in which it received a score of 4.3.[229] Since the index began in 2008, India's human freedom score and overall global ranking have both fallen.[230] India's judicial system cannot succeed in securing and promoting environmental human rights for its constituents in a deteriorating political environment.

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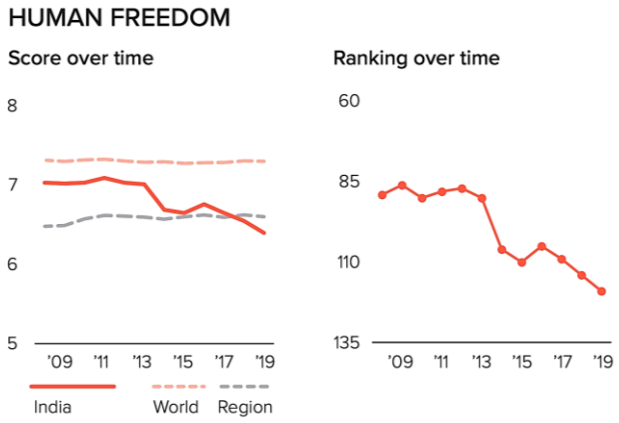
[220] *Id.*
[221] *Id.* at ¶ 5(i)–(iii).
[222] *Id.* at ¶ 22(i)–(iii).
[223] *Id.* ¶ 22.
[224] IAN VÁSQUEZ, FRED MCMAHON, RYAN MURPHY & GUILLERMINA SUTTER SCHNEIDER, THE HUMAN FREEDOM INDEX 2021: A GLOBAL MEASURE OF PERSONAL, CIVIL, AND ECONOMIC FREEDOM 191 (2020).
[225] *Id.* at 10.
[226] *Id.* at 3.
[227] *Id.*
[228] *Id.* at 25.
[229] *Id.* at 190.
[230] *Id.*

Figure 2: The Cato Institute's Human Freedom Index data for India from 2008 to 2019[231]



The HFI data helps fill the gap between India's progressive policies on paper and the present-day crises the country faces. India has a detailed spiritual relationship with the natural environment dating back thousands of years, but its cultural values and attempts at reforming its court system are being overshadowed by rampant public and private sector corruption, along with poorly planned industrialization that has failed to elevate the country's extreme poverty.[232] India needs a stable political administration dedicated to upholding democracy and advancing human rights in order for its extensive environmentally oriented legal framework to thrive.

IX. CONCLUSION

Improving the field of environmental human rights requires a comprehensive understanding of the human relationship with the natural environment and the unique cultural values that impact the success of a state's environmental and human rights legal frameworks. International law provides the principles for states to build on, as human rights enforcement ultimately occurs at the state level. While the right to a healthy environment has generally become accepted within the category of human rights, the field remains dominated by Western legal ethics. Environmental human rights ethics must be tailored and appropriately adapted to the cultural values of each respective state.

Using India as a case study allows for an assessment of whether incorporating local cultural norms is beneficial, and possibly necessary, in order to enact sustainable changes. In one sense, India appears to be a frontrunner in environmental human rights protection, as its Constitution guarantees the right to a healthy environment, and the country created a

[231] *Id.* at 190.
[232] JEAN DRÈZE & AMARTYA SEN, AN UNCERTAIN GLORY: INDIA AND ITS CONTRADICTIONS 18, 104 (Princeton Univ. Press 2013).

separate tribunal dedicated solely to environmental matters. In reality, however, India has some of the world's most dire levels of pollution and is experiencing multiple public health crises. Reconciling these two opposing truths requires understanding that India grapples with severe bureaucratic delays, rampant corruption, diminishing democratic principles, and minimal enforcement mechanisms. India must address and ameliorate these systemic problems in order for its strong environmental human rights legal framework to succeed outside the courtroom.