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UNHEARD VOICES: EXPANDING THE CONSTITUTIONAL PROTECTION FOR INDIGENOUS PEOPLE

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ABSTRACT

Indigenous communities worldwide share a profound connection with their land, treating it as both a cultural identity and a resource for survival. This paper examines how the Indian Constitution, particularly Article 21, can be expanded to recognize and protect Indigenous sovereignty over their natural resources and environment. It explores the challenges Indigenous communities' face, such as climate change, industrial encroachment, and limited legal protections, focusing on case studies like the Dongria Kondh, Ladakhi protests, and global parallels such as the Māori guardianship in New Zealand. The paper critiques existing constitutional provisions in India and highlights the gap in recognizing Indigenous rights as part of environmental justice. Drawing lessons from international frameworks, it advocates for actionable reforms, including the extension of Sixth Schedule provisions, granting legal personhood to sacred landscapes, and embedding Free, Prior, and Informed Consent (FPIC) in Indian law. By aligning constitutional frameworks with the realities of Indigenous communities, this research aims to integrate cultural preservation with sustainable development.

INTRODUCTION

This research paper explores the intersection of Indigenous rights, environmental justice, and constitutional frameworks, with a focus on the Indian context. It begins by examining the cultural, spiritual, and ecological connections Indigenous communities share with their land and natural resources, using examples like the Dongria Kondh and Ladakhi tribes, alongside global parallels such as the Māori in New Zealand. The paper then critiques the evolution of Article 21 of the Indian Constitution, analyzing its expanded interpretation to include environmental protection while identifying gaps in recognizing Indigenous sovereignty. Contemporary challenges, including climate change and industrial encroachment, are discussed through case studies, such as Ladakhi protests and global efforts like the Torres Strait Islanders' climate litigation. The paper further explores comparative models of Indigenous

sovereignty and environmental governance, drawing lessons from global examples such as New Zealand's legal personhood for the Whanganui River and Canada's recognition of Aboriginal title. Finally, the research provides practical and actionable recommendations for constitutional and policy reforms in India, advocating for the expansion of Article 21 to explicitly include Indigenous environmental rights and proposing frameworks for sustainable development and inclusive governance.

RESEARCH AREA

The intersection of Indigenous rights, environmental justice, and constitutional frameworks is a critical yet underexplored field, particularly in the context of India. Indigenous communities across the world share a unique, often spiritual connection with their land and ecosystems, making them natural stewards of biodiversity. However, these communities are increasingly vulnerable to the dual threats of climate change and industrial encroachment. While international frameworks like the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) advocate for Indigenous sovereignty, India's constitutional and legal systems provide limited recognition of these rights. This research seeks to bridge this gap by exploring how the constitutional right to life under Article 21 can be expanded to include Indigenous rights to their lands and natural resources, integrating both cultural and environmental dimensions.

RESEARCH QUESTION

How can the constitutional right to life in India be interpreted and expanded to encompass Indigenous sovereignty, recognizing their right to live in harmony with nature while protecting their cultural and environmental heritage?

RESEARCH OBJECTIVE

- Analyse the Relationship Between Indigenous Communities and Nature.
- Understanding Existing Legal Frameworks.
- Address Contemporary Challenges
- Propose a Framework for Constitutional Reform.

INDIGENOUS COMMUNITIES AND NATURE

Indigenous communities' worldwide share a profound, sacred connection to their land and natural surroundings, a relationship deeply embedded in their culture, beliefs, and way of life. This connection is far more than a reliance on nature for physical sustenance; it represents a spiritual and cultural bond where land, water, plants, and animals are regarded as integral parts of their identity. Indigenous people see themselves as custodians of the natural world, a

perspective that drives their environmental stewardship and sustainable practices, passed down through generations as Traditional Ecological Knowledge (TEK).[1]

In many Indigenous communities, nature is perceived as a living entity, a concept that fuels their protective stance toward ecosystems. For example, the Bishnoi community of Rajasthan, India, is renowned for its commitment to conserving wildlife and plants, especially the khejri tree.[2] Rooted in their spiritual beliefs, the Bishnoi people have safeguarded their environment for centuries, sometimes at the cost of their lives, as seen in the historic sacrifice of Amrita Devi and others who laid down their lives in defense of trees. Similarly, the Sungai Utik people of Borneo have fiercely resisted deforestation, preserving their forest home and the countless species it supports.[3] Indigenous knowledge systems also demonstrate an intimate understanding of local ecosystems, gained through generations of observation and adaptation. This understanding enables communities like the Pachagrama in Bolivia to predict weather patterns based on "bio-indicators," or natural signs in plants and animals.[4] The Pachagrama system, as described in the document, exemplifies how Indigenous people use nature-based knowledge for agriculture and resource management in ways that align with environmental sustainability. These practices not only help Indigenous communities thrive but also demonstrate valuable, alternative approaches to environmental conservation.

Indigenous communities are often the first to notice the impacts of climate change due to their close relationship with and reliance on the land. However, despite contributing minimally to global emissions, these communities disproportionately bear the consequences of environmental degradation. Climate change threatens their traditional ways of life, natural resources, and cultural identity, as shifts in weather patterns, rising sea levels, and deforestation disrupt their delicate ecological balance.

For instance, the melting of Arctic ice disrupts the traditional hunting practices of Inuit communities, whose lives depend on predictable ice patterns for safe travel and access to

[1] Traditional Knowledge (TK) and Climate Change - Indigenous Climate Hub, Indigenous Climate Hub, https://indigenousclimatehub.ca/traditional-knowledge-tk-and-climate-change

[2] India's Bishnoi Community: The original eco-warriors, Deccan Herald, (Dec. 01, 2022), https://www.deccanherald.com/india/indias-bishnoi-community-the-original-eco-warriors-1167330.html.

[3] Johnny Langenheim, Natural custodians: Indigenous lessons in reconnecting with nature, Environment, (Jan. 25, 2024), https://www.nationalgeographic.com/environment/article/paid-content-natural-custodians-indigenous-lessons-in-reconnecting-with-nature

[4] Aparna Pareek and PC Trivedi, Cultural values and indigenous knowledge of climate change and disaster prediction in Rajasthan, India, 10 Indian Journal of Traditional Knowledge 183-189, (2011).

food.[5] Similarly, Indigenous groups in coastal areas face severe habitat loss due to rising sea levels and coastal erosion, endangering their livelihoods and cultural heritage. In Bolivia, communities that rely on Pachagrama systems for agriculture face new uncertainties as erratic climate conditions threaten their accuracy and agricultural resilience. The Apatani community in India has developed sustainable agricultural methods like paddy-cum-fish farming, but changing climate patterns threaten this and similar practices, raising concerns about food security.[6] Industrial expansion, deforestation, and pollution further exacerbate these climate-related challenges. The establishment of factories, extraction of natural resources, and large-scale construction projects often lead to land dispossession, pollution, and ecosystem fragmentation, causing irreversible damage to Indigenous lands. In Central Africa, for example, the Mbroro nomadic herders and farmers face escalating conflicts over water scarcity exacerbated by climate change and deforestation.[7] Such environmental injustice affects not only Indigenous people's physical surroundings but also their mental health, as they grapple with ecological and cultural disintegration, a phenomenon sometimes called "eco-anxiety."[8]
This disproportionate impact underscores the urgent need for constitutional protections that recognize and safeguard the unique relationship between Indigenous communities and their natural environment. Recognizing Indigenous people's right to live in harmony with their land is essential to protect their cultural integrity and ensure environmental justice.

THE CONSTITUTIONAL RIGHT TO LIFE.

The Indian Constitution's Article 21 guarantees that "No person shall be deprived of his life or personal liberty except according to the procedure established by law." This deceptively simple clause has been transformed over the decades by the Indian judiciary into a comprehensive protector of numerous fundamental rights, transcending the original narrow scope of "life" to encompass dignity, environmental quality, and health. As such, Article 21 has become a central

[5] MARCOS MORENO, On climate change adaptation, consult the original experts: Indigenous people, The Hill, (Jun 15, 2023), https://doi.org/https://thehill.com/opinion/energy-environment/4041057-on-climate-change-adaptation-consult-the-original-experts-indigenous-people/

[6] Shabari Shankar, Apatani tribe secrets - Discovering ancient practices in Ziro Valley, Savaari Car Rentals Blog, May 3, 2024), www.savaari.com/blog/apatani-tribe-people-ziro-valley/

[7] Reynaldo A. Morales, Mbororo peoples' Journey for survival: Transhumance and territoriality in Central Africa, Cultural Survival, https://www.culturalsurvival.org/news/mbororo-peoples-journey-survival-transhumance-and-territoriality-central-africa.

[8] Climate Denial: Why It Happens and What To Do About It, The Climate Reality Project, (Feb 3, 2022), www.climaterealityproject.org/blog/climate-science-denial-why-and-what-to-do-about-it

pillar in India's constitutional rights framework, offering a basis for innovative interpretations that adapt to evolving social, environmental, and health-related.

The groundwork for this expanded interpretation of Article 21 was laid in the seminal case of *Maneka Gandhi v. Union of India* (1978),[9] in which the Supreme Court emphasized that the right to life should be understood as a right to live with dignity, including adequate conditions of livelihood. This case marked a shift from a narrow procedural understanding of "life" to one that acknowledges life's inherent quality. This broadened interpretation provided a foundation for integrating environmental and health protections into the constitutional understanding of the right to life.

In *Subhash Kumar v. State of Bihar* (1991)[10], the Supreme Court linked Article 21 directly to the environment by stating that "the right to life is a right to live with human dignity free from environmental pollution." This case was instrumental in establishing that clean air and water are essential elements of life. The ruling was expanded upon in the *M.C. Mehta v. Union of India* [11]series, where the Supreme Court directed the closure and relocation of highly polluting industries in Delhi, citing the fundamental right to a pollution-free environment. In *Vellore Citizens Welfare Forum v. Union of India* (1996)[12], the court introduced the "precautionary principle" and the "polluter pays principle," which hold polluters accountable for environmental damage and mandate proactive measures to prevent harm. These principles have become integral to India's environmental jurisprudence.

The Indian judiciary has continued to expand the scope of Article 21, treating it as a living right adaptable to changing societal and environmental conditions. The decision in *Indian Council for Enviro-Legal Action v. Union of India* (1996)[13] reinforced the state's duty to protect environmental integrity as part of its obligation under Article 21, confirming that public health and environmental welfare are non-negotiable aspects of the right to life. This case reflects the judiciary's recognition that human survival and dignity are directly linked to environmental quality. Nevertheless, while the courts have championed the environmental rights of individuals under Article 21, explicit protections for Indigenous communities and their unique environmental needs remain absent, leaving a critical gap in constitutional environmental

[9] Maneka Gandhi v. Union of India, (1978) 1 SCC 248

[10] Subhash Kumar v. State of Bihar (1991) 1 SCC 598

[11] M.C. Mehta v. Union of India 1987 SCC (1) 395

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

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

protections. The broadening of Article 21 to include environmental quality and health creates an opportunity to further expand this right to explicitly protect Indigenous people's unique relationships with their lands. Indigenous communities maintain deep cultural, spiritual, and economic ties to their natural environments, viewing land and nature as extensions of their identity and culture. This profound connection, which is integral to their concept of life, underscores the need for constitutional recognition that Indigenous communities' right to life under Article 21 inherently includes the right to preserve their ecosystems.[14]

In *Samatha v. State of Andhra Pradesh* (1997),[15] the Indian Supreme Court provided an early recognition of Indigenous land rights by invalidating mining leases granted on tribal lands. The court acknowledged that Indigenous (or "Scheduled Tribe") lands are not merely economic resources but vital cultural heritage that must be protected from exploitative practices. However, while the judgment established the inviolability of Indigenous land rights under certain conditions, it fell short of explicitly framing these rights within the context of the right to life, missing an opportunity to embed Indigenous environmental rights more directly within Article 21. The Forest Rights Act of 2006 further advanced Indigenous land protections by formally recognizing their rights to manage, protect, and sustain their traditional lands. By providing a legal mechanism for Indigenous communities to safeguard their territories, the Act aligns with the principles of Article 21 by ensuring that these communities have the means to protect their physical and cultural well-being. Nevertheless, the Act's effectiveness is limited, as its implementation is often obstructed by competing state interests in resource extraction and industrial development. Indigenous communities frequently face encroachment, pollution, and displacement from their lands due to such developments, which disrupt their ecosystems and diminish their quality of life, underscoring the need for stronger constitutional protections that directly link their right to life with their right to a sustainable environment.

In order to fully recognize Indigenous rights under Article 21, the right to life must be interpreted in a manner that incorporates the unique environmental needs and cultural significance of Indigenous land. Indigenous communities rely on these ecosystems not just for livelihood but as essential aspects of their social identity, spiritual practices, and

[14] FAY, Derick; JAMES, Deborah (Eds.). 2008. The rights and wrongs of land restitution: 'restoring what was ours'. Abingdon, Oxon; New York, NY: Routledge-Cavendish

[15] Samatha v. State of Andhra Pradesh 1997 (8) SCC 191

intergenerational knowledge systems. For these communities, environmental degradation is an existential threat that compromises their survival, cultural heritage, and the continuity of traditional practices. A failure to constitutionally protect Indigenous people's access to their land and natural resources is, therefore, a failure to uphold their right to life and dignity.

Judicial review has played a transformative role in advancing environmental protections under Article 21, yet Indigenous communities remain underrepresented in these judicial protections despite being disproportionately impacted by environmental harms.[16] Climate change exacerbates this marginalization, as rising temperatures, sea levels, and unpredictable weather patterns threaten the habitats, resources, and livelihoods of Indigenous populations. Unlike other groups, Indigenous people experience these environmental changes more acutely due to their reliance on specific land and water sources, placing them in a vulnerable position where climate impacts infringe upon their right to life. Environmental justice demands that the constitutional right to life under Article 21 includes protections for Indigenous people, who should be considered primary stakeholders in decisions affecting land, water, and resource use. India could take cues from international jurisprudence where courts have taken significant steps to safeguard Indigenous rights. For example, in the Canadian case *Tsilhqot'in Nation v. British Columbia* (2014)[17], the Supreme Court upheld Indigenous title to traditional lands, granting them control over land use and resource management. New Zealand offers another model with its legal recognition of Māori stewardship in environmental management, particularly through partnerships that allow Māori communities to actively participate in environmental decision-making. Drawing from these examples, Indian courts could adopt a similarly inclusive interpretation of Article 21, ensuring that Indigenous people are recognized as essential stakeholders in environmental conservation.[18]

The intersection of industrial development and environmental degradation presents a serious risk to Indigenous rights. Industrial projects, such as mining, hydroelectric dams, and deforestation, frequently encroach on Indigenous territories, leading to forced displacement, habitat destruction, and cultural disintegration. In the Vedanta case involving the Dongria

[16] Jérémie Gilbert, *Land Rights as Human Rights*, 18 SUR- INT'L J. ON HUM. RTS., (2013).

[17] Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, (Canada)

[18] Matthew Palmer, Indigenous Rights, Judges and Judicial Review, Home — Courts of New Zealand, https://www.courtsofnz.govt.nz/assets/speechpapers/jpalmer.pdf.

Kondh tribe in Odisha, India, a bauxite mining project threatened to displace the community from their sacred hills, which they believe to be the seat of their deity, Niyam Raja.[19]

"***We are born of this earth, and this earth is ours. Niyamgiri belongs to us***."[20]

The Supreme Court's ruling empowered the community to reject the mining project, recognizing their right to protect their sacred lands. However, without clear constitutional provisions tying Indigenous land rights to Article 21, such victories remain vulnerable to political and economic pressures.[21] The inclusion of Indigenous perspectives in judicial and constitutional frameworks is crucial for sustainable and equitable environmental governance. If Article 21 explicitly recognized Indigenous environmental rights, the judiciary could more effectively hold industrial and governmental actors accountable for environmental injustices that infringe upon Indigenous lives and ecosystems. This recognition would also protect Indigenous communities from climate-induced displacement, as seen in the Torres Strait Islander case in Australia[22], where Indigenous groups sought legal action against the Australian government to protect their land from rising sea levels and climate-related impacts. By aligning India's constitutional interpretation of the right to life with international examples, the judiciary can enhance environmental justice for Indigenous communities, acknowledging that their environmental well-being is integral to their right to life.

CONTEMPORARY THREATS TO INDIGENOUS RIGHTS AND ENVIRONMENTAL SECURITY

Climate change is a critical threat to Indigenous communities globally, as it exacerbates environmental challenges that directly impact their ways of life. While Indigenous communities contribute minimally to global emissions, they face disproportionate consequences of climate change, including rising temperatures, extreme weather events, and ecosystem degradation. These impacts pose significant risks to Indigenous people, threatening not only their physical environment but also their cultural identities, traditional practices, and

[19] Anjali George, Claiming Niyamgiri: the Dongria Kondh's Struggle against Vedanta – ritimo, RITIMO (Nov. 18, 2024), https://www.ritimo.org/Claiming-Niyamgiri-the-Dongria-Kondh-s-Struggle-against-Vedanta#:~:text=In%20a%20landmark%20decision%20for,ahead%20to%20Vedanta's%20mining%20project..

[20] Dongria Kondh, HOME - SURVIVAL INTERNATIONAL, https://www.survivalinternational.org/tribes/dongria.

[21] Ashish Kothari, Revisiting the legend of Niyamgiri, HINDU, June 4, 2016.

[22] Daniel Billy & other v. Australia (Toress Strait Islanders Petition),, United Nations Human Rights Committee, Sept. 23, 2022, 3624/2019, CCPR/C/135/D/3624/2019, (United Nation).

mental well-being. Climate change-induced habitat destruction disrupts Indigenous practices, particularly those reliant on specific ecological systems and biodiversity.

The document highlights various Indigenous communities' unique ecological knowledge and their early observations of environmental disruptions. Indigenous people are often the first to notice these changes, as their lives are intricately linked to their natural environment. For example, the Inuit in the Arctic rely on frozen landscapes for traditional hunting and safe travel. However, rapid warming and melting ice have made these practices increasingly hazardous, creating physical and economic vulnerabilities that jeopardize their cultural survival. In the Solomon Islands, Indigenous communities developed climate warning systems to predict extreme weather; yet, climate change continues to intensify the frequency and severity of these events, putting their homes and practices at risk.[23] Climate change-induced displacement is another significant concern, as rising sea levels, desertification, and extreme weather displace communities from their ancestral lands. Indigenous groups living in coastal and low-lying areas, such as those in the Sundarbans and Bangladesh, face the threat of losing their homes to rising sea levels. This displacement not only separates them from their land but also erodes their cultural heritage, disrupting the intergenerational transmission of knowledge, practices, and beliefs. The Torres Strait Islander community's legal action against the Australian government serves as a poignant example of Indigenous communities taking measures to protect their lands from climate-induced risks. Indian Indigenous communities face similar threats, underscoring the need for proactive protections that recognize their environmental and cultural rights.

The psychological impacts of climate change on Indigenous communities are profound. Known as "eco-anxiety," these mental health effects arise from existential threats to land, culture, and future generations.[24] Indigenous communities, already grappling with socioeconomic challenges, experience heightened levels of stress, depression, and anxiety as they face an uncertain future. The interconnectedness of their cultural practices and environmental stewardship means that climate-induced disruptions carry implications for their identity and cultural continuity, leading to feelings of dislocation and loss.

[23] JONATHAN MINGLE, At 11,500 Feet, a 'Climate Fast' to Save the Melting Himalaya, Yale E360, (Mar 28 2024), https://e360.yale.edu/features/sonam-wangchuk-interview

[24] John Sharry, How to turn climate-change denial into acceptance and action, The Irish Times, 27 October 2019, www.irishtimes.com/life-and-style/health-family/parenting/how-to-turn-climate-change-denial-into-acceptance-and-action-1.4058069

To address these issues, it is crucial for Indian courts and policymakers to recognize climate change as a factor in environmental justice for Indigenous communities. Expanding constitutional protections under Article 21 to encompass the right to a safe and stable environment could be instrumental in safeguarding Indigenous rights in the face of climate change. Such recognition would affirm Indigenous communities' role as stewards of biodiversity, acknowledging their traditional knowledge systems as invaluable resources in climate resilience and adaptation. Industrial expansion poses one of the most immediate and tangible threats to Indigenous rights and environmental security. Economic interests, often prioritized over environmental or cultural considerations, lead to deforestation, mining, infrastructure development, and water diversion projects that encroach on Indigenous lands. These activities not only deplete natural resources but also disrupt the ecosystems on which Indigenous communities rely, undermining their economic, cultural, and spiritual practices.[25]

The document illustrates how industrial expansion disproportionately affects Indigenous communities, especially those whose survival and identity are deeply tied to their ancestral lands. For example, in central India, mining operations encroach upon the traditional lands of tribal communities, stripping away forests that serve as essential resources for food, water, and medicinal plants. The Bishnoi community in Rajasthan, celebrated as eco-warriors, has historically protected forests and wildlife, yet faces continual encroachment from industrial projects that threaten their natural resources and cultural integrity.[26] In many cases, these industrial projects proceed without adequate consultation or consent from Indigenous communities, violating principles such as Free, Prior, and Informed Consent (FPIC), which are essential in safeguarding Indigenous autonomy over their lands.[27][28] The Vedanta mining case in Odisha's Niyamgiri hills provides a pertinent example, where the Dongria Kondh tribe resisted a bauxite mining project that would have destroyed their sacred lands. Although the Supreme Court ruled in favor of the community, empowering them to reject the project, the case highlights the recurring conflicts between Indigenous rights and industrial interests.

[25] Christina M. Kennedy et al., Indigenous Peoples' lands are threatened by industrial development; conversion risk assessment reveals need to support Indigenous stewardship, 2023.

[26] Supra Note 2

[27] Joji Carino, 'Indigenous Peoples' Right to Free, Prior, Informed Consent: Reflections on Concepts and Practice, ' (2005) 22 Arizona Journal of International and Comparative Law 19.

[28] Marcus Colchester and Maurizio Farhan Ferrari, Making FPIC Work: Challenges and Prospects for Indigenous Peoples, Forest Peoples' Programme No (2007).

Despite the legal victory in the Niyamgiri case, many Indigenous communities continue to struggle against industrial encroachment, often without the resources or legal support needed to protect their rights. Industrial expansion projects are typically backed by government interests in economic development, and when the state is a party to such initiatives, it is difficult for Indigenous communities to achieve justice without explicit constitutional protections. In this regard, Article 21's potential to protect Indigenous rights remains underutilized, as its interpretation has not yet been expanded to include Indigenous communities' right to protect their land, culture, and livelihood from industrial harm.

The incorporation of Indigenous knowledge and values into environmental governance could offer a pathway to more sustainable development practices. Industrial projects, when undertaken without respect for Indigenous perspectives, often lead to ecological degradation and community resistance. By contrast, countries such as New Zealand, through Māori co-management agreements, demonstrate how Indigenous stewardship can create a balanced approach to development that respects both economic and ecological needs.[29] If India's judicial and legislative bodies formally recognized Indigenous rights under Article 21, they could enforce stricter environmental assessments, requiring companies to consider the cultural and ecological value of Indigenous lands before undertaking any development project.

The cumulative impact of climate change and industrial encroachment highlights the urgent need for legal and policy reforms that recognize Indigenous environmental security as a matter of constitutional rights. Indian jurisprudence, while progressively expansive in its interpretation of the right to life under Article 21, still lacks a dedicated framework to protect Indigenous rights in the context of environmental justice. Recognizing these rights as integral to Article 21 would not only safeguard Indigenous ways of life but also strengthen India's commitment to sustainable development and biodiversity conservation. Comparative studies from other nations provide valuable insights into potential legal frameworks for protecting Indigenous environmental rights. In Canada, for example, the legal recognition of Aboriginal title has empowered Indigenous communities to exercise control over land and resources, as seen in the *Tsilhqot'in Nation v. British Columbia* (2014) case. Similarly, New Zealand's Treaty of Waitangi serves as a foundational document affirming Māori rights to natural resources, enabling the establishment of co-management frameworks for environmental governance. By recognizing Indigenous environmental

[29] Catherine Iorns, *Māori Co-Governance and/or Co-Management of Nature and Environmental Resources*, 2021 SSRN Elec. J.,

rights in India, the judiciary could ensure that Indigenous voices are integral to land management and policy development.

A stronger legal commitment to Indigenous environmental rights would also support the integration of Traditional Ecological Knowledge (TEK) into India's climate adaptation strategies. Indigenous communities possess place-specific knowledge and practices that can contribute to biodiversity conservation, soil management, and sustainable agriculture. By including Indigenous perspectives in environmental assessments and decision-making, India could leverage these knowledge systems to address the country's environmental challenges more effectively. As highlighted in the document, Indigenous practices such as the Bishnoi community's conservation of wildlife and the Apatani's sustainable farming in Arunachal Pradesh demonstrate how Indigenous knowledge aligns with ecological resilience.

The inclusion of Indigenous environmental security in Article 21 would require implementing robust mechanisms for consultation, co-management, and accountability. Government agencies responsible for industrial projects and land acquisition would need to comply with FPIC protocols and conduct comprehensive environmental impact assessments (EIA) that consider both ecological and cultural factors. Judicial review could play a critical role in enforcing these protections, allowing Indigenous communities to seek legal redress in cases of environmental harm or encroachment. Policy reforms could establish frameworks for financial compensation and restoration programs that address the environmental and cultural losses suffered by Indigenous communities. For instance, creating a national Indigenous Environmental Protection Council could facilitate ongoing dialogue between Indigenous communities, government bodies, and industrial stakeholders. This council would ensure that Indigenous concerns are considered in land-use policies, environmental regulations, and climate adaptation strategies.

COMPARATIVE ANALYSES

The challenges faced by Indigenous communities due to environmental degradation, industrial expansion, and climate change are not unique to India. Globally, Indigenous communities have had to assert their rights in the face of similar threats, often relying on constitutional or legal frameworks to safeguard their land, culture, and way of life. This section explores case studies from countries where Indigenous rights and environmental justice have been explicitly recognized or advanced, providing valuable lessons for India's constitutional framework.

NEW ZEALAND: MAORI PEOPLE

New Zealand offers a pioneering model of integrating Indigenous rights into environmental governance. The Treaty of Waitangi, signed in 1840 between the Māori chiefs and the British Crown, serves as a foundational document guaranteeing Māori rights to their land, water, and resources. Although the treaty's

implementation has been fraught with historical inequities, modern legal frameworks have sought to rectify these injustices by recognizing Māori stewardship over natural resources. One prominent example is the recognition of the Whanganui River as a legal person through the *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*[30]. This groundbreaking legislation grants the river legal status, representing both Māori cultural values and environmental protection. The law establishes the river as a living entity, with rights to its own protection and restoration. Māori representatives, as the river's legal guardians, actively participate in decision-making regarding its conservation. This unique approach underscores the importance of recognizing Indigenous perspectives and ensuring their role as custodians of natural resources.

India's recognition of rivers as legal entities aligns closely with the idea of granting personhood to natural entities, as seen in New Zealand's landmark *Tupua Act 2017* for the Whanganui River. In 2017, the Uttarakhand High Court granted personhood status to the Ganga and Yamuna rivers, declaring them "living entities" with rights, duties, and liabilities akin to humans.[31] This ruling emphasized the spiritual and cultural significance of these rivers, which are deeply revered in India, as well as their ecological importance. Legal guardians were appointed to represent the rivers' interests and to ensure their protection against pollution and encroachment. This Indian precedent highlights that personhood for natural entities is not a foreign concept. Instead, it builds upon the deep cultural and spiritual connection that Indigenous and local communities in India have with nature. However, the Supreme Court later overturned the Uttarakhand High Court's decision, citing practical challenges in implementing such a legal framework. Despite this, the idea remains influential as it underscores the need to treat natural ecosystems with rights deserving of protection. The parallels between the Indian and New Zealand approaches are significant. In New Zealand, Māori guardianship ensures the integration of Indigenous perspectives in managing the Whanganui River. Similarly, India could integrate local and Indigenous knowledge systems into governance frameworks by granting legal recognition to sacred landscapes, such as the Niyamgiri Hills, or rivers central to tribal communities' ways of life. Recognizing natural entities as "living entities" within Indian jurisprudence under Article 21 could serve as a bridge between environmental justice and the constitutional rights of Indigenous communities.

CANADA: ABORIGINAL TITLE AND RESOURCE MANAGEMENT

Canada's recognition of Aboriginal title has significantly advanced Indigenous rights over land and resources. The landmark case *Tsilhqot'in Nation v. British Columbia* (2014)[32] marked a turning point in

[30] Eleanor Ainge Roy, New Zealand river granted same legal rights as human being, The Gurdian, Mar 16, 2017

[31] Mohd. Salim v. State of Uttarakhand & others, Writ Petition (PIL) No.126 of 2014.

[32] Tsilhqot'in Nation v. British Columbia, 2014 SCC 44 (CanLII)

Indigenous legal rights, affirming that Aboriginal title entails ownership, governance, and control over traditional lands. The decision empowered Indigenous communities to prevent resource extraction or development projects on their lands without their consent, providing a legal framework for resisting industrial encroachment.[33] This case is particularly relevant to the Indian context, where Indigenous communities often struggle to protect their lands from mining, deforestation, and large-scale infrastructure projects. While the Forest Rights Act (2006) grants Indian tribal communities certain rights over forest resources, the absence of constitutional recognition for Indigenous land governance leaves them vulnerable to state and corporate interests. By adopting principles similar to Canada's Aboriginal title doctrine, India could empower its Indigenous communities to actively manage and protect their ancestral lands.

ECUADOR AND BOLIVIA: CONSTITUTIONAL RECOGNITION OF NATURE'S RIGHTS

Ecuador and Bolivia have established constitutional frameworks that recognize the rights of nature, aligning closely with Indigenous worldviews. Ecuador's 2008 Constitution explicitly grants rights to ecosystems, stating that nature "has the right to exist, persist, maintain, and regenerate its vital cycles." Similarly, Bolivia's *Law of the Rights of Mother Earth* (2010) emphasizes the intrinsic value of nature, ensuring its protection and sustainable use.[34] These legal frameworks are deeply rooted in Indigenous Cosmo visions, which view humans as part of an interconnected natural system. By recognizing nature's rights, these countries have not only reinforced environmental protections but also empowered Indigenous communities to act as stewards of their ecosystems. For example, Ecuadorian courts have upheld Indigenous claims against mining projects that threaten fragile ecosystems, citing nature's constitutional rights.

India could take inspiration from these examples by embedding similar principles within its legal framework. Recognizing Indigenous lands as integral to the rights of nature could align Article 21 with global environmental jurisprudence, providing a dual foundation for protecting both ecological integrity and Indigenous cultural heritage.

AUSTRALIA: LEGAL ACTION FOR CLIMATE AND CULTURAL SURVIVAL

The Torres Strait Islander communities in Australia provide a compelling example of Indigenous-led climate litigation. In *Pabai Pabai and Guy Paul Kabai v. Commonwealth of Australia*[35], the plaintiffs

[33]Robert Irwin, *Aboriginal Title*, Home | The Canadian Encyclopedia (Sept. 25, 2024), https://www.thecanadianencyclopedia.ca/en/article/aboriginal-title.

[34] Buen Vivir: The Rights of Nature in Bolivia and Ecuador, Rapid Transition Alliance, https://rapidtransition.org/stories/the-rights-of-nature-in-bolivia-and-ecuador/.

[35] Guy Paul Kabai v. Commonwealth of Australia, VID622/2021.

argued that the Australian government's failure to address carbon emissions violated their human rights, as rising sea levels threatened their ancestral lands and cultural identity. This case highlights the intersection of climate justice and Indigenous rights, emphasizing the government's responsibility to protect vulnerable communities from the impacts of climate change. Similar issues confront Indigenous communities in India, such as the loss of coastal lands in the Sundarbans due to rising sea levels. Incorporating climate accountability into India's constitutional interpretation of Article 21 could establish government obligations to mitigate climate impacts on vulnerable communities, particularly those whose cultural survival depends on their natural environment.

THE LADAKH ISSUE

The protests in Ladakh highlight the intersection of Indigenous rights, environmental justice, and governance. Since being designated a union territory (UT) in 2019, Ladakhis have voiced concerns over losing autonomy and representation in governance.[36] This shift has marginalized local voices in decision-making processes, particularly concerning land use and industrial development. Protesters have demanded inclusion under the Sixth Schedule of the Indian Constitution, which would grant local councils authority to protect Ladakh's cultural identity, natural resources, and fragile ecosystems. Prominent figures like Sonam Wangchuk have been instrumental in drawing national attention to Ladakh's challenges. Wangchuk's "climate fast" in freezing temperatures highlighted the devastating impacts of melting glaciers, water shortages, and industrial encroachment on Ladakh's fragile ecosystem. He argued that Ladakh needs localized governance to balance development with environmental preservation. His advocacy aligns with the broader goals of Leh Apex Body (LAB) and the Kargil Democratic Alliance (KDA), which have unified Buddhist and Muslim communities in a rare display of socio-political solidarity to demand constitutional safeguards.[37] Ladakh's ecosystem is acutely vulnerable to climate change, with rising temperatures accelerating glacier melt and water scarcity. Simultaneously, industrial projects, including large-scale solar farms and road construction, have displaced pastoralists and encroached upon grazing lands critical for Pashmina goat herders. These developments threaten not only livelihoods but also the cultural and spiritual connection Ladakhis have with their land.

Recognizing Ladakhi demands within India's legal and constitutional framework requires balancing national security and local governance. Sixth Schedule inclusion or statehood could provide the necessary safeguards to empower local councils while ensuring sustainable development. These protections would affirm Ladakhi rights to their land and cultural identity, aligning with India's broader constitutional commitment to social justice and environmental preservation.

[36] Ladakh: The thousands of Indians protesting in freezing cold, BBC, Mar 22, 2024

[37] Why Sonam Wangchuk and protestors from Ladakh are marching towards Delhi, The Indian Express, Oct 1, 2024

INDIGENOUS SOVEREIGNTY AND CONSTITUTIONAL FRAMEWORKS.

Indigenous sovereignty represents the inherent right of Indigenous communities to self-governance and control over their land, resources, and cultural practices. This sovereignty is rooted in historical connections to ancestral lands and ecosystems, where Indigenous people act as custodians, preserving these areas through traditional knowledge systems and sustainable practices. Across the world, constitutional frameworks and legal systems are evolving to recognize this sovereignty, bridging historical injustices and contemporary challenges.[38] In India, the concept of Indigenous sovereignty remains largely unarticulated in constitutional terms, though provisions such as the Fifth and Sixth Schedules provide some degree of autonomy to tribal areas. However, the current framework often falls short in safeguarding Indigenous rights against large-scale industrial encroachments, climate change, and other systemic challenges. The struggle of the Dongria Kondh tribe to protect the Niyamgiri Hills from mining interests, for example, underscores the need for stronger recognition of Indigenous sovereignty within India's constitutional framework.

Globally, Indigenous sovereignty has been formalized in diverse ways. In New Zealand, the Treaty of Waitangi (1840) established the groundwork for Māori rights to land and resources, albeit with historical limitations. More recently, the recognition of the Whanganui River as a legal person reinforced the Māori role as guardians of this natural resource, ensuring their perspectives inform its management and protection. Similarly, Canada's recognition of Aboriginal title in *Tsilhqot'in Nation v. British Columbia* (2014)[39] marked a significant shift towards affirming Indigenous land rights, enabling self-determination over resource management. States have a constitutional and moral obligation to respect and protect Indigenous rights, particularly regarding land and resource use. These obligations stem from both national constitutions and international frameworks such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which calls for free, prior, and informed consent (FPIC) for projects affecting Indigenous territories.[40]

In India, the principle of environmental justice embedded in Article 21 of the Constitution provides a foundation for protecting Indigenous communities' right to life and livelihood. Landmark rulings such as *Samatha v. State of Andhra Pradesh* (1997) have emphasized the

[38] Rashwet Shrinkhal, "Indigenous sovereignty" and right to self-determination in international law: a critical appraisal, 17 AlterNative 71.

[39] Supra Note 32

[40] S. James Anaya & Sergio Puig, MITIGATING STATE SOVEREIGNTY: THE DUTY TO CONSULT WITH INDIGENOUS PEOPLES, 67 U. TORONTO L.J. 435,

need to prioritize Indigenous rights in the face of economic development. However, inconsistent implementation and weak enforcement often leave Indigenous communities vulnerable to displacement and resource depletion.

The Ladakhi protests for Sixth Schedule inclusion highlight the gaps in India's current framework. By demanding autonomy over land use and resource management, Ladakhi activists underscore the importance of aligning state obligations with the constitutional goal of protecting tribal interests. This resonates with global practices, such as New Zealand's co-management models and Canada's legal recognition of Indigenous territories, which integrate Indigenous perspectives into state policies.

Conflicts over land and resources frequently pit Indigenous sovereignty against industrial or state interests. These disputes often arise from competing priorities, such as resource extraction, infrastructure development, and environmental conservation. Legal systems have played a critical role in resolving these conflicts, often balancing economic development with the rights of Indigenous communities and the need for environmental preservation.

The Dongria Kondh tribe in Odisha, India, faced displacement due to plans for bauxite mining in their sacred Niyamgiri Hills. The tribe's spiritual connection to the land, combined with their reliance on it for sustenance, exemplifies the inseparability of Indigenous identity from the environment. In 2013, the Supreme Court of India ruled that the tribe had the right to decide on the project's viability through local gram sabhas, ultimately empowering the community to reject the mining proposal. This case serves as a landmark example of Indigenous sovereignty being upheld to protect nature. In Australia, the Torres Strait Islanders brought a case against the Australian government, arguing that insufficient climate action threatened their ancestral lands and cultural identity. This legal challenge emphasized the state's obligation to address climate change as a human rights issue, particularly for Indigenous communities disproportionately affected by rising sea levels and environmental degradation.

New Zealand's recognition of the Whanganui River as a legal entity not only protected the river but also affirmed Māori guardianship. This innovative resolution recognized the river's spiritual significance to the Māori people, ensuring that their values guide its conservation and management. It serves as a model for integrating Indigenous stewardship into legal frameworks.

CONCLUSION AND RECOMMENDATION

This paper has explored the intricate relationship between Indigenous sovereignty, environmental justice, and constitutional frameworks, underscoring the urgent need for greater recognition and protection of Indigenous rights in India and beyond. From the deeply rooted spiritual and cultural connections Indigenous communities share with their land, as demonstrated by the Dongria Kondh and Ladakhi tribes, to global legal precedents like the Whanganui River in New Zealand, the importance of Indigenous stewardship over natural resources is clear. We examined how the Indian Constitution's Article 21, interpreted to include the right to life, dignity, and a healthy environment—offers a potential pathway for incorporating Indigenous environmental rights. However, the current legal and policy frameworks often fall short in addressing systemic challenges, including climate change, industrial encroachment, and limited local governance. The struggles of Ladakhi protestors and the Dongria Kondh tribe illustrate the consequences of these gaps, while examples from Canada, New Zealand, and Bolivia provide models for embedding Indigenous rights into constitutional frameworks.

This analysis has revealed a consistent theme: the need to empower Indigenous communities as equal stakeholders in decision-making processes. Doing so not only protects their cultural and environmental heritage but also strengthens broader efforts toward sustainable development and climate resilience.

India should expand Article 21 to explicitly recognize the rights of Indigenous communities to their land, resources, and cultural practices. This could involve:

- Recognizing sacred landscapes and natural entities as legal persons under constitutional protection, as seen in the Uttarakhand High Court's declaration of personhood for the Ganga and Yamuna rivers.
- Establishing a constitutional amendment or judicial precedent that affirms Indigenous sovereignty as integral to the right to life and dignity.
- Embedding Free, Prior, and Informed Consent (FPIC) in Indian Law. International frameworks such as UNDRIP emphasize FPIC as a cornerstone of Indigenous rights. India should legislate FPIC as a mandatory requirement for any development or industrial project affecting Indigenous territories.
- Building on the principles established in cases like *Te Awa Tupua* and the Ganga-Yamuna personhood rulings, India could institutionalize the concept of guardianship for rivers, forests, and other ecosystems. Appointing Indigenous communities as custodians would ensure that conservation efforts align with cultural values and ecological priorities.
- Establishing a dedicated commission to address Indigenous grievances, monitor policy implementation, and provide legal aid would strengthen institutional support for Indigenous

rights. This body could work with local councils, civil society, and international organizations to ensure accountability and transparency.

PRACTICAL STEPS FORWARD.

- **Judicial Advocacy**: Indian courts should continue to interpret Article 21 expansively, setting precedents that prioritize Indigenous rights and environmental justice. Judicial training programs on Indigenous issues and global best practices could facilitate this.
- **Policy Integration**: Ministries responsible for environment, tribal affairs, and rural development must collaborate to develop holistic policies that address the intersection of Indigenous rights and environmental governance.
- **Public Awareness Campaigns**: Raising awareness about the contributions of Indigenous communities to biodiversity conservation could build public support for policies that recognize and protect their rights.
- **International Cooperation**: India should engage with global forums on Indigenous rights and climate action, leveraging international expertise to strengthen domestic frameworks.

Protecting Indigenous sovereignty is not merely a legal or policy obligation; it is a moral imperative rooted in the principles of justice, equity, and sustainability. Indigenous communities have long acted as stewards of the environment, safeguarding ecosystems for future generations. Recognizing their rights within constitutional frameworks is both a debt owed to their heritage and a strategic investment in humanity's collective future. By bridging the gap between global precedents and local realities, India can pave the way for an inclusive, resilient, and ecologically balanced society.