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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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BREATHING UNDER THE CONSTITUTION: TOWARDS A JUSTICIABLE FUNDAMENTAL RIGHT TO CLEAN AIR IN INDIA

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ABSTRACT

India is currently facing an unprecedented atmospheric crisis where the Air Quality Index (AQI) in major urban hubs frequently reaches "hazardous" levels, often exceeding record-breaking benchmarks such as the 1500 AQI recorded in Delhi in late 2024¹. While the Indian judiciary has expanded Article 21 of the Constitution to include the right to a clean environment, this protection remains derivative and fragmented, lacking a coherent framework for automated State accountability during toxic spikes². The human cost of this failure is staggering, with air pollution linked to approximately 2.1 million premature deaths annually in India, making it the world's second most polluted country³. This paper argues for the recognition of a standalone, justiciable fundamental right to clean air anchored under Articles 21 and 14⁴. By synthesising the "Atmospheric Trust Doctrine" with a four-stage proportionality test, the research proposes a "constitutional floor" for air quality, where breaches of specific scientific thresholds trigger non-discretionary duties for State and local authorities⁵. This framework seeks to move Indian environmental jurisprudence from reactive, seasonal management to a robust, rights-based system of atmospheric governance, transitioning from a tool of "compliance management" into a shield for human dignity⁶.

Keywords: Right to health, Air pollution, Article 21, Health hazards, Environmental pollution

¹ Atmospheric Governance and the Systemic Crisis of Air Quality in India: A Comprehensive Report on Regulatory, Judicial, and Technical Responses in Late 2025 (2025)

² *id.*

³ Oommen C. Kurian, *Air Pollution: When 'No Conclusive Data' Becomes the Headline*, ORF (Dec. 24, 2025)

⁴ Parul Kumar & Abhayraj Naik, *India's New Constitutional Climate Right*, Verfassungsblog (Apr. 25, 2024)

⁵ Mary Christina Wood, *Atmospheric Trust Litigation*, (2009)

⁶ Atmospheric Constitutionalism and the Fiduciary State: Judicial Standards for Hazardous Air Quality and Environmental Rights

I. INTRODUCTION

The Republic of India is currently gripped by an "airpocalypse" that represents one of the gravest human rights challenges of the twenty-first century, as the transition of the atmosphere from a shared natural commons to a localised health hazard challenges contemporary constitutional theory⁷. In late 2025, air pollution in the National Capital Region (NCR) and adjoining areas reached such extreme levels that the atmosphere was solidifying the status of several regions as the most polluted in the world⁸. This public health emergency is reflected in data indicating that air pollution is linked to approximately **2.1 million premature deaths annually** in India, with particulate matter reducing average life expectancy by 5.3 years⁹. **The human cost of this failure is catastrophic, as air pollution serves as a primary driver of non-communicable diseases and acute respiratory crises**¹⁰. Furthermore, scientific research suggests that achieving the targets of the National Clean Air Programme (NCAP) could add an average of **two years to the life expectancy** of residents in 130 cities¹¹.

Despite the magnitude of this crisis, India's legal response remains characterised by what may be termed "derivative justiciability," where the right to clean air is not yet a primary entitlement¹². Historically, the right to clean air has been treated by the courts as a subset of the right to life under Article 21, rather than a standalone, independent entitlement¹³. The landmark case of *Subhash Kumar v. State of Bihar* established that the right to life includes the right of enjoyment of pollution-free water and air for full enjoyment of life¹⁴. However, this derivative approach has led to fragmented jurisprudence where judicial interventions are often reactive and administrative, such as the implementation of the **Graded Response Action Plan (GRAP)**¹⁵.

⁷ Atmospheric Constitutionalism and the Fiduciary State: Judicial Standards for Hazardous Air Quality and Environmental Rights

⁸ Atmospheric Governance and the Systemic Crisis of Air Quality in India: A Comprehensive Report on Regulatory, Judicial, and Technical Responses in Late 2025 (2025)

⁹ Tracing the Hazy Air 2025: Progress Report on National Clean Air Programme (NCAP) (2025)

¹⁰ The Architecture of Respiratory Security: Air Quality Emergency Governance and the Global Right to Health

¹¹ NCAP target of 40 pc cut in pollution can add 2 yrs to people's lives in 130 cities: Study (2025)

¹² Shibani Ghosh, *Reforming the Liability Regime for Air Pollution in India*, 4 *Envtl. L. & Prac. Rev.* 124, 126 (2015)

¹³ *id.*

¹⁴ *Subhash Kumar v. State of Bihar*, (1991) 1 S.C.C. 598 (India)

¹⁵ Atmospheric Governance and the Systemic Crisis of Air Quality in India: A Comprehensive Report on Regulatory, Judicial, and Technical Responses in Late 2025 (2025)

The core problem is that India's courts have not clearly articulated clean air as a standalone fundamental right, leading to significant enforcement gaps that allow executive hesitation and fragmented accountability¹⁶. There is currently no Supreme Court framework that treats clean air as an **enforceable constitutional right** with objective scientific benchmarks rather than a mere aspect of Article 21¹⁷. Furthermore, there is a lack of coherent standards for State obligations and remedies when hazardous air quality breaches occur, often allowing facilities to remain in "compliance" with permits while creating unhealthy environments¹⁸. **The "policy pathology" of modern administration is that facilities can remain in "compliance" with their permits while contributing to a localized environment that is fundamentally unhealthy for residents¹⁹.**

This paper seeks to bridge these gaps by addressing three core research questions: First, can the right to clean air be anchored as an independent fundamental right under Articles 21 and 14 of the Constitution?²⁰ Second, what specific constitutional duties arise for State and local authorities when AQI reaches hazardous levels?²¹ Third, what enforceable standards, such as minimum air quality benchmarks and proportionality tests, should courts adopt to give effect to this right?²² The paper argues that the recent landmark verdict in *M.K. Ranjitsinh v. Union of India* (2024), which recognised the **right to be free from the adverse effects of climate change**, provides the necessary jurisprudential opening to establish a standalone right to breathe clean air²³.

¹⁶ Why Delhi's Winter Smog Is Not Just a Policy Failure, but a Constitutional Question (2025)

¹⁷ Shibani Ghosh, *Reforming the Liability Regime for Air Pollution in India*, 4 *Envtl. L. & Prac. Rev.* 124, 126 (2015)

¹⁸ *id.* at 142

¹⁹ Atmospheric Constitutionalism and the Fiduciary State: Judicial Standards for Hazardous Air Quality and Environmental Rights

²⁰ India's New Constitutional Climate Right - Verfassungsblog (2024)

²¹ Shibani Ghosh, *supra* at 143

²² *id.* at 144

²³ *M.K. Ranjitsinh v. Union of India*, (2024) INSC 280 (India)

II. THEORETICAL FOUNDATIONS: ANCHORING THE INDEPENDENT RIGHT

A. Beyond Article 21: The Indivisibility of Breath and Dignity

The expansion of Article 21 has been the cornerstone of Indian environmental law, evolving from the protection of mere physical existence to the protection of human dignity²⁴. In *Maneka Gandhi v. Union of India*, the Supreme Court held that the right to "life" is not restricted to animal existence but includes the right to live with human dignity²⁵. Following this, *Virender Gaur v. State of Haryana* explicitly stated that the enjoyment of life is not possible without the protection and preservation of the environment, and that environmental pollution should be regarded as a violation of Article 21 per se²⁶. **The judiciary has consistently affirmed that "without a clean environment which is stable and unimpacted by the vagaries of climate change, the right to life is not fully realised"**²⁷.

However, the current crisis demands that clean air be elevated from a derivative interest to a primary right to prevent "slow poisoning" by a polluted atmosphere²⁸. Breath is the most fundamental biological prerequisite for life; therefore, toxic air constitutes a direct, continuous violation of the right to health and life without needing further derivation²⁹. The Supreme Court in *M.K. Ranjitsinh* (2024) underscored that the right against the adverse effects of climate change is a distinct facet of the right to life³⁰. **By anchoring the right to clean air as an independent entitlement, the judiciary can move away from mere "pollution-free" rhetoric toward an enforceable "right to breathe" that demands proactive State maintenance**³¹. This transition is essential because environmental, ecological, air, and water pollution should be regarded as amounting to a violation of Article 21 per se³².

²⁴ Manoj Mate, *The Rise of Judicial Governance in the Supreme Court of India*, 33 B.U. Int'l L.J. 169, 177 (2015)

²⁵ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India)

²⁶ *Virender Gaur v. State of Haryana*, (1995) 2 S.C.C. 577 (India)

²⁷ *M.K. Ranjitsinh v. Union of India*, (2024) INSC 280 (India)

²⁸ Shibani Ghosh, *Reforming the Liability Regime for Air Pollution in India*, 4 *Env'tl. L. & Prac. Rev.* 124, 145 (2015)

²⁹ Sri Yogamalar & Abdul Haseeb Ansari, *Right to a Healthful Environment: Flagship of Fundamental Human Rights*, IISES 533, 541 (2015)

³⁰ *M.K. Ranjitsinh v. Union of India*, (2024) INSC 280 (India)

³¹ Parul Kumar & Abhayraj Naik, *India's New Constitutional Climate Right*, *Verfassungsblog* (Apr. 25, 2024)

³² Maya Nirula, *Guest Blog: Pioneering Decision from the Indian Supreme Court Recognizing Freedom from the Adverse Effects of Climate Change as a Fundamental Right* (2024)

B. The Article 14 Anchor: Equality in Exposure

The right to clean air is equally a matter of the right to equality under Article 14, as air pollution impacts are iniquitously shared³³. Air pollution in India does not impact all citizens equally; it disproportionately affects the poor, marginalised communities, forest dwellers, women, and children³⁴. **The Supreme Court in *M.K. Ranjitsinh (2024)* applied Article 14 to protect these vulnerable communities from disproportionate environmental harms, noting that climate change exacerbates existing inequalities³⁵.** Marginalised communities such as Adivasis and the urban poor bear a heavier burden of atmospheric degradation due to lack of clean energy access and proximity to industrial hotspots³⁶.

Article 14 requires that the State provide "**equal protection of the laws**"³⁷. When the State fails to regulate hazardous AQI levels, it effectively permits an unequal environment where the poor breathe the dirtiest air while lacking the resources for private protection³⁸. Utilizing the Article 14 anchor allows courts to apply a "strict scrutiny" standard to State actions that lead to disparate health outcomes³⁹. **This is consistent with the *Ranjitsinh* reasoning that the inability of certain communities to adapt to climate change and cope with its impacts constitutes a violation of their right to equality⁴⁰.** Therefore, the State's constitutional responsibility is to ensure that environmental burdens do not fall disproportionately on those less able to protect themselves in political processes⁴¹.

C. The Atmospheric Trust Doctrine

The third theoretical pillar for an independent right is the "**Atmospheric Trust Doctrine,**" an evolution of the traditional Public Trust Doctrine which posits that the atmosphere is a vital natural resource held in trust by the state for the benefit of all citizens, including future generations⁴². The

³³ Parul Kumar & Abhayraj Naik, *India's New Constitutional Climate Right*, Verfassungsblog (Apr. 25, 2024)

³⁴ *id.*

³⁵ *M.K. Ranjitsinh v. Union of India*, (2024) INSC 280 (India)

³⁶ The Jurisprudence of Breath: The Right to Clean Air as a Justiciable Fundamental Right in India

³⁷ INDIA CONST. art. 14

³⁸ Parul Kumar & Abhayraj Naik, *India's New Constitutional Climate Right*, Verfassungsblog (Apr. 25, 2024)

³⁹ Richard Delgado, *Active Rationality in Judicial Review*, 64 Minn. L. Rev. 467, 468 (1979)

⁴⁰ Navroz Dubash & Shibani Ghosh, *Towards Operationalising a New Climate Right for India*, The India Forum (2026)

⁴¹ Vicki C. Jackson, *Constitutional Law in an Age of Proportionality*, 124 Yale L.J. 3094, 3192 (2015)

⁴² Jenna Lewis, *In Atmosphere We Trust: Atmospheric Trust Litigation And The Environmental Advocate's Toolkit*, 30 Colo. Env't L. J. 362, 366 (2019)

Public Trust Doctrine, as adopted in *M.C. Mehta v. Kamal Nath*, asserts that the State is the trustee of all natural resources, including air, water, and forests, for the benefit of the public⁴³. **The State, as a fiduciary, has a non-delegable duty to maintain the integrity of these resources and cannot abdicate its responsibility to private interests**⁴⁴. This implies that the people would not give power to their government to eradicate resources essential for their survival, such as a stable climate and atmospheric system⁴⁵.

The Atmospheric Trust Doctrine narrows this to the air, proposing that the atmosphere in its entirety is a defined trust asset⁴⁶. Under this doctrine, reaching a hazardous AQI threshold is not just an administrative failure but a **breach of the State's fiduciary duty** to protect the "trust corpus"⁴⁷. This doctrine shifts the State's role from a sovereign regulator with broad discretion to a "fiduciary trustee" whose actions must be judged against the scientific requirement of atmospheric stability⁴⁸. **If scientific evidence shows that PM 2.5 concentrations above a certain level cause systemic health failure, the State's fiduciary duty is to maintain the air below that level regardless of economic cost**⁴⁹. The State cannot disclaim its responsibility by pointing to "exceptional events" or out-of-state pollution sources, as a trustee must manage what is within its jurisdictional control to ensure the trust remains viable⁵⁰.

III. CONSTITUTIONAL DUTIES IN HAZARDOUS CONDITIONS

A. The Trigger Mechanism: Science-Based Duty Activation

A primary reason for the failure of the current legal regime is the "discretionary trap," where administrative bodies "decide" when to invoke emergency measures⁵¹. Currently, administrative bodies like the Commission for Air Quality Management (CAQM) "decide" when to invoke emergency measures⁵². A justiciable right would replace this discretion with an automated "trigger

⁴³ *M.C. Mehta v. Kamal Nath*, (1997) 1 S.C.C. 388 (India)

⁴⁴ *id.*

⁴⁵ Ipshta Mukherjee, *Atmospheric Trust Litigation – Paving the Way for a Fossil-Fuel Free World* (2017)

⁴⁶ Jenna Lewis, *In Atmosphere We Trust: Atmospheric Trust Litigation And The Environmental Advocate's Toolkit*, 30 Colo. Env't L. J. 362, 366 (2019)

⁴⁷ *id.*

⁴⁸ Mary Christina Wood, *Atmospheric Trust Litigation*, (2009)

⁴⁹ *id.*

⁵⁰ Atmospheric Constitutionalism and the Fiduciary State: Judicial Standards for Hazardous Air Quality and Environmental Rights

⁵¹ Shibani Ghosh, *Reforming the Liability Regime for Air Pollution in India*, 4 Env'tl. L. & Prac. Rev. 124, 140 (2015)

⁵² *id.*

mechanism" that treats atmospheric safety with the same automated rigor as nuclear safety protocols⁵³. Drawing on the concept of "active rationality," this paper proposes that when *PM 2.5* concentrations exceed a defined threshold, for example, $250.5\mu\text{g}/\text{m}^3$, constitutional duties must automatically activate⁵⁴. **Reaching this "trigger point" moves the State's duty from general "improvement" to immediate "protection and restoration," removing political hesitation from the governance process⁵⁵.**

B. The Duty of Protection and Maintenance

Once the trigger is activated, the State is under an affirmative constitutional obligation to protect citizens from immediate harm and is legally obligated to protect the "corpus" of the trust from substantial impairment⁵⁶. This includes mandatory emission cutbacks of high-emission activities that do not provide essential services⁵⁷. **The State must ensure that vulnerable groups, such as children in government schools, have access to air filtration systems and health guidance to ensure equitable access to protective equipment⁵⁸.** Furthermore, the State has a duty to ensure livelihood protection by providing subsistence allowances for workers, such as construction labourers, hit by sudden environmental bans⁵⁹.

C. The Duty to Warn and Data Transparency

The "right to know" is an inalienable part of Article 21, translating into a constitutional mandate for real-time, accurate data transparency⁶⁰. In the context of clean air, this translates into a constitutional mandate for real-time, accurate data transparency⁶¹. **The State has a duty to warn citizens of hazardous conditions through integrated public alert systems, as unreliable or masked data constitutes a violation of the fundamental right to information⁶².** A justiciable

⁵³ India's Air Pollution Emergency—A Comprehensive Evidence-Based Action Plan, Reddit (2025)

⁵⁴ Richard Delgado, *Active Rationality in Judicial Review*, 64 Minn. L. Rev. 467, 471 (1979)

⁵⁵ India's Air Pollution Emergency—A Comprehensive Evidence-Based Action Plan, Reddit (2025)

⁵⁶ Shibani Ghosh, *Reforming the Liability Regime for Air Pollution in India*, 4 *Env'tl. L. & Prac. Rev.* 124, 144 (2015)

⁵⁷ *id.*

⁵⁸ City of Lakewood, *Local Hazard Mitigation Plan* (2025)

⁵⁹ ANI News, *Air pollution case: Supreme Court orders subsistence allowance for workers hit by GRAP-3 construction ban* (Nov. 19, 2025)

⁶⁰ Shibani Ghosh, *Procedural Environmental Rights in Indian Law*, in *Indian Environmental Law: Key Concepts and Principles* 55, 65 (Shibani Ghosh ed., 2019)

⁶¹ *id.*

⁶² Oommen C. Kurian, *Air Pollution: When 'No Conclusive Data' Becomes the Headline*, ORF (Dec. 24, 2025)

framework would empower courts to issue a "Continuing Mandamus" to ensure the maintenance of a comprehensive national environmental data grid that is publicly accessible in real-time⁶³.

D. The Duty Against Abdication

The State often abdicates its responsibility by blaming "exceptional events," such as cross-border crop residue burning or specific weather patterns⁶⁴. However, constitutional duties are non-derogable, and a trustee cannot disclaim responsibility for the atmosphere by pointing to out-of-state sources⁶⁵. **The State's duty against abdication means it must develop long-term, structural resilience plans that account for these variables, rather than relying on "perennial" seasonal bans that provide no lasting relief⁶⁶.** Under the Atmospheric Trust Doctrine, the State cannot claim "helplessness" in the face of foreseeable events, and must manage localised emissions to ensure the trust remains viable⁶⁷.

IV. FORGING ENFORCEABLE STANDARDS AND JUDICIAL TESTS

A. The Four-Stage Proportionality Framework

To effectively protect the right to clean air, the Indian judiciary must move beyond the opaque "tiers of scrutiny" and adopt a structured **four-stage proportionality test** to evaluate State actions or omissions that impair atmospheric quality⁶⁸. This framework requires the State to justify any intrusion on the right to breathe through a sequenced set of inquiries, ensuring that fundamental rights are not sacrificed for arbitrary administrative goals⁶⁹. First, under **Legitimacy of Purpose**, the court must evaluate whether the state's policy is aimed at a constitutionally legitimate objective, explicitly balancing immediate economic stability against the non-derogable right to biological survival⁷⁰. Second, the **Suitability** limb requires the State to demonstrate that the chosen measures,

⁶³ Manoj Mate, *The Rise of Judicial Governance in the Supreme Court of India*, 33 B.U. Int'l L.J. 169, 191 (2015)

⁶⁴ M.C. Mehta v. Union of India (Crop Burning), (2020) 7 S.C.C. 530 (India)

⁶⁵ *id.*

⁶⁶ Shibani Ghosh, *Reforming the Liability Regime for Air Pollution in India*, 4 *Env'tl. L. & Prac. Rev.* 124, 146 (2015)

⁶⁷ Jenna Lewis, *In Atmosphere We Trust: Atmospheric Trust Litigation And The Environmental Advocate's Toolkit*, 30 *Colo. Env't L. J.* 362, 366 (2019)

⁶⁸ Atmospheric Constitutionalism and the Fiduciary State: Judicial Standards for Hazardous Air Quality and Environmental Rights, at 359

⁶⁹ Vicki C. Jackson, *Constitutional Law in an Age of Proportionality*, 124 *YALE L.J.* 3094, 3113 (2015)

⁷⁰ Atmospheric Constitutionalism and the Fiduciary State, *supra* at 360

such as current Graded Response Action Plan (GRAP) protocols, are rationally connected to mitigating hazardous air quality spikes and are empirically effective⁷¹.

Third, the **Necessity** test, the most rigorous stage of the inquiry, demands that the court examine whether the State could have achieved its objectives through "least restrictive means" that impair the right to clean air less severely⁷². In the context of the current crisis, this involves scrutinising whether the State's failure to implement structural shifts, such as aggressive electric vehicle (EV) transitions or sustainable in-situ stubble management, constitutes a violation of the necessity principle⁷³. Finally, **Balancing (*proportionality stricto sensu*)** requires an independent judicial evaluation of whether the societal benefits of a specific industrial or policy activity justify the marginal health loss inflicted on the population, particularly in marginalized communities⁷⁴. This stage is fundamental for **Environmental Justice**, as it prevents the State from "sacrificing" the air quality of specific basins for regional economic gain without a compelling and balanced justification⁷⁵.

B. Constitutional Floor Benchmarks

The enforcement of a justiciable right to clean air necessitates the adoption of **objective, science-based benchmarks** as "constitutional floors" to remove administrative ambiguity⁷⁶. While current Indian standards are managed through executive orders, courts should treat the **World Health Organization (WHO) guidelines**, specifically the $5\mu\text{g}/\text{m}^3$ annual mean for *PM 2.5* as the "optimal health" benchmark toward which the State is fiducially bound to strive⁷⁷. Persistent deviations from these guidelines toward "hazardous" levels, defined by *PM 2.5* concentrations exceeding $250.5\mu\text{g}/\text{m}^3$, should be treated as **prima facie evidence of a constitutional violation** of Article 21⁷⁸. Furthermore, the judiciary should institutionalise the **Non-Regression Principle**, whereby

⁷¹ *Id.* at 360

⁷² *id.* at 361

⁷³ *id.* at 361; *see also* Tracing the Hazy Air 2025: Progress Report on National Clean Air Programme (NCAP) (2025), at 2818

⁷⁴ Atmospheric Constitutionalism and the Fiduciary State, *supra* at 362

⁷⁵ *id.* at 362; *see also* (PDF) The Role Of Public Interest Litigation (PIL) In Environmental Protection In India (2025), at 46

⁷⁶ Atmospheric Constitutionalism and the Fiduciary State, *supra* at 350

⁷⁷ *id.* at 369

⁷⁸ *id.* at 350, 369

the State is under a non-derogable duty not to allow air quality to regress through negligent or regressive policies⁷⁹.

To give effect to these benchmarks, the "Exceptional Events Rule" must be judicially modified; transboundary smoke or adverse weather should only be excluded from compliance records if the State can prove it has implemented the "best management policies" and hazard mitigation practices available⁸⁰. This creates a "conditional accountability" standard that uses the threat of legal sanctions to compel states to meet their constitutional duties to mitigate atmospheric risks⁸¹. Adopting such standards ensures that the right to clean air is not merely an aspirational goal but a measurable entitlement tied to global scientific consensus⁸².

C. Strict Scrutiny for "Aggregate Acts"

Judicial review must apply **strict scrutiny** when State actions, taken in the aggregate, impair the fundamental right to clean air⁸³. This higher tier of review is particularly relevant for "aggregate acts", state-sponsored systems that cumulatively contribute to atmospheric impairment, such as the promotion of fossil-fuel-based energy or the failure to account for greenhouse gas (GHG) emissions in industrial permitting⁸⁴. Under this standard, any State action that increases the pollution load in a community already suffering from "Very Poor" AQI must be justified by a **compelling state interest** and be narrowly tailored to minimize harm⁸⁵. This approach forces the State to "rebalance the benefits and costs of land use" rather than relying on regional averages that mask localized suffering⁸⁶.

⁷⁹ *id.* at 369

⁸⁰ *id.* at 363

⁸¹ *id.* at 363

⁸² Global Regulatory Frameworks for Air Quality Management: A Comparative Analysis (2025), at 897

⁸³ Atmospheric Constitutionalism and the Fiduciary State, *supra* at 354

⁸⁴ *id.* at 354; *see also* Held v. Montana - Case Law Database (2024), at 973

⁸⁵ Atmospheric Constitutionalism and the Fiduciary State, *supra* at 368

⁸⁶ *id.* at 368

V. RETHINKING REMEDIES: BEYOND "SLAPPING A PERENNIAL GRAP"

A. Critique of Current Emergency Governance

The recurring atmospheric emergencies of late 2025 demonstrate that India's reactive framework of seasonal GRAP stages is fundamentally insufficient for a crisis of this magnitude⁸⁷. Despite decades of judicial monitoring, the **implementation gap** between visionary court orders and ground-level reality remains vast, largely due to institutional inertia and bureaucratic resistance⁸⁸. The Supreme Court has correctly noted that "perennial" GRAP is not a substitute for long-term structural measures and can disproportionately impact the livelihoods of the poor⁸⁹.

B. Proposed Innovations: Automatic Triggers and Financial Escrows

A justiciable right to clean air should be supported by **Automatic Legal Triggers** that remove political hesitation during atmospheric crises⁹⁰. This paper proposes mandating **Phase 3 emergency shutdowns** whenever *PM2.5* levels exceed $400\mu\text{g}/\text{m}^3$ for 72 consecutive hours, treating air quality with the same automated rigor as **nuclear safety protocols**⁹¹. To address the chronic underfunding and fund diversion that cripples the National Clean Air Programme (NCAP), a **Clean Air Escrow** mechanism should be established⁹². By "ring-fencing" environmental revenues, the judiciary can protect these funds through injunctions, ensuring they are used exclusively for atmospheric restoration and public health interventions, such as providing air filtration in government schools⁹³.

C. Remedial Essentialism and Atmospheric Recovery Plans

Utilising the theory of **Remedial Essentialism**, courts should separate the right to clean air from traditional monetary damages, which are often ineffective for widespread atmospheric harm⁹⁴.

⁸⁷ Atmospheric Governance and the Systemic Crisis of Air Quality in India: A Comprehensive Report (2025), at 377

⁸⁸ Shibani Ghosh, *Reforming the Liability Regime for Air Pollution in India*, 4 ENVTL. L. & PRAC. REV. 124, 147 (2015)

⁸⁹ Atmospheric Governance and the Systemic Crisis of Air Quality in India, *supra* at 374

⁹⁰ India's Air Pollution Emergency—A Comprehensive Evidence-Based Action Plan, Reddit (2025), at 1832

⁹¹ Atmospheric Governance and the Systemic Crisis of Air Quality in India, *supra* at 378; *see also* India's Air Pollution Emergency, *supra* at 1833

⁹² *id.* at 1832

⁹³ Atmospheric Governance and the Systemic Crisis of Air Quality in India, *supra* at 378

⁹⁴ Atmospheric Constitutionalism and the Fiduciary State, *supra* at 367

Instead, the judiciary should order the State to develop comprehensive **Climate Recovery Plans** or "Smoke Mitigation Plans" that meet stringent scientific standards⁹⁵. These plans must include **mandatory GHG and particulate accounting** to identify and target the State's specific contributions to hazardous conditions⁹⁶.

D. Continuing Mandamus 2.0: Shifting to Structural Monitoring

The tool of **Continuing Mandamus** must be evolved from its current form of seasonal micromanagement to one of **structural transition monitoring**⁹⁷. Rather than directing the height of individual chimneys, courts should use their supervisory powers to oversee the State's progress toward defined **airshed management targets** and data transparency mandates⁹⁸. This "Continuing Mandamus 2.0" would focus on enforcing **automated notice-generation systems** and ensuring that real-time air quality data is made available as a non-negotiable "right to know"⁹⁹.

VI. CONCLUSION: THE JURISPRUDENCE OF BREATH

The recognition of a standalone, justiciable fundamental right to clean air represents the next essential step in India's constitutional evolution¹⁰⁰. By synthesising the **Atmospheric Trust Doctrine** with a structured **proportionality framework**, the judiciary can bridge the gap between "derivative rhetoric" and "enforceable reality"¹⁰¹. The "airpocalypse" of late 2025 underscores that the State cannot continue to operate in a "deadly vacuum" of sluggishness while the right to life of millions is systemically violated¹⁰². Ultimately, the transition to a justiciable right to breathe is not merely a legal necessity but a moral imperative to protect human dignity and ensure that the "trust corpus" of the atmosphere is preserved for all time to come¹⁰³.

⁹⁵ *id.* at 367; *see also* Atmospheric Trust Litigation - Paving the Way for a Fossil-Fuel Free World, at 384

⁹⁶ Atmospheric Constitutionalism and the Fiduciary State, *supra* at 367; *see also* Mary Christina Wood, *Atmospheric Trust Litigation*, (2009), at 284

⁹⁷ The Jurisprudence of Breath: The Right to Clean Air as a Justiciable Fundamental Right in India, at 2626, 2637

⁹⁸ Atmospheric Governance and the Systemic Crisis of Air Quality in India, *supra* at 378; *see also* Reforming India's Air-Quality Governance, at 2341

⁹⁹ Reforming India's Air-Quality Governance, *supra* at 2341; *see also* National Air Quality Governance in India (2025), at 2258

¹⁰⁰ The Jurisprudence of Breath, *supra* at 2615

¹⁰¹ The Jurisprudence of Breath, *supra* at 2637, 2640

¹⁰² Mary Christina Wood, *supra* at 296

¹⁰³ *id.* at 300

Establishing this right ensures that atmospheric safety is not a matter of executive discretion but a **constitutional mandate** triggered by objective scientific benchmarks¹⁰⁴. As seen in the landmarks of *Held v. Montana* and *M.K. Ranjitsinh*, the global judiciary is beginning to recognize that "without a clean environment... the right to life is not fully realized"¹⁰⁵. Establishing this right is akin to **nuclear safety protocols**: the State should not "decide" whether to act when the air becomes toxic; rather, reaching a hazardous AQI threshold should trigger **automatic, self-executing legal safeguards** that override standard economic or political hesitation¹⁰⁶.



¹⁰⁴ India's Air Pollution Emergency, *supra* at 1836

¹⁰⁵ Atmospheric Constitutionalism and the Fiduciary State, *supra* at 370; *see also* *M.K. Ranjitsinh v. Union of India*, (2024) INSC 280 (India)

¹⁰⁶ India's Air Pollution Emergency, *supra* at 1833