



## CLIMATE JUSTICE AND HIMALAYAN BLASTS: A CONSTITUTIONAL REFLECTION ON THE JOSHIMATH CRISIS (2024)

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### ABSTRACT

*The ecological crisis in Joshimath, a sacred Himalayan town, sparked national concern in early 2024 as land subsidence, widespread infrastructure collapse, and the displacement of hundreds of residents unfolded before the public eye. The incident exposes a deeper fault line—India's development model, which has historically prioritised rapid infrastructural growth over environmental sustainability and local community rights. This paper explores the legal, constitutional, and climate justice implications of the Joshimath disaster. It argues that the crisis is a direct outcome of regulatory failures, unscientific infrastructure development in fragile geographies, and systemic disregard for the environmental rule of law. Through an analysis of Article 21, relevant Supreme Court jurisprudence, the Environmental Impact Assessment (EIA) regime, and climate justice principles, this article proposes legal reforms and a rights-based approach to protect ecologically sensitive regions from future disasters. In doing so, it affirms that climate resilience, ecological preservation, and human dignity are integral to the Indian constitutional framework.*

**Keywords:** Environmental Justice, Climate-Induced Displacement, Constitutional Right to Environment.

### INTRODUCTION: THE SINKING CITY AND THE RISING CRISIS

Joshimath, perched at over 6,000 feet in the Chamoli district of Uttarakhand, is both spiritually significant and ecologically vulnerable. Known as the gateway to Badrinath and the Valley of Flowers, Joshimath lies on a slope composed of old landslide debris and weak geological strata. In January 2024, alarming images of cracked homes, fractured roads, and evacuations of entire

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neighbourhoods circulated on national and global media, leading to widespread scrutiny of governmental development practices in India's Himalayan region.

The crisis was not entirely unexpected. Scientists, civil society groups, and residents had repeatedly warned of the region's geological instability. Yet, infrastructural projects such as the Char Dham road expansion and NTPC's Tapovan-Vishnugad Hydroelectric Project were approved and executed with inadequate environmental scrutiny. Over 800 homes were damaged, more than 3,000 residents were displaced, and the town was declared a "land subsidence zone" by the National Disaster Management Authority (NDMA).

At the core of this disaster lies a legal and ethical question: Can development be justified when it endangers the lives, homes, and heritage of vulnerable communities? This paper asserts that the Joshimath tragedy is a constitutional failure, particularly of the right to life under Article 21, environmental governance mechanisms, and the principles of climate justice.

## **UNREGULATED INFRASTRUCTURE IN A FRAGILE ECOSYSTEM**

**Geological Fragility of the Himalayan Region:** The Indian Himalayan Region (IHR) spans 13 states and union territories and represents one of the most ecologically sensitive zones in the world. The region is geologically young, seismically active, and highly prone to landslides, erosion, and glacial retreat. Joshimath was built on an ancient landslide zone, and its terrain is composed of unconsolidated moraine material. This makes it particularly susceptible to subsidence. As early as 1976, the Mishra Committee Report warned that large-scale construction in the area could lead to irreversible damage. Despite this, a wave of development projects was green-lighted in the 21st century.

**Infrastructure Projects Without Precaution:** Key projects contributing to the crisis include:

1. The Tapovan-Vishnugad Hydroelectric Project by NTPC involved deep tunnelling using tunnel boring machines (TBMs) under densely populated areas.
2. The Char Dham Highway Project, which widened mountain roads through extensive hill-cutting, tree felling, and slope destabilisation.
3. Unregulated urban expansion, including multi-story hotels, shops, and roads built without geological surveys or drainage infrastructure.

These projects were implemented with minimal transparency and negligible consultation with local communities. The cumulative impact of such development, executed in disregard of basic geological principles, triggered large-scale destabilisation of the sub-surface layers in Joshimath.

## **ENVIRONMENTAL IMPACT ASSESSMENT (EIA) AND GOVERNANCE FAILURES**

**The Illusion of Due Process:** India's Environmental Impact Assessment (EIA) regime is intended to be a scientific, participatory process ensuring that large projects account for ecological impacts before receiving clearance. However, the actual implementation has become largely procedural and superficial. The EIA process failed in Joshimath in the following ways:

- **Project Fragmentation:** Developers often broke large projects into smaller ones to avoid comprehensive environmental scrutiny (a technique termed “salami slicing”).
- **Generic Studies:** Impact studies used data from unrelated regions or outdated geological assessments.
- **Lack of Cumulative Assessment:** Multiple concurrent projects (road, hydropower, tourism) in the region were not assessed together for their collective environmental footprint.
- **Absence of Public Consultation:** In several cases, local people were excluded from hearings, or consultations were conducted perfunctorily, in violation of the EIA Notification 2006.

This regulatory dilution was further compounded by the central government's attempt in 2020 to weaken the EIA framework through a draft amendment that would have legalised post-facto environmental clearances.

**Institutional Inertia and Apathy:** Despite being aware of the risks, the Ministry of Environment, Forest and Climate Change (MoEFCC), National Green Tribunal (NGT), and State Pollution Control Boards failed to prevent or mitigate the impact of these projects. This reflects a deeper institutional failure—a prioritisation of economic speed over ecological wisdom.

## CONSTITUTIONAL IMPLICATIONS: ARTICLE 21 AND THE RIGHT TO LIFE

**Judicial Expansion of Article 21:** Article 21 of the Indian Constitution provides that - “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Over the decades, Indian courts have given expansive interpretations to Article 21, recognising rights such as clean air, safe water, sound health, shelter, and a pollution-free environment.

In *Subhash Kumar v. State of Bihar* (1991), the Supreme Court held that - “The right to live includes the right to enjoyment of pollution-free water and air.”

Similarly, in *M.C. Mehta v. Union of India*, a series of cases from 1986 onwards, the Court introduced the precautionary principle, polluter pays principle, and sustainable development as central to environmental jurisprudence. By allowing unsafe infrastructure development in Joshimath, the state has arguably violated the positive obligations under Article 21, failing to safeguard citizens’ right to a secure and sustainable living environment.

### Directive Principles and Fundamental Duties:

- Article 48A: The State shall endeavour to protect and improve the environment.
- Article 51A(g): Every citizen must protect the natural environment.

While not enforceable by courts, these provisions shape constitutional morality and guide the interpretation of fundamental rights. Together with Article 21, they create a robust constitutional mandate for ecological conservation—a mandate disregarded in Joshimath.

## CLIMATE JUSTICE AND UNEQUAL VULNERABILITIES

### What Is Climate Justice?

Climate justice is a framework that connects human rights and development with the urgent need for equitable climate action. It recognises that those who suffer most from environmental harm—such as tribal communities, subsistence farmers, and the urban poor—are usually not those responsible for causing it. In Joshimath:

- Residents contributed little to carbon emissions or industrial development.
- They faced the direct consequences of construction and climate-induced geological shifts.

- They received inadequate rehabilitation, compensation, or information.

This situation exemplifies climate injustice, where marginalised communities bear disproportionate ecological risks.

**The Doctrine of Loss and Damage:** Joshimath also raises issues of loss and damage, a principle of international climate law emphasising the need to compensate communities facing irreversible climate-induced harm. Recognised in COP27 under the Loss and Damage Fund, this principle can be domestically invoked as a moral and legal argument for:

- State liability for ecological negligence.
- Reparations and just compensation.
- Protection of climate refugees.

## LEGAL REMEDIES AND LITIGATIONS ARISING FROM JOSHIMATH

**Public Interest Litigation (PIL):** In response to the Joshimath crisis, several PILs were filed before the Uttarakhand High Court and the Supreme Court of India, seeking:

- A stay on all ongoing construction activities in sensitive zones.
- Compensation and rehabilitation for displaced families.
- An expert committee to investigate causality and state accountability.
- Formulation of a national policy for ecologically fragile regions.

Although the Supreme Court has constituted a technical committee, it has refrained from issuing firm interim relief or penalising developers. This stands in contrast to its proactive approach in the Tehri Dam and Ganga Pollution cases.

**Challenges in Legal Accountability:** Holding developers and state authorities legally accountable is fraught with challenges:

- Difficulty in proving causation between specific projects and land subsidence.
- Absence of strong tort-based environmental liability laws in India.
- Limited access to justice for displaced rural populations.

Nonetheless, the courts remain a critical avenue for asserting constitutional and environmental rights. There is a growing need for a justiciable right to climate resilience within the Indian legal framework.

## **TOWARD CLIMATE-RESILIENT CONSTITUTIONALISM**

**Enacting a Himalayan Protection Law:** Joshimath demonstrates the need for a specialised legal regime for high-risk ecological zones. A proposed Himalayan Ecological Protection Act should:

- Mandate independent geological and seismic assessments for all projects.
- Empower local communities through prior informed consent mechanisms.
- Declare ecologically sensitive areas as no-development zones.
- Establish legally enforceable carrying-capacity thresholds.

Such a statute must integrate climate data, risk mapping, and community participation as foundational legal norms.

**Integrating Environmental Justice into Policy:** The Joshimath incident reveals that environmental sustainability cannot be post-facto; it must be integrated at the planning stage. Recommendations include:

- Revamping the EIA framework to ensure transparency and scientific rigour.
- Mandatory cumulative impact assessments in fragile regions.
- Climate literacy and training for public officials and engineers.
- Local monitoring committees are empowered under the Environment (Protection) Act, 1986.

Ultimately, climate resilience must be mainstreamed into India's developmental paradigm, with constitutional accountability acting as the legal backbone.

## **CONCLUSION: JOSHIMATH AS A CONSTITUTIONAL CRISIS**

Joshimath is not merely a case of local administrative failure—it is emblematic of a larger, systemic malaise in India's environmental governance and constitutional enforcement. The crisis starkly reveals the contradictions between rapid economic development and environmental stewardship, between technological ambition and ecological wisdom.

The tragedy affirms that development without ecological limits is not only unsustainable—it is unconstitutional. A future-oriented legal framework must prioritise ecological preservation, community rights, and climate equity as core constitutional values.

To honour the spirit of Article 21 and India's commitment to environmental justice, the legal system must ensure that no community is sacrificed at the altar of unchecked growth. The cracks in Joshimath's homes are not just structural; they are constitutional fault lines, and they must not be ignored.

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