



## Testing development against Article 21: A constitutional analysis of Great Nicobar Project

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### Abstract

The Great Nicobar Island Development project is the most ambitious infrastructure project by the Indian Government which envisages a trans-shipment port, an international airport, township development, and a 450 Megavolt-Amperes (MVA) gas and solar-based power plant along with strategic presence in the Indo-Pacific. However, constitutional concerns are propounded for its location in an ecologically fragile and seismically sensitive region. Existing scholarly engagement gravitates towards environmental and geopolitical dimensions, whereas constitutional analysis under Article 21 and India's environmental jurisprudence received scant attention.

This paper incorporates a doctrinal legal methodology, analyzing constitutional provisions, landmark Supreme Court precedents and publicly available policy documents related to the project. In this paper the key principles namely precautionary principle, sustainable development, inter-generational equity, and the public trust doctrine are scrutinized.

The study finds that the current framework of the project exhibits insufficient compliance with constitutional safeguards, even though it pursues legitimate strategic and developmental objectives. The paper concludes that while not inherently unconstitutional the project fails to satisfy exacting constitutional standard in its current form, making stronger environmental and procedural safeguards indispensable.

**Keywords:** Sustainable development, Article 21, right to life, environment protection

### Introduction

#### Background of the Great Nicobar Project

The Great Nicobar Island Development Project is a massive Greenfield infrastructure project conceived by NITI Aayog and approved by the Union Cabinet in 2021 <sup>[1]</sup> envisions transformative intervention in Andaman and Nicobar archipelago. These islands are positioned strategically near the Malacca Strait which is one of the world's busiest maritime trade route and at the southernmost tip of India.

The Indian government has sanctioned a ₹72,000-crore mega-infrastructure initiative called the 'Holistic Development of Great Nicobar Island. The project covers around 166 sq. km, or nearly 18% of the island's total land area, and entails an integrated city-state designed to serve both commercial and military purposes <sup>[2]</sup>. It includes a transshipment port, an international port, a greenfield township, and supporting power infrastructure aimed at augmenting regional economic integration and, maritime connectivity. Historically, due to ecological sensitivity and seismic vulnerability along with presence of indigenous communities the development in the Islands has remained limited. But recent policy shifts aiming at India's broader economic and strategic planning, positioned the Great Nicobar Project as bedrock of long-term Indo-Pacific engagement.

#### Constitutional Framework

Article 21 of the Indian Constitution, operates as substratum of substantive due process ensuring that state action does not deprive a person of their right to life and personal liberty, and in relation to this the project's scale of ecological implication raises constitutional questions. The Supreme Court of India has consistently interpreted right to clean and healthy environment as a part of Article 21, most notably in *Subhash Kumar v. State of Bihar* (1991) <sup>[3]</sup>. The judiciary also recognizes that environmental degradation

falls within the ambit of constitutional scrutiny, as it affects one's quality of life. Against this backdrop, constitutional evaluation is solicited as large-scale development projects are located in ecologically fragile zones, to determine that developmental objectives are pursued in manner consistent environmental safeguards and long-term public welfare.

#### Reserch Objective and Methodology

The present study seeks to determine whether the principles evolving from Article 21 and India's environmental jurisprudence are being abided by The Great Nicobar Project. The central research question guiding this paper is that the project has recently received approval from the National Green Tribunal, and tribunal-level clearance does not foreclose deeper constitutional scrutiny, and whether this project satisfies constitutional standards. Adopting a doctrinal legal research methodology, the paper analyses constitutional provisions, Supreme Court precedent, regulatory and policy documents along with tribunal reasoning where relevant.

#### Legal and Constitutional Context

##### a. Article 21 of the Indian Constitution

Article 21 of Indian Constitution states that, "No person shall be deprived of his life or personal liberty except according to procedure established by law". The Supreme Court has progressively expanded the scope of Article 21 in landmark judgments like *A. K. Gopalan v. State of Madras* <sup>[4]</sup>, *Kharak Singh v. State of UP* <sup>[5]</sup> and *Maneka Gandhi v. UOI* <sup>[6]</sup>, and has transformed Article 21 into a repository of substantive rights essential to human dignity. The Court recognized that quality of life is interwoven with environmental conditions and incorporated environment protection within the ambit of right to life. Supreme Court in *Subhash Kumar v. State of Bihar* held that right to life is a fundamental right under Article 21 of the Constitution and it

includes the right of enjoyment of pollution free water and air for full enjoyment of life<sup>[7]</sup>. In *Virendra Gaur v. State of Haryana*, the Court held that enjoyment of life and its attainment encompasses human dignity within its ambit<sup>[8]</sup>. Consequently, environmental degradation is no longer treated as mere policy concern rather a constitutional issue subject to judicial scrutiny.

#### **b. Environmental Laws and Regulations in India**

A combination of statutory regulation and Constitutional oversight operates India's environmental governance framework. Key legislations such as the Environment (Protection) Act, 1986, the Forest (Conservation) Act, 1980, and the Wildlife (Protection) Act, 1972, are the backbone of ecologically sensitive regions. Through the establishment of the National Green Tribunal (NGT), created to provide specialized and expeditious adjudication of environmental disputes<sup>[9]</sup>, institutional mechanisms have also evolved. NGT plays an instrumental role in reviewing environmental clearances, assessing compliance with statutory norms, and applying principles such as sustainable development and precautionary approach<sup>[10]</sup>.

However, the functions of tribunal are within the ambit of constitutional framework and are subject to judicial review<sup>[11]</sup>. Thus, environmental statutes and constitutional guarantees operate in a mutually reinforcing but hierarchically structured relationship.

#### **c. Judicial Precedents On Development Projects and Article 21**

Right to pollution free and healthy environment has been invariably held to be a part of Article 21 of the Constitution. In situations when these rights are violated through environmental projects, the court strives to balance developmental needs with environmental protection.

In *Narmada Bachao Andolan v. Union of India*<sup>[12]</sup>, the Narmada Valley Development Project (NVDP) was intended to develop giant dams across Narmada River. The community insisted that the dam's construction would cause vast areas of land to be submerged, resulting in the displacement of thousands of people, mostly from rural and tribal societies. The NBA insisted that the government's rehabilitation and resettlement processes were defective and that there was no proper environmental impact assessment before the launching of the project<sup>[13]</sup> violating Article 14 and Article 21.

In *Subhash Kumar v. State of Bihar and ors*<sup>[14]</sup>, The Public Interest Litigation is filed by Subhash Kumar under Article 32 of the Indian Constitution for preventing the pollution of Bokaro river water from the discharge of sludge or slurry from the washeries of the Tata Iron and Steel Co. Ltd (TISCO)<sup>[15]</sup>. The Court in this held right to pollution free water and air is part of Article 21.

#### **The Great Nicobar Project: Overview and Concerns**

##### **a. Project Details and Objectives**

The Great Nicobar Island project is a large-scale developmental infrastructure project at the southern tip of Great Nicobar Island, around Galathea Bay. Andaman and Nicobar Islands Integrated Development Corporation Limited (ANIIDCO) proposed Holistic Development of Great Nicobar Island in Andaman and Nicobar Islands. Integrated development of International Container Transshipment Terminal (ICTT)-14.2 Million TEU,

Township & Area development and 450 MVA Gas and Solar based power plant in Great Nicobar Islands, Nicobar District by M/s Andaman and Nicobar Islands Integrated Development Corporation Ltd<sup>[16]</sup>.

The objective of the project is that by establishing a major transshipment port near the Strait of Malacca, it aims to enhance maritime logistics capabilities and reduce the dependence on foreign ports for cargo handling. The project, of strategic, defense and national importance, is designed to transform Great Nicobar into a major hub of maritime and air connectivity in the Indian Ocean Region. It combines the objectives of economic growth, infrastructure development and employment generation with critical national security imperatives, thereby contributing to India's long-term strategic and developmental interests in the Indian Ocean Region while also protecting the environment<sup>[17]</sup>.

##### **b. Environmental Impact Assessment**

To evaluate the ecological aftereffects of the project, an Environmental Impact Assessment (EIA) was conducted. It was acknowledged in the assessment that the proposed area for development lies within ecologically sensitive zone, containing tropical rainforests, coastal ecosystems, and habitats for several endemic and protected species such as leatherback sea turtles, Nicobar macaque, Nicobar megapode and saltwater crocodiles and rare and endemic plant species such as tree ferns and orchids and Galathea Bay the proposed site of the project is a critical leatherback turtle nesting site, which is critically endangered species. For the project, the MoEF has sanctioned diversion of just over 130 square kilometres of forest land and felling of around 8.5 lakh trees. The project is likely to affect the mangrove cover and coral reef in the area<sup>[18]</sup>. In the report, mitigation strategies like afforestation, wildlife management plans, and environmental monitoring mechanisms were also included.

Based on the available documentation and regulatory review, the project received environmental clearance and was subsequently upheld by the National Green Tribunal, which concluded that the approval process had incorporated adequate safeguards. But many scholars have questioned whether long term ecological risks were evaluated accordingly, and the collective environmental impact this project may have being situated in seismically sensitive island ecosystem.

##### **c. Social and Cultural Implications**

The population of Great Nicobar Island combines aboriginal tribes that have inhabited this island for thousands of years with ex-servicemen that were settled here by the Government of India during the 1970s. The new residents came from Punjab, Maharashtra and Andhra Pradesh. Thus, a 'Mini-India' exists in Great Nicobar Island, with Indians from all parts of the country harmoniously residing here<sup>[19]</sup>. Hitherto the Islands of Andaman and Nicobar are considered among the handful of ecologically rich and well-thriving regions without human intervention. The physiographic features of the area are highly at risk due to the rising sea levels and being the most prone to seismic activities. Any further large-scale disturbance like the aforementioned development will push it to the brink of making it completely inhabitable and ecologically robbed<sup>[20]</sup>. The Hon'ble NGT in the case of *Sarang Yadhwakar and others v. The Commissioner*<sup>[21]</sup> held, "one must, while

permitting development, not only ensure that no substantial damage is caused to the environment but also take such preventive measures, which would ensure no irretrievable damage to the environment even in future on premise on inter-generational equity".

The project has also drawn criticism and concern upon the impact on indigenous communities like Shompan and Nicobarese tribes inhabiting the island. Indigenous people have equivocally shunned the project in their areas as they have myriad needs which need to be looked after rather than being collateral damage overridden by bulldozers and trucks through the slush, and at a time when the rights of indigenous communities are being recognized and hailed all across the world, "we are continuing to ignore or even acknowledge their rights to their livelihood and to the island [22]".

## **Constitutional Analysis of the Great Nicobar Project**

### **a. Right to Clean Environment**

Article 21 states: 'No person shall be deprived of his life or personal liberty except according to the procedure established by law [23]'. The Supreme Court strengthened Article 21 in two ways. First, it required laws affecting personal liberty to also pass the tests of Article 14 and Article 19 of the Constitution, thereby ensuring that the procedure depriving a person of his or her personal liberty be reasonable, fair and just. Second, the court recognized several unarticulated liberties that were implied by Article 21. It is by this second method that the Supreme Court interpreted the right to life and personal liberty to include the right to wholesome environment [24].

In the case of *Subhash Kumar v. State of Bihar and Others* [25], The Court held that right to a healthy environment is an intrinsic part of Article 21 of Indian Constitution. The Supreme Court in *Vellore Citizens Welfare Forum v. UOI* [26], institutionalize the "polluter pays" doctrine and make environmental harm fundamental rights violation and thus move on from individual redress to the systemic accountability [27]. Developmental projects reconfigure local ecological balance of an area affecting quality of life attracts constitutional scrutiny. In the context of the Great Nicobar Project, proposed port, airport, township, require substantial changes to the biodiversity of the region raising profound concerns. Even though the mitigation measures were provided in the Environment Impact Assessment report, critics argue that long term ecological implications remain uncertain.

The central question from a constitutional viewpoint is that whether the environmental risks involved will be justified by the anticipated development while still complying with Article 21 standards of environmental protection.

### **b. Right to Livelihood**

The Supreme Court in *Olga Tellis v. Bombay Municipal Corporation* [28], held that "An equally important facet of right to life is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to live, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation [29]."

Livelihood of the local people that depend on natural resources may be affected by such developmental projects that alter ecological and economic conditions of the area.

While the government claims that the locals will not be displaced by the project, it has said in the Parliament that the project will use about 7.114 sq. km of tribal reserve forest land, where the Shompen, a Particularly Vulnerable Tribal Group (PVTG), and the Nicobarese reside. The Nicobarese tribe residing in the area have raised concerns about the potential infringement on their ancestral lands and disruption of their traditional way of life. As it is, many of the residents are yet to be relocated into their old habitats after they were displaced in the aftermath of the Tsunami of 2004 [30].

The local communities in the area rely on forest, coastal ecosystem, and marine resources for subsistence and rapid development and urbanization alter this balance. The existing livelihood patterns must not be undermined even though new economic opportunities are created by urbanization of the area, as proposed in the project.

### **c. Rights of Indigenous Peoples**

The Great Nicobar region houses indigenous communities, whose life patterns are closely tied to the island's ecological environment. The constitutional and regulatory framework of India recognizes the need to protect these tribal communities and preserve their traditional way of life through various legislations like The Andaman And Nicobar Islands (Protection of Aboriginal Tribes) Regulation, 1956 [31], And the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [32], Enacted to Protect the Rights of Tribes That Are Indigenous to The Island.

In the case of *Samatha v. State of Andhra Pradesh* [33], the court reaffirmed the protective provision enshrined in Vth schedule of the Indian Constitution. It emphasized the importance of safeguarding the rights of the scheduled tribes over land and resources in the Scheduled areas, thereby, preventing their exploitation [34].

The central question here is that whether the proposed project sufficiently safeguards the autonomy, cultural continuity, and access to traditional resources of community. Although authorities have indicated that rights of the communities will be protected, but during a press conference on January 22, chiefs of tribal committees on the island said they were invited for a meeting by the district administration on January 7, and then asked to sign surrender certificates in order to show support for the island's development, which they have opposed since 2022 [35] which raises concerns regarding effects of the developmental project on the population.

The principle of Free, Prior and Informed Consent (FPIC), recognized under the United Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007 [36], requires that the indigenous communities must be adequately informed and voluntarily consulted for ant developmental project that affects their land, resources, livelihood and cultural practices.

### **d. Sustainable Development and Intergenerational Equity**

The Supreme Court has consistently held that guiding principles of Indian environmental jurisprudence are based on rules of sustainable development and intergenerational equity. Sustainable development is how we must live today if we want a better tomorrow, by meeting present needs without compromising the chances of future generations to

meet their needs<sup>[37]</sup>. Every generation receives a natural and cultural legacy in trust from its ancestors and holds it in trust for its descendants. This trust imposes upon each generation the obligation to conserve the environment and natural and cultural resources for future generations<sup>[38]</sup>.

The Supreme Court in the case of *Vellore Citizens Welfare Forum v. Union of India & ors*<sup>[39]</sup>, brought recognition to 'Right to Clean Environment' and recognized it as a right under the ambit of Article 21 of the Indian Constitution. This case also showed the importance of environment protection and adoption of sustainable development principles in case of environment degradation by recognizing polluter pays principle<sup>[40]</sup>. The Great Nicobar Project illustrates the tension between conservation of ecological resources and economic development. As the environmental clearance of the project was upheld by the National Green Tribunal incorporating mitigation measures and statutory safeguards, constitutional analysis must also assess whether long term ecological risks and ecological transformations have been sufficiently accounted for, ensuring that development remains sustainable safeguarding both.

## **Legal Challenges and Judicial Review**

### **a. Existing Legal Challenges to The Project**

The Great Nicobar Project has been subjected to legal scrutiny in front of the National Green Tribunal (NGT). NGT is empowered to resolve disputes regarding environmental issues and their enforcement in India. Concerns were raised regarding the adequacy of Environmental clearance as the diversion of forest land has ecological consequences for the island's fragile ecosystem. A case challenging the project's environmental clearance was first filed by environmental activist Ashish Kothari in 2022. In a second round of litigation, Kothari argued that those deficiencies amounted to violations of India's Island Coastal Regulation Zone (ICRZ) Notification. The NGT had ordered a High-Powered Committee (HPC) to be constituted to "revisit" the clearance based on its observed deficiencies, While the HPC's report was never made public, citing national security reasons, it claimed there were no shortcomings in the EC<sup>[41]</sup>.

Tribunal upheld the project's environmental clearance, after examining all the documents and expert assessments, reiterating that statutory process incorporated mitigation measures and necessary safeguards. The petitioner's counsel countered that the Ministry had yet to prove that either the project or the HPC report fell within the purview of national security. "It is for the respondent (MoEFCC) to plead and prove that the project is for national security," he said, adding that the Ministry had not done so in its written submissions. "The principle of natural justice has been thrown out of the window<sup>[42]</sup>." The project underscores the possibility of further judicial scrutiny as the tension between environmental protection and developmental objectives continues.

### **b. Scope for judicial intervention**

Article 32 of Indian Constitution provides the right to constitutional remedies, allowing citizens to move the Supreme Court (SC) for enforcement of their Fundamental Rights (FRs)<sup>[43]</sup>. Article 226 empowers the High Courts to issue writs not only for the enforcement of fundamental rights but also for any other legal right<sup>[44]</sup>. In this context,

despite tribunal's approval judicial intervention remains within constitutional framework under Article 32 empowering courts to adjudicate issues which affect right to life.

In the case of *Narmada Bachao Andolan v. Union of India*<sup>[45]</sup>, The Court emphasized that environmental concerns should not indefinitely stall development, as long as proper safeguards were in place<sup>[46]</sup>, balancing developmental projects with environmental protection under Article 21. Article 22<sup>[47]</sup> of National Green Tribunal Act, 2010 states "Any person aggrieved by any award, decision or order of the Tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908<sup>[48]</sup>". Potential grounds for judicial review include, procedural irregularities in environmental decision making, insufficient consideration of ecological risks, or failure to adequately protect the rights of affected communities. Courts may issue range of remedies when constitutional concerns are established.

### **c. Comparative Analysis with Similar Cases**

The conflict between developmental projects and ecological development is not unique to The Great Nicobar Project, the courts have addressed similar issues before involving industrial expansion, infrastructure development, and ecological protection. In *Narmada Bachao Andolan v. UOI*<sup>[49]</sup> The intervention of the Supreme Court in the case was crucial. In its judgment of 2000, the Court permitted the building of the dam to proceed, holding that the project was necessary for national development. But the Court also directed that rehabilitation and resettlement should be undertaken as per the guidelines set down by the Narmada Water Disputes Tribunal (NWDT)<sup>[50]</sup>.

In *M. C. Mehta vs. Union of India*<sup>[51]</sup> (the Oleum Gas Leak case), the Supreme Court established a new concept of managerial liability absolute and non-delegable' – for disasters arising from the storage of or use of hazardous materials from their factories. The enterprise must ensure that no harm results to anyone irrespective of the fact that it was negligent or not<sup>[52]</sup>.

In *Vellore Citizens Welfare Forum vs. Union of India*<sup>[53]</sup>, the Supreme Court held that industries are vital for the country's development, but having regard to pollution caused by them, principle of 'Sustainable Development' has to be adopted as the balancing concept. 'Precautionary Principle' and 'Polluter Pays Principle' has been accepted as a part of the law of the country<sup>[54]</sup>. In these cases, it was recognized by the courts that development which is essential for the economic purposes must be within constitutional limits, and judicial review does not halt development but balances it with sustainability and constitutional rights.

## **Conclusion and Recommendations**

The study has examined the Great Nicobar Project through the lens of Article 21 and India's Environmental Jurisprudence. Key constitutional concerns like potential disruption of livelihood, impact on the indigenous tribes and communities, and large-scale environmental depletion are identified in this study. Even though the National Green Tribunal has given the project environmental clearance, the analysis indicates that such approval does resolve constitutional questions. Contemporarily, the project

signifies incomplete application of precautionary approach and intergenerational equity, raising concerns about its alignment with broader aspect of Right to Life.

To ensure compliance with constitutional safeguards strong environmental safeguards, transparent and rigorous impact assessments are required. Measures like cumulative ecological impact, adaptive regulatory mechanisms, and long-term monitoring should be incorporated. Additionally, safeguards for indigenous communities must be ensured, along with balancing infrastructure growth with ecological preservation by minimally invasive implementation strategies.

The Great Nicobar Project sets a landmark precedent for future developmental project in ecologically sensitive areas, by highlighting the need of harmonious construction of ecological balance with infrastructural development of the region by integrating constitutional principles into decision making process. Future research may focus on evolving standards of judicial review, the role of specialized tribunals, and comparative global practices in sustainable development. Ultimately, the goal is to strike a balance between development and constitutional rights in India's legal and policy landscape.

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