

# Should Singapore Constitutionalize the Right to Environment? A Comparative Analysis of Approaches to the Right to a Clean and Healthy Environment Elsewhere

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## Abstract

In 2022, the United Nations General Assembly introduced a resolution recognizing the right to a clean, healthy, and sustainable environment with a recorded vote of 161 in favor and zero against. This right has also been introduced in the constitutions of 156 States. However, Singapore has yet to constitutionalize or recognize the existence of such a right in its judicial decisions; this thus raises the question of whether Singapore should do so to be in step with developments abroad. To answer this question, this paper conducts a comparative analysis across countries that have either expressly or implied recognized the right to environment, and those that have yet to (with a specific focus on South Africa, India, and Japan), and concludes that there is no need for Singapore to constitutionalize the right to environment. Instead, it considers that the effectiveness of a country's environmental management system ultimately depends on the willpower of the government to implement environmental policies, rather than the existence of a right to environment in a country's constitution.

**Keywords:** Comparative Environmental Law; Environmental Management; Constitutional Rights

## Introduction

The fight against climate change has garnered significant momentum in Singapore and worldwide. States have recognized the importance of ensuring that global temperatures do not exceed the 1.5 degrees Celsius threshold as this could result in severe impacts on the Earth, including droughts, heatwaves and rainfall occurring more often.<sup>1</sup> This saw the welcoming of the 2015 Paris Agreement,<sup>2</sup> which comprises 196 parties,<sup>3</sup> whose overarching goal is to limit global temperature rise to 1.5 degrees Celsius.<sup>4</sup> Such weather events put the already vulnerable, such as those living in areas highly susceptible to climate change, at further risk of poor health<sup>5</sup> – for example, it has been forecasted that climate change in itself will result in approximately 250,000 more deaths yearly from 2030 to 2050 as a result of malnutrition, malaria, diarrhea, and heat stress.<sup>6</sup> Apart from

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<sup>1</sup> Martha Henriques, "Climate change: The 1.5C threshold explained," BBC Future, February 8, 2024, <https://www.bbc.com/future/article/20231130-climate-crisis-the-15c-global-warming-threshold-explained#>.

<sup>2</sup> United Nations Climate Change, "The Paris Agreement," accessed May 5, 2024, <https://unfccc.int/process-and-meetings/the-paris-agreement>.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> World Health Organization, "Climate change," October 12, 2023, <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>.

<sup>6</sup> Ibid.

the Paris Agreement, other important international agreements include the 1992 United Nations Framework Convention on Climate Change<sup>7</sup> (“UNFCCC”) which aims to maintain greenhouse gas emissions at an acceptable level that prevents anthropogenic interference with the natural climate,<sup>8</sup> as well as the 2005 Kyoto Protocol,<sup>9</sup> which mandates developed States to decrease emissions by an average of five percent below 1990 levels.<sup>10</sup>

In Singapore, the government introduced the Singapore Green Plan 2030 which involves whole-of-nation efforts that involve citizens, businesses, and the government alike to advance Singapore’s sustainability goals.<sup>11</sup> There are five key pillars<sup>12</sup> under the plan that focus on different aspects of sustainability; all of them support the United Nations (“UN”)’s Sustainable Development Goals such as sustainable cities and communities, climate action, good health and well-being, just to name a few. The Singapore Green Plan 2030 also aims to further Singapore’s international commitments under the UN’s 2030 Sustainable Development Agenda and Paris Agreement.<sup>13</sup> In so doing, Singapore hopes to reduce its 2030 emissions to 60 MtCO<sub>2e</sub> after peaking emissions earlier, and in the long-term reach net-zero emissions by 2050.<sup>14</sup> However, even though Singapore presently has comprehensive laws addressing climate change including in areas such as transboundary harm<sup>15</sup> to carbon pricing,<sup>16</sup> the Constitution of the Republic of Singapore<sup>17</sup> (“Singapore Constitution”) has yet to include a right to a clean environment. This appears to be out of step with global movements as the UN General Assembly (“UNGA”) had recognized that everyone on Earth has a right to a healthy environment,<sup>18</sup> and more than 80 percent of all UN member States (156 out of 193) have legally recognized the right to a safe, clean, healthy and sustainable environment.<sup>19</sup> Moreover, some States are in the midst of deciding whether the right to a clean and healthy environment should be constitutionalized.<sup>20</sup> These developments abroad therefore raise the question of whether Singapore should constitutionalize a right to a clean and healthy environment. Indeed, Justice Jeyaretnam of the Singapore courts was recently invited to

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<sup>7</sup> United Nations Framework Convention on Climate Change (1992).

<sup>8</sup> United Nations Climate Change, “The Paris Agreement.”

<sup>9</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change, UN Doc FCCC/CP/1997/L.7/Add.1 (December 10, 1997).

<sup>10</sup> United Nations Climate Change, “What is the Kyoto Protocol?,” accessed May 5, 2024, [https://unfccc.int/kyoto\\_protocol#](https://unfccc.int/kyoto_protocol#).

<sup>11</sup> Singapore Green Plan, “Singapore Green Plan,” accessed May 5, 2024, <https://www.greenplan.gov.sg>.

<sup>12</sup> Singapore Green Plan, “Key focus areas,” accessed May 5, 2024, <https://www.greenplan.gov.sg/key-focus-areas/city-in-nature/>.

<sup>13</sup> Singapore Green Plan, “Our Global Commitment,” accessed May 5, 2024, <https://www.greenplan.gov.sg/globalcommitment/>.

<sup>14</sup> National Climate Change Secretariat Singapore, “Singapore Commits to Achieve Net Zero Emissions by 2050,” October 25, 2022, <https://www.nccs.gov.sg/media/press-releases/singapore-commits-to-achieve-net-zero/>.

<sup>15</sup> Transboundary Haze Pollution Act (2014).

<sup>16</sup> Carbon Pricing Act (2018).

<sup>17</sup> Constitution of the Republic of Singapore (1963).

<sup>18</sup> United Nations General Assembly, “The human right to a clean, healthy and sustainable environment,” UN Doc A/76/L.75 (2022).

<sup>19</sup> European Parliament, “A universal right to a healthy environment,” accessed May 5, 2024, [https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS\\_ATA\(2021\)698846\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA(2021)698846_EN.pdf).

<sup>20</sup> ACT Government, “Right to a Healthy Environment,” accessed May 5, 2024, <https://www.justice.act.gov.au/safer-communities/right-to-a-healthy-environment>.

share his views as part of a talk on “Advancing the Environment Rule of Law” on the difficulties presented to climate litigation in Singapore due to the absence of such a right.<sup>21</sup>

To determine if Singapore should constitutionalize a right to a clean and healthy environment, this paper adopts a comparative law approach by considering other States’ approaches to implementing the right to a clean, healthy and sustainable environment abroad. This right may either be found explicitly or implicitly in a State’s constitution, or alternatively, despite the absence of such a constitutional right, a State may implement different policies in environmental management. Primarily, this paper compares the approaches from South Africa, India, and Japan; these countries have been chosen on the basis that they (South Africa and India) are either strikingly different from Singapore’s approach to environmental management or is similar (Japan). This paper’s comparative analysis of developments abroad reveals that it is not the existence of a right to a clean and healthy environment being found in a State’s constitution that ultimately determines the success of a country’s environmental management system. Instead, what is necessary for a robust environmental management system is the effective enforcement of environmental laws and relevant policies by the State. Therefore, even if a right to a clean and healthy environment exists within a State’s constitution, the right may go unrealized due to lackluster enforcement. Having considered the effective enforcement of environmental laws and policies in Singapore and the ongoing success of Singapore’s environmental management system, this paper considers that there is presently no need for Singapore to constitutionalize a right to a clean and healthy environment.

This paper’s argument is supported in four main parts: Part A explains what the right to a clean and healthy environment might entail. Then, as this paper focuses on whether the right to a clean and healthy environment in the Singaporean context, Part B offers readers insight as to the Singapore legal system to better contextualize the discussion. Part C next presents possible options as to how the right to a clean and healthy environment may be recognized by a State, based on other countries’ approaches. Part D compares the benefits, limitations, and effectiveness of other States’ approaches, and provides further reasons as to why Singapore should maintain status quo. The last section reflects on the lessons learnt from other countries and offers concluding remarks.

### **A. Overview of a constitutional right to a clean and healthy environment**

The constitutional right to a clean and healthy environment can be explicit or implicit. An explicit right to a clean and healthy environment is expressly provided for in a State’s constitution. This includes both substantive and procedural rights.<sup>22</sup> Substantive rights typically specify the type of environment an individual has the right to; an individual may have access to a “clean”, “healthy”, or “sustainable” environment.<sup>23</sup> An example is the Constitution of the Portuguese Republic,<sup>24</sup> specifically Article 66 states that “Everyone shall possess the right to a healthy and ecologically balanced human living environment and the duty to defend it”. Another example is the Spanish

<sup>21</sup> SG Courts, "Justice Philip Jeyaretnam: Speech delivered at Conversations with the Community on 26 July 2024," July 26, 2024, <https://www.judiciary.gov.sg/news-and-resources/news/news-details/justice-philip-jeyaretnam--speech-delivered-at-conversations-with-the-community-on-26-july-2024>.

<sup>22</sup> Ole W. Pedersen, "Environmental Law and Constitutional and Public Law," in *The Oxford Handbook of Comparative Environmental Law*, ed. Emma Lees and Jorge E. Viñuales (Oxford: Oxford University Press, 2018), chap. 47, p. 6.

<sup>23</sup> Ibid.

<sup>24</sup> Constitution of the Portuguese Republic (2005).

Constitution<sup>25</sup> wherein Section 45(1) provides that “Everyone has the right to enjoy an environment suitable for the development of the person, as well as the duty to preserve it”. In a similar vein, Article 110(b) of Norway’s Constitution<sup>26</sup> states that “Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.”

Procedural rights do not specify the level of environmental protection an individual is entitled to and instead prescribes the government’s duty to assess environmental impacts and the public’s right to take part in decision making regarding the environment.<sup>27</sup> One example is Article 21 of the Dutch Constitution<sup>28</sup> that provides that the “State is entrusted with the care to keep the land fit for human occupation and to preserve and improve the environment”. Another example is Article 35(1) and 35(2) of the Constitution of the Czech Republic<sup>29</sup> that enshrines everyone’s “right to a favorable environment” and “timely and complete information about the state of the environment”. Similarly, Article 2 of Sweden’s Constitution<sup>30</sup> states that “The public institutions shall promote sustainable development leading to a good environment for present and future generations”.

On the other hand, an implicit right to a clean and healthy environment cannot be found expressly in a State’s constitution but is instead inferred from existing provisions in a State’s constitution.<sup>31</sup> An example is in Pakistan where the right to a clean and healthy environment has been inferred from the fundamental right to life and dignity in its Constitution.<sup>32</sup> The Lahore High Court in *Imarana Tiwana v Province of Punjab*<sup>33</sup> decided that environmental protection was “an inalienable right and perhaps more fundamental than other rights [in the Constitution]” because “environmental justice is an amalgam of the constitutional principles of democracy, equality, social, economic and political justice”.<sup>34</sup> Another example can be found in India: Article 21 of the Indian Constitution<sup>35</sup> provides that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” The Indian courts have interpreted Article 21 to include a right to a clean and healthy environment: in *Subhash Kumar v State of Bihar and Ors*<sup>36</sup> and *B.L. Wadebra v Union of India*,<sup>37</sup> the court recognized that the right to life includes the right to live in clean water and air. In the former case, the claimant instituted a claim against two iron and steel corporations for they caused health risks to the public by disposing waste from their factories into the Bakaro river; the claimant also argued that the State Pollution Control Board did not adopt

<sup>25</sup> The Spanish Constitution (1978).

<sup>26</sup> Norway’s Constitution of 1814 (1814).

<sup>27</sup> Pedersen, “Environmental Law and Constitutional and Public Law,” chap. 47, p. 6.

<sup>28</sup> The Constitution of the Kingdom of the Netherlands (2018).

<sup>29</sup> Czech Republic Constitution (1993).

<sup>30</sup> Sweden Constitution (1974).

<sup>31</sup> Pedersen, “Environmental Law and Constitutional and Public Law,” chap. 47, p. 6.

<sup>32</sup> Imran Ahmed, “Intersections of Environmental, Climate and Rights Jurisprudence in Pakistan”, Institute of South Asian Studies”, May 25, 2023, <https://www.isas.nus.edu.sg/papers/intersections-of-environmental-climate-and-rights-jurisprudence-in-pakistan/>.

<sup>33</sup> PLD 2015 Lahore 522.

<sup>34</sup> Ahmed, “Intersections of Environmental, Climate and Rights Jurisprudence in Pakistan.”

<sup>35</sup> Constitution of India (1947).

<sup>36</sup> 1991 AIR 420.

<sup>37</sup> 1996 AIR SCW 1185.

appropriate measures to prevent pollution to the river.<sup>38</sup> The latter case involved similar facts: the petition claimed that the Municipal Corporation of Delhi and the New Delhi Municipal Corporation failed to live up to their duties in the “collection, removal and disposal of garbage and other wastes from the city”.<sup>39</sup> The Indian court decided that the authorities had the responsibility of reducing pollution and they had not discharged their responsibility as such.<sup>40</sup>

## B. Overview of the Singapore legal system

As a British colony, Singapore adopted its former colonial master’s common law system and the Westminster model of parliament.<sup>41</sup> The Westminster model of parliament consists of three branches of government: the Executive, Legislature and Judiciary.<sup>42</sup> The Elected President, the Cabinet and the Attorney-General form the Executive.<sup>43</sup> Of specific relevance to the shaping of laws is the Attorney-General (who also plays the role of Public Prosecutor), who is the government’s legal advisor and may influence the drafting of Bills,<sup>44</sup> as well as the Cabinet whom a Minister belongs, given that he/she is responsible for introducing drafts of laws (known as “Bills”) before they are eventually passed by Parliament.<sup>45</sup> The Legislature includes the President and Parliament, who both, as will be seen below, are responsible for the enactment of statutes.<sup>46</sup> Finally, the Judiciary is led by the Chief Justice.<sup>47</sup> The different, albeit overlapping, functions of each branch of government in the maintenance and development of Singapore’s legal system is also a common theme that will be further fleshed out in this paper.

Under the common law system, there are two main sources of law: first, the common law, which refers to judge-made law through decisions that come before the courts.<sup>48</sup> This comes within the purview of the Judiciary.<sup>49</sup> The Singapore Judiciary adopts a two-tier court system, which comprises the State Courts and Supreme Court.<sup>50</sup> The State Courts hear both civil and criminal cases, and includes the District, Magistrates’, Coroners’ Courts, just to name a few.<sup>51</sup> The Supreme Court on the other hand is made up of the Court of Appeal and High Court.<sup>52</sup> Like the State

<sup>38</sup> UN Environmental Programme, "Subhash Kumar v. State of Bihar," accessed May 5, 2024, <https://leap.unep.org/en/countries/in/national-case-law/subhash-kumar-v-state-bihar>.

<sup>39</sup> UN Environmental Programme, "Dr. B.L. Wadehra v. Union of India and others," accessed May 5, 2024, <https://leap.unep.org/en/countries/in/national-case-law/dr-bl-wadehra-v-union-india-and-others>.

<sup>40</sup> *Ibid.*

<sup>41</sup> Goh Goh Yihan, "History of the Singapore Legal System," in *The Legal System of Singapore - Institutions, Principles and Practices*, ed. Gary Kok Yew Chan and Jack Tsen-Ta Lee (Singapore: LexisNexis, 2016), 1-2.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.* For more on the role of the President and the Cabinet of Singapore, see President of the Republic of Singapore, "President's Duties," accessed August 20, 2024, <https://www.istana.gov.sg/The-President/Presidents-Duties/Constitutional> and Prime Minister's Office Singapore, "The Cabinet," accessed August 20, 2024, <https://www.pmo.gov.sg/The-Cabinet>.

<sup>44</sup> Goh, "History of the Singapore Legal System," 4.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> Goh, "History of the Singapore Legal System," 4.

<sup>48</sup> Goh, "History of the Singapore Legal System," 1-2.

<sup>49</sup> Goh, "History of the Singapore Legal System," 5.

<sup>50</sup> *Ibid.*

<sup>51</sup> For more, see SG Courts, "About the Singapore courts," accessed August 20, 2024, <https://www.judiciary.gov.sg/who-we-are/about-singapore-courts..>

<sup>52</sup> *Ibid.*

Courts, the Supreme Court has both criminal and civil jurisdiction.<sup>53</sup> Cases that go on appeal from the High Court are heard in the Court of Appeal – examples include appeals arising relating to constitutional or administrative law (which is one of the focuses of this paper); contempt of court, law of arbitration, etc.<sup>54</sup> Apart from the common law, the other source of law in Singapore is statute law, which is passed by Parliament.<sup>55</sup> An obvious example of statute law is the Singapore Constitution.<sup>56</sup> Statute law cannot be modified or created by judges; instead, judges must apply such laws with Parliament’s intentions in mind.<sup>57</sup> Laws are passed in Singapore’s Parliament essentially through a three-step process: first, a Bill is introduced by a Minister (or a Member of Parliament), which is given a Reading with no debate.<sup>58</sup> Then, if the Bill is proposed to be read a second time, Members of Parliament will debate on whether a Second Reading should take place; and if the answer to this is a yes, then the Bill will go to either the Committee of the Whole Parliament or a Select Committee.<sup>59</sup> After the Committee releases its report to the Parliament, the Bill will be given a Third Reading and be deemed as passed.<sup>60</sup>

With a better understanding of the constitutional right to a clean, healthy and sustainable environment as well as the Singapore legal system, this paper will now turn to the possible options that may be adopted by Singapore to implement such a right.

### C. Possible options for Singapore

A survey of the approaches abroad suggests that there are three main possible options for Singapore as regards whether to constitutionalize the right to a clean and healthy environment: (A) an express constitutional right to a clean and healthy environment; (B) imply a right to a clean and healthy environment based on other provisions in the Singapore Constitution; or (C) not constitutionalizing the right to a clean and healthy environment.

#### Option A: Express right to a clean and healthy environment

The first option is for Singapore to introduce an express right to a clean and healthy environment in its Constitution. Singapore’s express right to a clean and healthy environment may be modelled after, for example, Article 28H(1) of the Indonesian Constitution,<sup>61</sup> that states that “every person shall have the right to enjoy a good and healthy environment”, or Article 24 of the Constitution

<sup>53</sup> SG Courts, "Role and structure of the Supreme Court," accessed August 20, 2024, <https://www.judiciary.gov.sg/who-we-are/role-structure-supreme-court>.

<sup>54</sup> Supreme Court of Judicature Act 1969 (Singapore), Sixth Schedule.

<sup>55</sup> Goh, "History of the Singapore Legal System," 1-2.

<sup>56</sup> Constitution of the Republic of Singapore (1965), Part 4. Part 4 of the Singapore Constitution provides for fundamental liberties, such as the liberty of the person, slavery and forced labor prohibited, equal protection, etc. If an express right to a clean, healthy and sustainable environment were to be included in the Singapore Constitution, it would likely be included here.

<sup>57</sup> Goh, "History of the Singapore Legal System," 1-2.

<sup>58</sup> Goh, "History of the Singapore Legal System," 4.

<sup>59</sup> Ibid. Select Committees are appointed for a term to undertake various functions; there are presently 7 Standing Select Committees; for more, *see* Parliament (Singapore), "Select Committees of Parliament", accessed August 20, 2024, <https://www.parliament.gov.sg/about-us/structure/select-committees>.

<sup>60</sup> Goh, "History of the Singapore Legal System," 5. If, however, the Bill affects any specific racial or religious group, the Bill goes to the Presidential Council for Minority Rights. When approved, the President will assent to the Bill before being gazette in the Government Gazette.

<sup>61</sup> The 1945 Constitution of the Republic of Indonesia.

of South Africa<sup>62</sup> that states that “everyone has the right a) to an environment that is not harmful to their health or well-being; and b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that i. prevent pollution and ecological degradation; ii. promote conservation; and iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development”.

### **Option B: Implied right to a clean and healthy environment**

In the absence of an express right to a clean and healthy environment, the Singapore courts can imply the right to a clean and healthy environment from the existing provisions in its Constitution, just as the Indian courts have done. As alluded to earlier, the Indian courts have implied the right to a clean and healthy environment from Article 21 of the Indian Constitution which states that “no person shall be deprived of his life or personal liberty”, which is *in pari materia* to Article 9 of the Singapore Constitution that states that “no person shall be deprived of his life or personal liberty save in accordance with law”.

### **Option C: Preserving status quo**

Singapore can also choose to not constitutionalize the right to a clean and healthy environment. Like Singapore, Japan has not constitutionalized the right to a clean and healthy environment, and there are no publicly known discussions on constitutionalizing such a right in both countries. Further, like the Singapore Constitution, the Constitution of Japan<sup>63</sup> does not explicitly address the environment.<sup>64</sup> While legal commentators have interpreted Articles 13 (“All of the people shall be respected as individuals. Their right to life, liberty and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs”) and 25 (“All people shall have the right to maintain the minimum standards of wholesome and cultured living”) of the Japanese Constitution to include environmental rights, no such justiciable right has been acknowledged by the Japanese Supreme Court.<sup>65</sup>

## **D. Comparative analysis of approaches abroad and Singapore**

Having set out the possible options for Singapore, this paper will now turn to compare the benefits, limitations, and effectiveness of the various approaches, followed by comparing the contextual differences across the countries to provide further reasons as to why Singapore should preserve status quo (i.e., not constitutionalize the right to a clean and healthy environment).

### **Benefits**

The major benefit of enshrining a constitutional right to a clean and healthy environment, whether express or implicit, can influence the development of stronger environmental laws that call for

<sup>62</sup> The Constitution of the Republic of South Africa (1996).

<sup>63</sup> The Constitution of Japan (1947).

<sup>64</sup> Julius Weitzdörfer and Lucy Lu Reimers, “Japan,” in *The Oxford Handbook of Comparative Environmental Law* (Oxford University Press, 2018), chap. 12, p. 3.

<sup>65</sup> *Ibid.*

greater environmental protection.<sup>66</sup> This is demonstrated by the experiences of both South Africa and India. In South Africa, the exhortation for “ecologically sustainable development” in Article 24 of the South African Constitution was fundamental to the enactment of the National Environment Management Act 107 of 1998 (“NEMA”). The NEMA aims to promote environmental governance by providing decision-making frameworks on environmental matters as well as foster cooperation between state agencies on environmental protection.<sup>67</sup> The NEMA involves at least more than ten environmental management principles, including the doctrine of public trust that recognizes that the State holds the natural environment in trust for its people, and therefore the use of the environment must be for the public interest.<sup>68</sup>

Other pieces of environmental legislation in South Africa that contain the public trust doctrine include the National Water Act 36 of 1998 (“NWA”) and the Mineral and Petroleum Resources Development Act 28 of 2002 (“MPRDA”). The NWA is intended to reform the law as regards water resources, and therein recognizes that water resources must be “protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner for the benefit of all persons and in accordance with its constitutional mandate”.<sup>69</sup> Whereas the MPRDA on the other hand is intended to ensure equitable access and sustainable development of South Africa’s mineral and petroleum resources, and states that such resources are under the custodian care of the government, which must in turn ensure that these resources are used to promote economic and social development within the national environmental policy.<sup>70</sup>

Likewise in the Indian experience, the Indian Environmental Protection Act of 1986 (“EPA”) was enacted as a consequence of *Re Bhopal* (otherwise also known as *Union Carbide Corporation v Union of India*),<sup>71</sup> a case that focused on an individual’s right to reside in a healthy and clean environment. A short summary of the facts of the case is as follows: the victims of the Bhopal disaster that involved a poisonous gas spill in India sued Union Carbide in the United States (“US”) federal court.<sup>72</sup> The gas leak involved a pesticide plant which leaked over 40 tones of poisonous gas methyl isocyanate into the community surrounding the plant, causing nearly 3000 deaths and 50,000 others permanently disabled.<sup>73</sup> They sought compensation for the gas spill incident and the spillover effects of environmental contamination.<sup>74</sup> The US rejected the claimants’

<sup>66</sup> David R Boyd, “The Effectiveness of Constitutional Environmental Rights,” Yale UNITAR Workshop, April 26-27, 2013.

<sup>67</sup> South African Government, “National Environment Management Act 107 of 1998,” accessed May 5, 2024, <https://www.gov.za/documents/national-environmental-management-act>.

<sup>68</sup> South African Government, “National Environment Management Act 107 of 1998.”

<sup>69</sup> South African Government, “National Water Act 36 of 1998,” accessed May 5, 2024, <https://www.gov.za/documents/national-water-act#:~:text=The%20National%20Water%20Act%2036,provide%20for%20matters%20connected%20therewith.>

<sup>70</sup> South African Government, “Mineral and Petroleum Resources Development Act 28 of 2002,” accessed May 5, 2024, <https://www.gov.za/documents/mineral-and-petroleum-resources-development-act>.

<sup>71</sup> AIR 1988 SC 1531.

<sup>72</sup> UN Environmental Programme, “Union Carbide Corporation (Appellant) v. Union of India and others (Respondents),” accessed May 5, 2024, <https://leap.unep.org/en/countries/in/national-case-law/union-carbide-corporation-appellant-v-union-india-and-others>; Business & Human Rights Resource Centre, “Union Carbide/Dow lawsuit (re Bhopal, filed in India),” accessed May 5, 2024, <https://www.business-humanrights.org/en/latest-news/union-carbidedow-lawsuit-re-bhopal/>.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.



case on jurisdictional grounds,<sup>75</sup> but in parallel proceedings in India, the court found Union Carbide and seven of its executives guilty of criminal negligence.<sup>76</sup> The EPA was then introduced with the aims of protecting and improving the environment in India; it empowers the Central Government to establish authorities with the mandate to prevent environmental pollution and address environmental problems in different parts of India.<sup>77</sup>

The existence of constitutional rights to a clean and healthy environment have also resulted in the introduction of other doctrines into the law, whether through statute or the common law, aimed at strengthening environmental protection in South Africa and India. The doctrine of public trust has been alluded to above in the context of South Africa as seen in Chapter 1(*o*) of the NEMA which provides that the environment is held in public trust by the government for the people, but it has also been considered in *M.C. Mehta v Kamal Nath*<sup>78</sup> in India, which was a case involving an attempt to divert the river flow to augment facilities at a motel.<sup>79</sup> The court decided that the State had a duty to protect and preserve natural resources.<sup>80</sup>

Another example of a relevant doctrine to environmental protection which has been recognized by States is the polluters-pay principle which states that the costs of remedying pollution ought to be borne by those responsible for harming the environment.<sup>81</sup> This can be found in the NEMA, specifically Chapter 1(*p*) that states that “The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimizing further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment”, and was introduced by the Indian court in *Indian Council for Enviro-Legal Action v MoEF*.<sup>82</sup> The issue in question was whether the government should introduce and implement new policies regarding hydrofluorocarbon-23,<sup>83</sup> which is a greenhouse gas with a 100 year global warming potential (“GWP”) of 14,800.<sup>84</sup> GWP compares the contribution to global warming effect of a gas relative to carbon dioxide.<sup>85</sup> The court decided that the polluters pay principle was applicable and imposed a fine on the chemical industrial plant responsible for the pollution.<sup>86</sup> This principle was subsequently applied by the court in the *Taj*

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<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ministry of Environment, Forest and Climate Change, “Environment Protection”, accessed May 5, 2024, <https://moef.gov.in/moef/rules-and-regulations/environment-protection/index.html>.

<sup>78</sup> 1997 1 SCC 388.

<sup>79</sup> Bharat H. Desai and Balraj K Sidhu, “India,” in *The Oxford Handbook of Comparative Environmental Law* (Oxford University Press, 2018), chap. 15, p. 12.

<sup>80</sup> Ibid.

<sup>81</sup> Desai and Sidhu, “India,” chap. 15, p. 11.

<sup>82</sup> 1996 AIR SCW 1069.

<sup>83</sup> “Indian Council for Enviro-Legal Action (ICELA) v. MoEF,” accessed May 5, 2024, <https://climatecasechart.com/non-us-case/indian-council-for-enviro-legal-action-icela-v-moef/>.

<sup>84</sup> US Environmental Protection Agency, “Control of HFC-23 Emissions,” accessed May 5, 2024, <https://www.epa.gov/climate-hfcs-reduction/control-hfc-23-emissions>.

<sup>85</sup> US Environmental Protection Agency, “Understanding Global Warming Potentials,” accessed May 5, 2024, <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>.

<sup>86</sup> UN Environmental Programme, “Indian Council for Enviro-legal Action and others (Petitioners) v. Union of India and others (Respondents),” accessed May 5, 2024, <https://leap.unep.org/en/countries/in/national-case-law/indian-council-enviro-legal-action-and-others-petitioners-v-union>.

*Trapezium* case<sup>87</sup> which concerned air pollution by the industries operating near the Taj Mahal.<sup>88</sup> The court observed that the pollution contributed by these industries resulted in the deterioration of the Taj Mahal, and ordered for the creation of a Trapezium to regulate air pollution, as well as for the Pollution Control Boards to monitor further deterioration of the Taj Mahal.<sup>89</sup>

Having considered the benefit of introducing a constitutional right to a clean and healthy environment, this paper turns to analyze the potential magnitude of this benefit in Singapore. It is submitted that it is unlikely that the introduction of a right to a clean and healthy environment in the Singapore Constitution would be as impactful as it was in South Africa and India. This is because Singapore already has comprehensive environmental laws despite the absence of a right to a clean and healthy environment; the government continuously reviews its existing environmental laws and introduces new environmental policies on a regular basis. For example, Singapore amended its Environmental Protection and Management Act 1999 to enable the government to introduce measures that reduce the release of hydrofluorocarbons.<sup>90</sup> During the Second Reading of the Environmental Protection and Management (Amendment) Bill, Minister of State for Sustainability and Environment Desmond Tan noted that hydrofluorocarbons contribute to climate change as they are greenhouse gases that trap more heat than carbon dioxide.<sup>91</sup> That is why measures such as shifting the market towards climate-friendly equipment and improving the industry's handling of hydrofluorocarbons refrigerants were announced by the government in the previous year.<sup>92</sup> The Bill implements these measures for instance by phasing out refrigeration and cooling equipment that use refrigerants with high global warming potential.<sup>93</sup>

Another recent amendment is the Carbon Pricing (Amendment) Act 2022 which amends the Carbon Pricing Act 2018.<sup>94</sup> The Act came into operation on 1 January 2024.<sup>95</sup> The amendment seeks, amongst other objectives, to allow entities to surrender certain international carbon credits ("ICCs") so as to meet carbon tax obligations, which in turn contributes to Singapore's larger goal of reaching net zero by 2050.<sup>96</sup> An ICC, as defined by section 2 of the Carbon Pricing Act, is a "certificate representing one tone of greenhouse gas emissions reductions or removals measured in CO<sub>2</sub>e, generated from any project or programme outside Singapore", and is generated through entities implementing projects or activities that greenhouse gas emissions from the atmosphere.

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<sup>87</sup> *M.C. Mehta v. Union of India & Ors*, 1997 AIR SCW 552 (30 December 1996).

<sup>88</sup> UN Environmental Programme, "Mehta v. Union of India and ors.," accessed May 5, 2024, <https://leap.unep.org/en/countries/in/national-case-law/mc-mehta-v-union-india-and-ors-1>.

<sup>89</sup> *Ibid.*

<sup>90</sup> Environmental Protection and Management (Amendment Bill) (2021).

<sup>91</sup> Ministry of Sustainability and Environment, "Opening Speech for Second Reading Of The Environmental Protection And Management (Amendment) Bill by Mr Desmond Tan, Minister of State for Sustainability and the Environment," September 13, 2021, <https://www.mse.gov.sg/resource-room/category/2021-09-13-second-reading-epm-amendment-bill-opening/>.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> Ministry of Sustainability and Environment, "Carbon Pricing (Amendment) Bill 2nd Reading Opening Speech - Grace Fu," November 8, 2022, <https://www.mse.gov.sg/resource-room/category/2022-11-08-opening-speech-by-minister-grace-fu-carbon-pricing-amendment-2nd-reading>.

<sup>95</sup> Rajah & Tann, "Amendments to Carbon Pricing Act 2018 Come into Force on 1 Jan 2024," September 2023, [https://eoasis.rajahtann.com/eoasis/lu/pdf/2023\\_09\\_18\\_sept\\_consol\\_V3.pdf](https://eoasis.rajahtann.com/eoasis/lu/pdf/2023_09_18_sept_consol_V3.pdf).

<sup>96</sup> *Ibid.*

An ICC is issued after the reduction or removal of emissions has been verified by an eligible carbon crediting program.<sup>97</sup>

Moreover, Singapore continuously engages in bilateral environmental arrangements with its trade partners such as the Green Economy Agreement with Australia<sup>98</sup> and the Sino-Singapore Tianjin Eco City project.<sup>99</sup> The former was signed on 18 October 2022 with the aim of improving collaboration between Australia and Singapore to drive economic growth while reducing emissions.<sup>100</sup> This in turn done through, *inter alia*, the promotion of trade of environmental goods and services, and decarbonization of the shipping and maritime industry.<sup>101</sup> The latter is a project that commits both Singapore and China to sharing expertise and experience in various areas such as urban planning, environmental protection, resource conservation, etc.<sup>102</sup> Apart from bilateral agreements, Singapore also has arrangements with both regional and international organisations like the Asia-Pacific Economic Cooperation<sup>103</sup> (“APEC”) and the UN. As part of the APEC, Singapore is committed to climate change efforts through the APEC Putrajaya Vision 2040 that is intended to pursue sustainable economic growth.<sup>104</sup> Target actions have been set to limit the rise of global temperatures to no more than 2 degrees Celsius by reducing greenhouse gas emissions by about 900 million tons of carbon dioxide per year until 2030.<sup>105</sup> And as part of international efforts, Singapore has ratified numerous agreements like the UNFCCC, the Kyoto Protocol<sup>106</sup> and the Paris Agreement.

The absence of a constitutional right to a clean and healthy environment also has the benefit of enabling Singapore to maintain flexibility over its environmental measures because the right to a clean and healthy environment runs the risk of oversimplifying the solutions to complex environmental issues by either providing individuals with a mere symbolic constitutional right that does not translate to environmental protection or restricting the government’s measures to those found in the constitutional right to a clean and healthy environment.<sup>107</sup> Without being confined to measures typically found in a constitutional right to a clean and healthy environment,<sup>108</sup> Singapore has implemented novel environmental policies like the Singapore Green Finance Action Plan that brings together the governmental, financial and environmental sectors to combat climate

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<sup>97</sup> Ibid.

<sup>98</sup> Australian Government Department of Foreign Affairs and Trade, "Singapore-Australia Green Economy Agreement," accessed May 5, 2024, <https://www.dfat.gov.au/geo/singapore/singapore-australia-green-economy-agreement>.

<sup>99</sup> Ministry of National Development Singapore, "Tianjin Eco-City," accessed May 5, 2024, <https://www.mnd.gov.sg/tianjinecocity/who-we-are>.

<sup>100</sup> Australian Government Department of Foreign Affairs and Trade, "Singapore-Australia Green Economy Agreement."

<sup>101</sup> Ibid.

<sup>102</sup> Ministry of National Development Singapore, "Tianjin Eco-City".

<sup>103</sup> APEC, "About APEC," January 2024, <https://www.apec.org/about-us/about-apec>.

<sup>104</sup> APEC, "APEC Putrajaya Vision 2040," accessed May 5, 2024, <https://www.apec.org/about-us/about-apec/apec-putrajaya-vision-2040>.

<sup>105</sup> APEC, "APEC and Climate Change," accessed May 5, 2024, [https://www.apec.org/docs/default-source/infographics/2021/1104\\_apec-and-the-climate-change-crisis\\_a4.pdf?sfvrsn=f1661200\\_2](https://www.apec.org/docs/default-source/infographics/2021/1104_apec-and-the-climate-change-crisis_a4.pdf?sfvrsn=f1661200_2).

<sup>106</sup> UNFCCC, "What is the Kyoto Protocol?," accessed May 5, 2024, [https://unfccc.int/kyoto\\_protocol](https://unfccc.int/kyoto_protocol).

<sup>107</sup> Pedersen, "Environmental Law and Constitutional and Public Law," chap. 47, p. 7.

<sup>108</sup> As discussed above, these typically include the government assessing environmental impacts and making environmental information public, and facilitating public participation in decision making, amongst others.

change.<sup>109</sup> The Singapore Green Finance Action Plan aims to strengthen the financial sector's resilience to environmental risks such as pollution, biodiversity loss and land use changes, as well as develop markets and solutions such as sustainable bond and loan grant schemes as well as investment programs to promote a sustainable economy.<sup>110</sup> Similarly, this has also been the case in Japan where there is strong collaboration between the public and private sectors to develop zero carbon cities, which aim to achieve zero carbon emissions by 2050.<sup>111</sup> Till date, 785 local governments have announced their commitment to this initiative.<sup>112</sup>

### Limitations

A significant limitation of the right to a clean and healthy environment is that its practical impact on environmental protection is highly dependent on governmental attitudes. In this regard, South Africa and India can be considered as lying on two ends of the spectrum when it comes to judicial attitudes in deciding environmental cases using the right to a clean and healthy environment.

On one end of the spectrum, the South African courts have been reluctant to meaningfully engage with Article 24 of the South African Constitution to adjudicate cases.<sup>113</sup> It has therefore been pointed out that there has been “ongoing silence” on Article 24,<sup>114</sup> and that Article 24 has been “under-utilized”.<sup>115</sup> The last time the South African court had engaged with Article 24 in a meaningful sense was in *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* from 2007.<sup>116</sup> There, the South African court recognized and highlighted the importance of the role of the judiciary in protecting the environment,<sup>117</sup> as well as the importance of sustainable development.<sup>118</sup> Specifically, the court stated that “development cannot subsist upon a deteriorating environmental base. Unlimited development is detrimental to the environment and the destruction of the environment is detrimental to development. Promotion of development requires the protection of the environment.”<sup>119</sup> Since then, subsequent judgments have merely cited Article 24 in passing or reduced it to a footnote.<sup>120</sup>

More recently in 2022, the South African court passed on an opportunity to clarify the scope of the environmental right under Article 24 in *Mineral Sands Resources (Pty) Ltd & Others v Reddell &*

<sup>109</sup> Monetary Authority of Singapore, “Sustainable Finance,” accessed May 5, 2024, <https://www.mas.gov.sg/development/sustainable-finance>.

<sup>110</sup> Monetary Authority of Singapore, “Green Finance Action Plan,” accessed May 5, 2024, [https://www.mas.gov.sg/-/media/MAS-Media-Library/development/sustainable-finance/without-retail-ESG-funds-GFAP-Infographic\\_June-2022.pdf?la=en&hash=B49713D36266B8D8EF3CA8EEBD0FEFFD9ACBDAA0](https://www.mas.gov.sg/-/media/MAS-Media-Library/development/sustainable-finance/without-retail-ESG-funds-GFAP-Infographic_June-2022.pdf?la=en&hash=B49713D36266B8D8EF3CA8EEBD0FEFFD9ACBDAA0).

<sup>111</sup> Koizumi Shinjiro, “Japan’s transition to become a decarbonized society,” The World Economic Forum, January 19, 2021, <https://www.weforum.org/agenda/2021/01/japan-climate-change-carbon-neutral-2050>.

<sup>112</sup> Ministry of Environment (Government of Japan), “2050 Zero Carbon Cities in Japan,” accessed May 5, 2024, [https://www.env.go.jp/en/earth/cc/2050\\_zero\\_carbon\\_cities\\_in\\_japan.html](https://www.env.go.jp/en/earth/cc/2050_zero_carbon_cities_in_japan.html).

<sup>113</sup> Ruth Kruger, “The Silent Right: Environmental Rights in the Constitutional Court of South Africa,” *Constitutional Court Review* 9 (2019): 473-496.

<sup>114</sup> Melanie Murcott, “Minding the Gap: the Constitutional Court's Jurisprudence Concerning the Environmental Right,” *Constitutional Court Review* 13, no. 1 (2023): 147-170.

<sup>115</sup> Melanie Murcott, “Minding the Gap,” 147.

<sup>116</sup> 2007 (6) SA 4 (CC).

<sup>117</sup> Ruth Kruger, “The Silent Right: Environmental Rights in the Constitutional Court of South Africa,” 478.

<sup>118</sup> *Ibid.*

<sup>119</sup> 2007 (6) SA 4 (CC), para 44.

<sup>120</sup> Ruth Kruger, “The Silent Right: Environmental Rights in the Constitutional Court of South Africa,” 480-483.

*Others*.<sup>121</sup> There, Mineral Sands Resources (a multi-national corporation) sued environmental lawyers and activists who were part of an extractivism movement in South Africa for defamation.<sup>122</sup> Extractivism refers to the removal of natural resources especially for export.<sup>123</sup> The defendants argued in response that Mineral Sands Resources' claim was a strategic lawsuit against public participation so as to stifle environmental activism by abusing court process, which was accepted by the South African court as the aim of the litigation was not to vindicate a right belonging to Mineral Sands Resources.<sup>124</sup> However, the court did not engage with the scope and content of Article 24 of the South African Constitution, choosing merely to recognize the importance of giving effect to environmental rights.<sup>125</sup> Such reluctance on the part of the South African courts to engage with Article 24 could possibly be attributed to its cautious attitude to prevent judicial encroachment into what they perceive as exclusive domains of the legislature and the executive,<sup>126</sup> which in turn resulted in the limited practical impact of Article 24 on environmental protection in South Africa. On the other end of the spectrum lies the Indian courts which have been more willing to dabble in policy and fill the gaps of the executive.<sup>127</sup> Not only are the Indian courts willing to take expansive interpretations of its Constitution, but it has also created new laws.<sup>128</sup> Therefore, the existence of a right to a clean and healthy environment does not guarantee its use by courts to adjudicate environmental cases, let alone the right to a clean and healthy environment's translation into environmental protection.

Turning to Singapore, it is submitted that the Singapore courts' attitudes are similar to the South African judiciary as compared to the Indian courts. Both Singapore and South African courts view the separation of powers as core to their governmental structures.<sup>129</sup> Both courts have well-documented inclinations to avoid intrusion into the domain of executive decision-making.<sup>130</sup> For example, the Singapore court in *Law Society of Singapore v Tan Guat Neo Phyllis*<sup>131</sup> recognized that the separation of powers is a fundamental doctrine of the Singapore Constitution; given this, "the courts will decline review in matters where they lack expertise or special knowledge, or where their institutional capacity makes it ill-suited to address issues like allocative decisions".<sup>132</sup> This is so as to avoid intrusion into the domain of executive decision-making, of which environmental

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<sup>121</sup> 2023 (2) SA 68 (CC).

<sup>122</sup> 2023 (2) SA 68 (CC), para 7.

<sup>123</sup> Melanie Murcott, "Minding the Gap," 157.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

<sup>126</sup> Felix Dube, "Separation of powers and the institutional supremacy of the Constitutional Court over Parliament and the executive," *South African Journal on Human Rights* 26 (2020).

<sup>127</sup> Lavanya Rajamani, "Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability," *Journal of Environmental Law* 19, no. 3 (2007): 293-321.

<sup>128</sup> Desai and Sidhu, "India," chap. 15, pp. 10-15.

<sup>129</sup> Felix Dube, "Separation of powers and the institutional supremacy of the Constitutional Court over Parliament and the executive;" Ministry of Law Singapore, "Response Speech by Second Minister for Law Edwin Tong to Adjournment Motion on Rule of Law, Judicial Review and the Sunlight of Scrutiny," March 4, 2021, <https://www.mlaw.gov.sg/news/parliamentary-speeches/response-speech-by-2m-edwin-tong-to-adjournment-motion-rule-of-law-judicial-review/>.

<sup>130</sup> Felix Dube, "Separation of powers and the institutional supremacy of the Constitutional Court over Parliament and the executive;" Kenny Chng, "Conceptualising A Role for The Common Law in Environmental Protection in Singapore," *Asian Journal of Comparative Law* 16 (2021): 231.

<sup>131</sup> [2008] 2 SLR(R) 239.

<sup>132</sup> Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Academy Publishing, 2012), para 03.024.

protection likely is part of given that the courts do not have the same resources and expertise in being aware of the type of environmental policies that should be best implemented as opposed to the government. Indeed, such an attitude has been reaffirmed in Justice Jeyaretnam's address alluded to above: the learned judge noted the concept of "judicial modesty" particularly in the context of environmental issues.<sup>133</sup> This is because environmental issues have multi-faceted considerations and stakeholders, which are better addressed by the Executive as opposed to the Judiciary.<sup>134</sup> In contrast, issues decided by the courts are instead on a bilateral basis between a claimant and respondent.<sup>135</sup>

Furthermore, it has been previously held by the Singapore court in *Ong Ah Chuan v Public Prosecutor*<sup>136</sup> that the decisions of the Indian courts on the 'Fundamental Rights' in the Indian Constitution should be approached with caution as guides to the interpretation of individual articles in Pt IV of the Singapore Constitution.<sup>137</sup> Therefore, the Singapore courts are unlikely to imply a right to a clean and healthy environment from existing provisions found in the Singapore Constitution. Additionally, even if a right to a clean and healthy environment exists in the Singapore Constitution, the Singapore courts are unlikely to utilize it to adjudicate cases. This makes the introduction of an express or implied right to a clean and healthy environment less attractive in the Singaporean context.

### Effectiveness

Having considered the benefits and limitations of introducing a right to a clean and healthy environment, this paper now turns to consider what the effectiveness of a right to a clean and healthy environment would be in Singapore. There are presently no quantitative studies showing the relationship between a constitutional right to a clean and healthy environment and the success of a country's environmental management system; therefore to mitigate this, this paper considers judgments where the right to a clean and healthy environment has been discussed. The effectiveness of judgments can be determined by the level of compliance by the relevant parties and if there have been improvements in the areas of environment that the judgements address. Applying these criteria, the effectiveness of constitutional right to a clean and healthy environment-related judgments have been limited in South Africa and India for a few reasons: the first is that there has been limited compliance by relevant stakeholders in South Africa and India. In South Africa, the Supreme Court of Appeal, for example in *Company Secretary of Arcelormittal South Africa and Another v Vaal Environmental Justice Alliance*,<sup>138</sup> held that companies were required to report environmental impacts not only to the state but to affected communities and the public.<sup>139</sup> However, companies continue to violate environmental laws and provide insufficient disclosure

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<sup>133</sup> SG Courts, "Justice Philip Jeyaretnam: Speech delivered at Conversations with the Community on 26 July 2024."

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> [1979-1980] SLR(R) 710.

<sup>137</sup> [1979-1980] SLR(R) 710, para 22.

<sup>138</sup> 2015 (1) SA 515 (SCA).

<sup>139</sup> UN Environmental Programme, "Company Secretary of ArcelorMittal South Africa vs. Vaal Environmental Justice Alliance," accessed May 5, 2024, <https://leap.unep.org/en/countries/za/national-case-law/company-secretary-arcelormittal-south-africa-vs-vaal-environmental>.

to its shareholders.<sup>140</sup> Similarly, although the Supreme Court imposed a ban on smoking of tobacco in public places across India,<sup>141</sup> cigarettes and bidis continue to be sold in tobacco-free train stations, bus stops and cinemas.<sup>142</sup>

Secondly, there has been limited improvement in the areas of environment that the judgments seek to address. Although it was declared that Mpumalanga province's unsafe level of air pollution was in breach of Article 24 of the South African Constitution,<sup>143</sup> air pollution continues to be a major problem in South Africa. It is the second-largest cause of death,<sup>144</sup> and nearly 100% of the population breathes in air that does not meet World Health Organization ("WHO") standards.<sup>145</sup> Similarly, in India, despite the Supreme Court's direction to control pollution in Delhi,<sup>146</sup> the authorities have not done so.<sup>147</sup> Delhi continues to be the world's most polluted capital.<sup>148</sup>

The discussion of South Africa and India thus reveals that the existence of a constitutional right to a clean and healthy environment is not a silver bullet for environmental protection. Instead, what is necessary in promoting an effective environmental management system is the willpower of State agencies to enforce and comply with environmental laws. This is seen in how despite the absence of a constitutional right to a clean and healthy environment in Singapore and Japan, they rank higher than South Africa and India on the 2024 Environmental Performance Index ("EPI").<sup>149</sup> In fact, India ranks last on the 2024 EPI.<sup>150</sup> The EPI considers various factors such as climate change mitigation, sanitation and waste management, etc. in determining a country's performance in environmental protection.<sup>151</sup> Countries with higher EPI values have better performances as regards environmental protection, while those with a lower EPI value fare less well than other nations in working towards international environmental goals.<sup>152</sup> Despite the absence of a constitutional right to a clean and healthy environment in Singapore, Singapore's willpower to implement and enforce environmental laws is clearly seen from its success in overcoming the challenges that beset South Africa and India today, such as highly polluted air and

<sup>140</sup> Centre for Environmental Rights, "Full Disclosure – The Truth About Corporate Environmental Compliance in South Africa," October 21, 2022, <https://fulldisclosure.cer.org.za/2015/enforcing-the-law>.

<sup>141</sup> *Murlis S. Deora v Union of India* (2001) 3 SCC 765.

<sup>142</sup> V.K. Agarwal, "Environmental Laws in India: Challenges for Enforcement," *Bulletin of the National Institute of Ecology* 15, 233.

<sup>143</sup> Centre for Environmental Rights, "Major court victory for communities fighting air pollution in Mpumalanga Highveld," March 18, 2022, <https://cer.org.za/news/major-court-victory-for-communities-fighting-air-pollution-in-mpumalanga-highveld>.

<sup>144</sup> Madhumita Paul, "Different air under one sky: Almost everyone in South Africa breathes polluted air," *Down to Earth*, March 18, 2022, <https://www.downtoearth.org.in/news/health-in-africa/different-air-under-one-sky-almost-everyone-in-south-africa-breathes-polluted-air-84743#:~:text=Nearly%20100%20per%20cent%20of,cause%20of%20death%20in%20Africa>.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Almitra H. Patel v Union of India* AIR 2000 SC 1256.

<sup>147</sup> Agarwal, "Environmental Laws in India: Challenges for Enforcement."

<sup>148</sup> Neha Arora, "New Delhi is world's most polluted capital for third straight year – IQ Air study," *Reuters*, March 16, 2021, <https://www.reuters.com/article/us-india-pollution-idUSKBN2B817F>.

<sup>149</sup> Environmental Performance Index by Country 2024, accessed May 5, 2024, <https://worldpopulationreview.com/country-rankings/environmental-performance-index-by-country>.

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*

rivers, and indiscriminate waste disposal.<sup>153</sup> Additionally, Singapore's air and water quality are also well within WHO standards.<sup>154</sup> Given the existence of effective environmental policies, Singapore therefore need not constitutionalize a right to a clean and healthy environment.

### Contextual differences

Apart from the benefits, limitations, and effectiveness of introducing a right to a clean and healthy environment, what is also relevant is contextual differences that set Singapore apart from South Africa and India that militate against constitutionalizing the right to a clean and healthy environment in Singapore.

The first is the difference in the way environmental disputes between citizens and the State are managed. Environmental disputes between citizens and the State in South Africa, India, and Japan are predominantly handled through formal dispute resolution methods such as litigation and alternative dispute resolution.<sup>155</sup> In contrast, such disputes in Singapore are often resolved through public consultation, that involves the government taking up suggestions by the public and reviewing its existing proposals.<sup>156</sup> For example, changes were made to reduce environmental damage due to the second phase of the Cross Island Line's construction in Singapore after environmentalists submitted suggestions to the Land Transport Authority.<sup>157</sup> Another example would be the reversal of the authorities' decision regarding the reclamation of Chek Jawa (wetlands of approximately 100 hectares in area) after the project generated controversy amongst concerned citizens who displayed their concern over the wildlife that reside there.<sup>158</sup>

The second is the difference in the severity of the environmental cases before the Singapore courts compared to abroad. The environmental cases before the Singapore courts relate mainly to littering and the cleansing of public toilets,<sup>159</sup> which are now managed by the National Environmental Agency ("NEA").<sup>160</sup> The NEA is a statutory board under Singapore's Ministry of Sustainability and the Environment charged with the responsibility of improving and maintaining a clean and green Singapore environment.<sup>161</sup> Contrastingly, the environmental cases before the South African and Indian courts are much more severe in nature, often concerning air and water pollution which affect the healthy living of people. Remediating these problems often require whole-of-government efforts. Therefore, the severity of environmental degradation signaled the need for

<sup>153</sup> Lye Lin Heng, "The Judiciary and Environmental Governance in Singapore", *Journal of Court Innovation* 3, no. 1 (2010): 134.

<sup>154</sup> National Environmental Agency Singapore, "State of Singapore's Air and Water Quality – Look at Our Environment," September 30, 2021, <https://www.nea.gov.sg/media/news/news/index/state-of-singapore's-air-and-water-quality--look-at-our-environment>.

<sup>155</sup> Desai and Sidhu, "India;" Weitzdöfer and Reimers, "Japan;" Glzewski, "South Africa," in *The Oxford Handbook of Comparative Environmental Law* (Oxford University Press, 2018).

<sup>156</sup> Lye, "The Judiciary and Environmental Governance in Singapore," 142.

<sup>157</sup> Navene Elangovan, "Not fallen on deaf ears: Nature lobbyists cheer LTA's plans to relocate Cross Island Line MRT station to protect wildlife," Today, October 13, 2022, <https://www.todayonline.com/singapore/nature-lobbyists-lta-relocate-mrt-station-cross-island-line-protect-wildlife-2019216>.

<sup>158</sup> Lye Lin Heng, "A Fine City in a Garden – Environmental Law and Governance in Singapore," *Singapore Journal of Legal Studies* (2008): 66-117, 110.

<sup>159</sup> Lye, "The Judiciary and Environmental Governance in Singapore," 141.

<sup>160</sup> Lye, "The Judiciary and Environmental Governance in Singapore," 142.

<sup>161</sup> National Environmental Agency Singapore, "About us," accessed May 5, 2024, <https://www.nea.gov.sg/corporate-functions/who-we-are>.



South Africa and India to introduce a right to a clean and healthy environment so litigants were provided with a platform for individualized justice, whereas Singapore has less of such a need.

### **Conclusion**

Having considered the three options to the right to a clean and healthy environment, Singapore should preserve status quo: first, the benefits of introducing such a constitutional right are unlikely as impactful in Singapore because of Singapore's unique context and existing set of comprehensive laws. Secondly, Singapore's environmental management system is successful due to its willpower in enforcing and implementing environmental laws. Thirdly, the Singapore judiciary is unlikely to be receptive to utilizing a constitutional right to environment to adjudicate cases due to its cautious attitude.

Nevertheless, while this paper has argued that Singapore should maintain status quo, there are lessons to be learnt from other countries. The most significant lesson is that environmental protection cannot be achieved solely by the judiciary. The legislature needs to continuously evolve to meet citizens' environmental needs, and the executive must remain on guard to track these needs by engaging with the public frequently. Therefore, all branches of government must work together to ensure the continued success of Singapore's environmental management system.

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