



ARTICLE

CLIMATE JUSTICE IN INDIA: THE EVOLVING ROLE OF THE JUDICIARY IN ENVIRONMENTAL LITIGATION

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Abstract

The escalating global climate crisis has led to a surge in climate change litigation, which has become a potent means of ensuring environmental responsibility and shaping policies worldwide. This research paper analyses the significant role of the Indian judiciary in tackling the urgent challenges posed by climate change, focusing on landmark cases and the development of legal frameworks. This study explores the intersection of judicial activism, public interest litigation, and rights-based approaches that highlight the judiciary's dedication to environmental accountability. This paper examines key judicial decisions, illustrating how Indian courts have interpreted constitutional provisions and international principles to protect environmental rights and advance sustainable development. This paper seeks to enhance the current discussion on climate justice in India, highlighting the essential role of the judiciary in promoting a balanced strategy for development and conservation amid global environmental challenges. This article also conducts a comparative analysis of climate change litigation in India with other nations which have different legal traditions, environmental policies, and levels of climate vulnerability. This an analysis of significant cases and different judicial approaches, this research uncovers the intricate relationship between domestic legal systems, international commitments, and the impact of public interest litigation on the development of climate justice. Known for its dedication to upholding both domestic law and European Union environmental directives, the United Kingdom presents a unique perspective on the integration of climate commitments within a common law framework. This showcases the judiciary's expanding role in addressing human rights issues related to climate change. India, on the other hand, highlights the significant role of public interest litigation in a developing country context. This article takes a close look at the procedural and substantive aspects of climate litigation in different jurisdictions while also exploring the wider implications for global climate governance. This article provides a comprehensive analysis on the way courts in these countries interpret scientific evidence, apply international environmental principles, and respond to the challenges of climate change amidst political and economic pressures. In addition, this research uncovers new trends, obstacles, and potential in climate litigation, suggesting a framework to improve judicial collaboration and promote a more unified global approach to climate justice.

Keywords – Climate change litigation; comparative climate laws; judicial climate governance; and public interest litigation.

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I. Introduction

Climate change stands as a critical global challenge of our era, impacting ecosystems, human livelihoods, public health, and national economies. As the urgency of this crisis deepens, courts around the world have started to assume a crucial role in addressing the deficiencies of legislative and executive responses through climate change litigation. Different countries are addressing the legal implications of climate-related cases, with the United States, the United Kingdom, and India showcasing distinct judicial philosophies, legal frameworks, and developing climate jurisprudence. India, which accounts for nearly 20% of the global population and is among the countries most vulnerable to climate change, is emerging as a significant contributor to the international climate dialogue. The Anthropocene era has witnessed a notable increase in Earth's temperature, largely attributed to greenhouse gas emissions resulting from human activities. This increase poses a significant risk to ecosystems and, by extension, to both current and future generations, while also exacerbating human rights violations. Initiatives are underway at international, national, and local levels to mitigate these impacts.¹⁸⁷ The 2015 Paris Agreement represents a significant global commitment to restrict temperature increases to below 2°C above pre-industrial levels, with a strong focus on safeguarding vulnerable communities.¹⁸⁸

The effects of climate change in India are notably significant, with projections indicating that temperatures may increase by two to four degrees Celsius by the 2050s. This carries significant implications for agriculture, forestry, and the 650 million individuals in India who rely on these climate-sensitive sectors. The Indian judiciary has historically taken an active role in the development of environmental law, frequently intervening in situations where legislative measures have not kept pace. The case of *Vishaka & Ors. v. State of Rajasthan*¹⁸⁹ exemplifies the judiciary's function in addressing legislative deficiencies through judicial activism, resulting in significant consequences that extend beyond the parties involved. The judiciary in India has intervened to tackle climate issues when legislative and policy measures are inadequate. This article examines the significance of climate litigation as an emerging response to environmental damage and a mechanism for upholding climate justice. The discussion initiates with an examination of the global climate emergency and the specific climate challenges faced by India, subsequently providing an overview of climate litigation and emphasizing the necessity for a more robust climate strategy.

In a similar vein, the global trend in climate change litigation is exemplified by landmark cases like *Urgenda Foundation v. The Netherlands*¹⁹⁰, which underscored the significance of strategic litigation in enhancing awareness and fostering systemic changes across national boundaries. These cases go beyond the traditional roles of plaintiff and defendant, seeking to stimulate policy reforms and encourage international collaboration on climate action. In the wake of *Urgenda*, the Dutch courts mandated that Royal Dutch Shell reduce its global carbon emissions by 45% by 2030, underscoring the potential of litigation to create significant impacts in the global battle

¹⁸⁷ IUCN, 'Climate Change Impacts on Nature', <https://iucn.org/our-work/topic/climate-change-impacts-on-nature>, accessed on 29 October 2024.

¹⁸⁸ Amit Garg & P. R. Shukla & Manmohan Kapshe, 'From climate change impacts to adaptation: A development perspective for India,' Natural Resources Forum, Blackwell Publishing, May 2007, vol. 31(2), pages 132-141, <https://ideas.repec.org/a/wly/natres/v31y2007i2p132-141.html>, accessed 29 October 2024.

¹⁸⁹ *Vishaka & Ors. v State of Rajasthan*, 1997 INSC 604 .

¹⁹⁰ *Urgenda Foundation v The Netherlands* [2015] HAZA C/09/00456689.

against climate change. In the United States and the United Kingdom, climate change litigation has developed in unique manners, highlighting the variations in legal traditions, regulatory frameworks, and societal priorities. In the United States, the judicial system has emerged as a focal point for climate-related litigation, with cases frequently centered on regulatory measures, public trust principles, and corporate responsibility. The UK has observed a rising focus on climate commitments and environmental obligations within the framework of international law, emphasizing the importance of holding governments and corporations accountable for their carbon footprints.

This research paper conducts a comparative analysis of climate change litigation in the US, UK, and India, examining the similarities and differences in their legal responses to the climate crisis. This paper seeks to offer a thorough analysis of landmark cases and judicial trends within these jurisdictions, highlighting the role of courts in shaping climate governance and impacting global climate policies. The global community is currently confronted with significant environmental challenges, making the judiciary's role in promoting sustainable development and climate justice increasingly vital. By examining this comparison, we can uncover important insights regarding the effectiveness of litigation in promoting significant climate action internationally. This paper examines India's adherence to international environmental principles and the influence of public interest litigation (PIL) on cases related to the environment and climate.¹⁹¹ This analysis explores the contributions of tort law to environmental justice and highlights the essential function of judicial review in climate litigation. An analysis is conducted on the various categories of climate cases currently before Indian courts, exploring the potential of restorative justice to effectively address climate-related harm within a developing context. Ultimately, climate litigation may offer a means to achieve justice for individuals affected by climate change, especially when legislative and executive measures fall short.

Research Objectives

The author is of the opinion that the below mentioned objectives collectively aim to explore the climate change litigation across the globe, while identifying gaps in the climate change litigation. The objectives are as follows:

1. To analyze the role of judiciary in shaping climate governance in India
2. To examine landmark climate change litigation cases in the other countries and India and their impact on environmental policies
3. To compare the judicial philosophies and legal frameworks governing climate litigation in the world and India and Principles observed from the other nations.
4. To assess the effectiveness of climate litigation as a mechanism for achieving climate justice and policy reform
5. To explore the implications of climate litigation on international climate agreements and cooperation

¹⁹¹ Justice Hima Kohli, 'Public Interest Litigation: Climate Change and Environment', < <https://www.ajne.org/sites/default/files/event/7081/session-materials/3ajs-ts3-2-hkohli-public-interest-litigation.pdf>>, accessed 30 October 2024.

Research Questions

The author, through this paper, strongly affirms that these research questions below presented are crafted to ensure a thorough and balanced exploration of the subject, delving into the practical, regulatory, and case-based dimensions of climate change litigation:

1. What role does the judiciary play in shaping climate governance within India and other nations, and how does it address gaps left by legislative and executive actions?
2. What are the major differences and similarities in legal frameworks and judicial philosophies concerning climate litigation across the globe with India?
3. How have landmark climate litigation cases influenced national climate policies and public awareness in each country?
4. To what extent does climate litigation contribute to achieving climate justice for vulnerable communities and individuals impacted by climate change?
5. How does domestic climate litigation in India interact with international climate agreements, and what potential does it hold for promoting international climate cooperation?

Research Methodology

This study adopts a qualitative methodology, using a doctrinal approach to examine case law, legal statutes, and pertinent judicial interpretations concerning climate change in India. Primary sources encompass significant rulings, judicial statements, and constitutional clauses that illustrate the judiciary's changing perspective on environmental matters. Academic articles, books, and reports from environmental organizations are examined to offer context and bolster the analysis. This study explores the principles of public interest litigation and rights-based approaches to emphasize the judiciary's role in advancing climate justice. This study conducts a comparative analysis of various cases to identify patterns and trends in judicial activism related to climate change, aiming to enhance the understanding of the Indian judiciary's role in environmental protection.

II. Literature Review

In an article authored by Eeshan Chaturvedi which is titled as “*Climate Change Litigation: Indian Perspective*”,¹⁹² it has been stated that in the recent years, climate change litigation in India has developed distinctly inside the Indian court system, showcasing its capacity to incorporate developing climate ideas into local law. Indian courts, grounded in a tradition of judicial activism and environmental awareness, have shown the capacity and authority to address global environmental issues. This movement is characterized by the incorporation of international environmental concepts into India's legislative framework, demonstrating a congruence with democratic values and the judiciary's assertive approach. This progressive strategy poses obstacles, highlighting a contrast between the courts' readiness to embrace international norms and the actual difficulties confronting climate litigation now.

¹⁹² Eeshan Chaturvedi, ‘Climate Change Litigation: Indian Perspective’, Cambridge University Press, November 2021, German Law Journal, 22, pp. 1459-1470, < <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/8776773582C54FE6715472733A8516D4/S2071832221000857a.pdf/climate-change-litigation-indian-perspective.pdf>>, accessed 30 October 2024.

An article titled “*Climate Change litigation: Chronicle from Global South. A Comparative Study*”,¹⁹³ authored by Sudha Kavuri and Anjana Ramanathan, the authors have clearly described that climate change litigation has become an essential instrument in promoting climate governance at all levels, with the judiciary serving a critical function. Although the Global North often prevails in discussions, the increasing array of cases and legal methods from the Global South is still little acknowledged. Recent studies highlight that courts in the Global South have significantly advanced climate justice, promoting a global movement for climate responsibility and resilience. Legal professionals, including lawyers, judges, and litigants, are progressively exchanging knowledge across areas, collaboratively fostering a more inclusive and resilient global climate jurisprudence. This literature contests the fallacy that significant climate litigation is limited to wealthy countries, highlighting the varied and crucial function of Global South courts in the international climate justice arena.

In a webpage titled “*The Comparative Politics of Courts and Climate Change*”,¹⁹⁴ authored by Lisa Vanahala published by Taylor & Francis Online, the article describes how the growing disenchantment with global frameworks for tackling climate change has resulted in a new phase of climate policy, marked by the heightened involvement of courts as “battlefields” in the climate conflict. A comparative review of the United Kingdom, Canada, and Australia underscores litigation as an essential mechanism for addressing governance deficiencies in nations with inadequate climate policy. This inductive analysis uncovers trends in climate litigation, highlighting the influence of various legal proceedings and litigants on climate politics. These examples exemplify the interaction between legal mobilization and climate policy, highlighting the distinctive roles courts play in climate governance by filling policy gaps and promoting climate responsibility.

In a report titled “*Global Trends in Climate Change Legislation and Litigation*”,¹⁹⁵ authored by Michal Nachmany, Sam Fankhauser, Joana Setzer and Alina Averchenkova, published by Inter Parliamentary Union, it has been stated that recent years have seen substantial advancements in climate change legislation and litigation worldwide, indicating the progression of legal strategies in environmental governance. This paper, the sixth installment in a series of Climate Legislation Studies initiated in 2010, examines significant changes in climate legislation and judicial proceedings worldwide. Utilizing data from the Climate Change Laws of the World and Climate Change Litigation of the World databases, curated by the Grantham Research Institute at the London School of Economics and the Sabin Centre at Columbia Law School, it underscores the increasing intricacy and scope of climate-related legal frameworks.

¹⁹³ Sudha Kavuri & Anjana Ramanathan, ‘Climate Change Litigation: Chronicle from Global South – A Comparative Study’, *Comparative Law Review* (2022), pp. 169-199, < <https://pure.jgu.edu.in/id/eprint/5175/1/CLIMATE%20CHANGE%20LITIGATION.pdf>>, accessed 30 October 2024.

¹⁹⁴ Lisa Vanahala, ‘The Comparative Politics of Courts and Climate Change’, Taylor & Francis Online, (2013), 22(3), pp. 447-474, < <https://www.tandfonline.com/doi/full/10.1080/09644016.2013.765686>>, accessed 30 October 2024.

¹⁹⁵ Michal Nachmany, Sam Fankhauser, Joana Setzer and Alina Averchenkova, ‘Global Trends in Climate Change Legislation and Litigation’, (2017), IPU, < <http://archive.ipu.org/pdf/publications/global.pdf>>, accessed 26 October 2024.

III. Significance of Climate Change Litigation

Climate change litigation has developed to address deficiencies in the legislative framework at both international and domestic levels, aiming to protect individuals' rights from climate-related impacts. This form of litigation encompasses actions against both public and private entities, with the objective of ensuring accountability for their failure to meet legal obligations concerning environmental protection. As of May 2019, climate litigation has emerged in 28 countries, with low and middle-income nations, such as India, witnessing a rise in climate-related cases. These cases shape public discourse, bolster grassroots initiatives, and facilitate the translation of intricate scientific concepts into accessible issues for the broader community. Climate litigation has experienced significant growth globally, focusing on matters such as adherence to climate commitments, violations of human and constitutional rights, corporate accountability, and the necessities of adaptation. In developing nations such as India, discussions surrounding climate issues frequently emphasize the execution of governmental strategies aimed at addressing or adapting to climate challenges.

In India, the judiciary has emerged as a crucial entity in tackling environmental challenges where legislative measures fall short. The Supreme Court, recognized for its pivotal role in social reform, has interpreted Article 21, which pertains to the right to life and liberty, to encompass the right to a clean environment.¹⁹⁶ Indian environmental jurisprudence has undergone significant evolution through landmark cases related to air pollution, natural resource conservation, and wildlife protection. Furthermore, international environmental principles, public interest litigation, and tort law have influenced judicial responses to environmental issues; however, climate-specific concerns require more extensive legal acknowledgment. The COVID-19 pandemic has indirectly influenced climate litigation, as the increase in biomedical waste has put pressure on waste management systems, leading to potential health and environmental risks that may exacerbate climate-related challenges. In India, a nation significantly susceptible to climate impacts, the potential losses encompass property, economic stability, and human rights violations. Equipping the judiciary to effectively address climate claims is essential for safeguarding citizens' rights and responding to the escalating environmental crisis.

IV. Position of Indian Judiciary

India is the third-largest emitter of greenhouse gases globally and is also the seventh most vulnerable nation to the effects of climate change. The dual status underscores the necessity for India to implement comprehensive strategies at both state and national levels to effectively tackle climate risks and environmental challenges. Although India has implemented numerous environmental laws and disaster management frameworks, a clear deficiency exists in its legislative strategy regarding climate change, as there is presently no all-encompassing climate law in place. The judiciary, encompassing the Supreme Court, High Courts, and the National Green Tribunal (NGT), has consistently recognized the significance of climate change in its rulings, highlighting the necessity for prompt and effective actions to safeguard the environment. Public interest litigations (PILs) have been instrumental in launching significant climate change cases that advance environmental justice.

¹⁹⁶ The Constitution of India, 1950, art. 21.

A notable case is *Association for Protection of Democratic Rights v. The State of West Bengal and Others*¹⁹⁷, in which the Supreme Court was approached to halt the extensive deforestation in West Bengal due to development initiatives. The Court highlighted the negative effects of these activities on the environment and climate, asserting that the right to a clean and healthy environment is a fundamental extension of the right to life as outlined in Article 21¹⁹⁸ of the Indian Constitution. Furthermore, Article 48-A¹⁹⁹ mandates the government to safeguard and enhance the environment, with a specific focus on forests and wildlife. The Supreme Court, in this significant ruling, emphasized the necessity of achieving a balance between development and environmental conservation. A specialist committee was established by the court to formulate scientific and policy guidelines addressing deforestation linked to development projects. This case establishes a significant precedent, highlighting India's obligation to enhance tree cover from 23% to 33% and to reduce the ecological consequences of deforestation.

Another significant case is *In re Court on its Own Motion v. State of Himachal Pradesh and Others*²⁰⁰, in which the NGT initiated suo moto action to impose restrictions on activities near Rohtang Pass, an environmentally sensitive area in the Himalayas. The Court determined that vehicular emissions significantly contributed to black carbon, which in turn accelerated glacier melt in the region. A study conducted by IIT Kanpur indicated that 40% of the glacier melt can be linked to black carbon emissions originating from vehicles in the vicinity of Rohtang Pass. The Court acknowledged the citizens' entitlement to a healthy and clean environment as outlined in Article 48-A. It instructed the Himachal Pradesh government to adopt various measures, including conducting random pollution checks, limiting transportation options, and encouraging the use of electric vehicles. This case exemplifies the proactive measures taken by judicial bodies to safeguard ecologically sensitive regions from degradation caused by climate change.

The case of *Hanuman Laxman Aroskar v. Union of India* represents a significant judicial intervention, as the Supreme Court decided to suspend the construction of an airport in Goa while awaiting a thorough review of environmental clearances.²⁰¹ The Court mandated that the government provide evidence of adherence to national environmental standards as well as international climate obligations, specifically those outlined in the Paris Agreement. Following the presentation of adequate evidence, the suspension was revoked, accompanied by commitments from the airport to pursue the goal of becoming a "zero carbon" facility. This case illustrates the Supreme Court's function in guaranteeing that development initiatives conform to India's environmental responsibilities and prevent avoidable ecological harm.

India has demonstrated its dedication to global climate objectives by signing multiple treaties, such as the United Nations Framework Convention on Climate Change (UNFCCC),²⁰² the

¹⁹⁷ *Association for Protection of Democratic Rights v The State of West Bengal & Ors.* Special Leave Petition (CIVIL) No. 25047 of 2018.

¹⁹⁸ *supra* note. 1 at 10.

¹⁹⁹ The Constitution of India, 1950, art. 48-A.

²⁰⁰ *In re Court on its Own Motion v. State of Himachal Pradesh and Others*, 2013 (CWPIL No. 15 of 2010).

²⁰¹ *Hanuman Laxman Aroskar v Union of India*, 2019 INSC 434 .

²⁰² UN General Assembly, United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly, A/RES/48/189, 20 January 1994, <https://www.refworld.org/legal/resolution/unga/1994/en/26583>, accessed 26 October 2024.

Convention on Biological Diversity,²⁰³ and the Paris Agreement.²⁰⁴ India has committed to emphasizing sustainable development and environmental protection through these frameworks. India has made a significant commitment under the National Action Plan on Climate Change (NAPCC) to enhance carbon sinks through the expansion of forest cover, aiming for an ambitious target of achieving 33% tree cover. These cases illustrate the progression of India's legal framework, as courts shift focus from environmental justice to climate justice. Judicial decisions indicate an increasing recognition of climate issues; however, the challenges associated with enforcement continue to pose a substantial obstacle. The adherence to court orders and the execution of environmental rulings frequently exhibit variability, highlighting the necessity for ongoing legal reforms and more robust policy frameworks to bolster India's climate resilience initiatives.

V. Response of Indian Judiciary Towards Climate Change Litigation

The Indian judiciary serves as a dynamic force in tackling issues that extend beyond the legislative branch, particularly through the mechanism of public interest litigation (PIL). Judicial activism has enabled Indian courts to proactively tackle social and environmental issues, even in instances where legislative measures have not kept pace. The global climate litigation landscape, supported by frameworks such as the Paris Climate Agreement, has enabled judiciaries worldwide to handle intricate environmental cases with greater efficiency. This trend is evident in India, where an active judiciary has traditionally utilized Public Interest Litigation to enhance access to justice and address environmental protection issues. The Indian judiciary, through PIL, has adopted a comprehensive approach that serves the broader public interest, extending beyond the immediate litigants involved. This has enabled courts to respond to pressing social issues, bridge legislative voids, and consistently oversee the execution of their rulings.

Justice Krishna Iyer highlighted the importance of judicial intervention in instances where legislative actions are postponed, positioning judicial activism as a reaction to the needs of the public. This change in India's judiciary also encompassed a broader interpretation of locus standi—permitting concerned individuals or groups, such as NGOs, to initiate cases on behalf of those lacking access to legal resources. The Indian judiciary has demonstrated a strong commitment to environmental protection, recognizing the right to a healthy environment as an essential component of the right to life under Article 21 of the Constitution. In significant cases, the courts have utilized principles like “polluter pays” to uphold environmental accountability, as demonstrated in *Indian Council for Enviro-Legal Action v. Union of India (1996)*.²⁰⁵ The court has mandated that polluters are responsible for the costs associated with environmental damage and compensation, highlighting the rigorous enforcement of environmental laws and ensuring that corporations are held accountable for negligence. The Indian judiciary has established a precedent where economic growth is balanced with environmental protection to ensure sustainable development.

²⁰³ The Convention on Biological Diversity of 5 June 1992 (1760 U.N.T.S. 69).

²⁰⁴ The Paris Agreement of 12 December 2015, < <https://www.un.org/en/climatechange/paris-agreement>>, accessed 28 October 2024.

²⁰⁵ *Indian Council for Enviro Legal Action v Union of India & Ors.*, 1996 INSC 237

VI. Impact of International Law on Indian Environmental Jurisprudence

The environmental legal framework in India has been notably enhanced and broadened through the incorporation of international law principles, demonstrating a comprehensive commitment to environmental protection aligned with global standards. The Indian judiciary, especially the Supreme Court and the National Green Tribunal (NGT), has often drawn upon international legal doctrines and decisions as influential authority to inform domestic environmental jurisprudence. This progressive approach has incorporated a range of doctrines into Indian law, such as the public trust doctrine, the polluter pays principle, the precautionary principle, and intergenerational equity, which now form essential elements of the nation's environmental protections.

The public trust doctrine²⁰⁶, which originated from Roman law and has been embraced by numerous international jurisdictions, asserts that specific natural resources—such as air, water, and forests—are maintained by the government in trust for public benefit and cannot be privately owned or misappropriated. The Indian judiciary has adopted this doctrine to emphasize the government's responsibility as a steward of the nation's resources. In matters related to environmental degradation, the judiciary has applied this doctrine to assert that the state has a responsibility to safeguard and preserve natural resources for the benefit of the public and future generations. This has enabled a judicial directive for the government to avert environmental damage and prioritize ecological interests as essential. The NGT has advanced India's environmental jurisprudence by integrating emerging international principles. In the matter of *Society for Protection of Environment & Biodiversity v. Union of India*,²⁰⁷ the NGT evaluated a government notification intended to exempt specific building projects from environmental assessment. The tribunal determined that certain aspects of this notification were at odds with established environmental protections, highlighting their contradiction of the principles of non-regression and environmental justice. This decision illustrates the tribunal's function in ensuring that regulatory actions are consistent with India's dedication to environmental protection as required by international standards. The doctrine of non-regression, a principle within international environmental law, asserts that legal protections for the environment must remain robust once they are instituted. The principle established by the International Union for Conservation of Nature (IUCN) stipulates that states must avoid amending environmental laws in a manner that reduces protective standards. The NGT has applied this doctrine to highlight that regulatory measures must not undermine existing environmental safeguards, even though it has not yet been codified within Indian environmental legislation. The NGT emphasized the importance of harmonizing economic development with environmental conservation, dismissing the idea that developmental goals should compromise the integrity of the ecosystem. This case marks an important advancement in Indian jurisprudence, showcasing the tribunal's commitment to aligning domestic laws with international standards.

²⁰⁶ Ashish Kumar Jha, 'Borrowed Concepts, Undefined Boundaries: A Critical Examination of India's Public Trust Doctrine', May 27, 2024, SCC Online, < <https://www.scconline.com/blog/post/2024/05/27/borrowed-concepts-undefined-boundaries-a-critical-examination-of-indias-public-trust-doctrine/>>, accessed 01 November 2024.

²⁰⁷ *Society For Protection of Environment v Union of India*, Original Application No. 677 of 2016.

Furthermore, the NGT's application of the doctrine of severability in this judgement illustrates a notable convergence between Indian and international legal principles. The tribunal annulled sections of the government notification that were at odds with environmental standards, while affirming the other provisions that aligned with legal requirements. This balanced approach guarantees that legal regulations uphold environmental values while facilitating development, ensuring alignment between India's domestic laws and international environmental standards. India's incorporation of these international legal principles has strengthened its environmental framework, allowing the judiciary to ensure accountability among regulatory bodies and maintain ecological integrity. The integration of international doctrines into Indian environmental jurisprudence has led to an expansion of legal protections aimed at safeguarding India's natural resources. This alignment with global standards reflects the Indian judiciary's forward-thinking perspective and reinforces India's position as a dedicated steward of the environment internationally.

VII. Principles Observed from Other Jurisdictions

The differences in socio-economic and geographical conditions between the Global North and the Global South are significant. The Global South, consisting mainly of developing nations, confronts significant domestic issues, such as poverty, unemployment, and systemic corruption. In contrast, numerous issues have been more thoroughly addressed by nations in the Global North, enabling them to concentrate more on environmental matters. In the Global South, environmental issues frequently garner less focus unless they directly affect everyday life. In the face of these challenges, nations in the Global South have made notable progress in climate change litigation, attaining impactful outcomes despite constraints in resources and legislative backing.

The Climate Change Act 2008 in the UK is recognized as one of the most ambitious frameworks in the world.²⁰⁸ The requirement is for an 80% reduction in greenhouse gas emissions from 1990 levels by 2050, supported by binding targets and the guidance of the independent Climate Change Committee, which provides advice on carbon budgets and adaptation strategies. The EU regulations, particularly the EU Emissions Trading System (ETS), have significantly impacted UK policy, strengthening emissions trading, renewable energy objectives, and carbon capture initiatives. Historically, climate litigation in the UK has focused on matters such as planning permissions for renewable energy initiatives, particularly wind farms. Initial rulings frequently favored local interests over the demands of climate activists, weighing community concerns against the necessity for renewable energy development. Over time, there was a gradual shift in which courts acknowledged climate considerations in conjunction with local issues, as demonstrated in *Bradford v. West Devon BC* (2007).²⁰⁹ A notable case was *R (London Borough of Hillingdon & Ors) v. Secretary of State for Transport & Another* (2010),²¹⁰ in which the Climate Change Act was cited in opposition to the expansion of Heathrow Airport. The UK litigation landscape encompasses proactive climate activism, illustrated by the Kingsnorth Six case, in which activists were acquitted for their protest against a coal-fired power station,

²⁰⁸ The Climate Change Act, 2008.

²⁰⁹ *Bradford v West Devon BC*, [2007] P.A.D. 45

²¹⁰ *R (London Borough of Hillingdon & Ors.) v Secretary of State for Transport & Anr.*, [2010] EWHC 626.

successfully demonstrating that their actions mitigated greater environmental damage. This represented a new defence strategy, though its long-term impact was somewhat limited.

In contrast, Australia does not have a national law specifically addressing climate change, similar to the UK's Climate Change Act. Although the Kyoto Protocol was ratified in 2007 under Prime Minister Kevin Rudd, ambitious initiatives such as the Carbon Pollution Reduction Scheme (CPRS) did not succeed due to insufficient bipartisan support.²¹¹ Environmental litigation has concentrated on the application of general environmental laws, such as the Environment Protection and Biodiversity Conservation (EPBC) Act 1999, in climate-related cases. Australian courts have increasingly mandated the inclusion of climate change considerations in Environmental Impact Assessments (EIAs), especially concerning coal-related projects. In the case of *Australian Conservation Foundation v. Latrobe City Council* (2004),²¹² the court determined that the greenhouse gas impacts of coal combustion are required to be included in the assessment, representing a significant legal milestone. In the Anvil Hill case, the court emphasized the necessity for accurate quantification of emissions impact for proposed projects. In coal-related litigation, establishing a causal link between coal extraction and climate harm has presented significant challenges. In the case of *Wildlife Preservation Society of Queensland v. Minister for the Environment and Heritage* (2006),²¹³ the court found no causal link between a proposed coal mine and damage to the Great Barrier Reef, highlighting the challenges in demonstrating direct environmental harm.

From the above it can be well observe that the UK excels in establishing binding and structured climate policies and legislation; however, its litigation approach tends to be reactive and shows limited dependence on the Climate Change Act. In contrast, Australia employs general environmental statutes to facilitate climate litigation, particularly focusing on coal, achieving varied outcomes in the judicial system. The variation in approaches highlights the unique legal strategies and challenges encountered by each country in the realms of climate governance and environmental accountability.

A notable aspect of climate change litigation in the Global South is the incorporation of a rights-based approach. Researchers such as Jacqueline Peel and Hari Osofsky have noted a shift towards a “rights-based turn”²¹⁴ in these cases, highlighting the growing connections between human rights and environmental concerns. At first, courts in the Global South were reluctant to emphasize human rights arguments in climate cases; however, litigants continued to advocate, presenting environmental degradation as a breach of essential rights. Approximately 44% of climate cases in the Global South now incorporate human rights claims, which stands in stark contrast to the United States, where only 5% of cases include such claims. This indicates a distinctive interpretative framework in the Global South that links climate challenges to fundamental human rights, emphasizing the necessity of viewing climate justice as an entitlement rather than a luxury.

²¹¹ Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162.

²¹² *Australian Conservation Foundation v. Latrobe City Council*, [2004] VCAT 2029.

²¹³ *Wildlife Preservation Society of Queensland v. Minister for the Environment and Heritage*, [2006] FCA 736.

²¹⁴ Vidya Ann Jacob, ‘Climate Change Litigation in India: An Overview’, ILI Law Review, (2021), <https://ili.ac.in/pdf/win21_5.pdf>, accessed 01 November 2024.

In Asia, nations such as Pakistan and India have established an advanced legal framework, employing public interest litigation to protect the rights of vulnerable groups and ensure environmental preservation. An important case is *Ashgar Leghari v. Federation of Pakistan*,²¹⁵ which utilized human rights arguments to promote climate justice and highlighted the judiciary's dedication to safeguarding citizens' rights to a clean environment. This rights-focused framework is not exclusive to Pakistan; courts throughout the Global South, including in India, South Africa, and Colombia, have similarly interpreted the right to a clean environment as a fundamental constitutional guarantee. This approach illustrates a significant shift within the judiciary, as courts broaden their interpretation of environmental rights to tackle socio-economic disparities. The judicial approach in the Global South is marked by an active and interventionist role. Courts have taken an active approach in climate litigation, especially in cases related to fundamental rights, and have successfully utilized the judiciary to connect governmental policies with their implementation. This trend is prominently observed in India, where the judiciary has adopted a proactive stance in promoting the environmental justice via innovative constitutional interpretations. Courts in the Global South have effectively balanced the principles of separation of powers, highlighting the judiciary's essential role in ensuring access to justice and socio-economic rights, which are fundamentally linked to the environmental protection.

This judicial approach, grounded in rights and aimed at transformation, has developed in the Global South amid significant socio-economic challenges, governance issues, and the impacts of colonial history. In the face of these challenges, the judiciary in these regions has served as a driving force for change, working diligently to safeguard citizens' environmental rights and creating a legal framework that ensures government accountability for climate-related actions. The Global South presents a model of climate litigation that emphasizes the importance of vulnerable communities through the adoption of innovative and rights-based strategies, highlighting the critical link between human rights and environmental justice.

VIII. The Way Forward

Indian courts have thus far treated climate change as an ancillary consideration in discussions of environmental rights, rather than recognizing it as a primary issue deserving of focused attention. Considering India's susceptibility to climate impacts, it is essential for the judiciary to adopt a more proactive approach, acknowledging climate-related claims as fundamental to the constitutional right to life. This approach enables the courts to enhance their support and protection for citizens impacted by climate change. Enhancing current judicial approaches—like public interest litigations (PILs) and judicial reviews—focused on climate-related cases has the potential to considerably bolster climate justice. Utilizing these mechanisms, which have proven effective in environmental cases, would enable the Indian judiciary to establish a strong framework for addressing climate claims and ensuring accountability. The Indian judiciary is currently facing an emerging challenge regarding corporate liability in climate-related cases. Addressing corporate responsibility involves navigating distinct challenges, particularly given that numerous corporations responsible for climate change are based in developed countries. India's reliance on foreign direct investment (FDI) for economic growth highlights the importance of examining precedents from other jurisdictions that have successfully held

²¹⁵ *Ashgar Leghari v. Federation of Pakistan*, (2015) W.P No. 25501/201.

corporations accountable. In the case involving Greenpeace Asia, 50 prominent carbon-emitting companies faced allegations of violating the human rights of Filipinos as a result of their industrial emissions. In the Lliuya case, a German utility company encountered claims for compensation linked to its involvement in the melting of glaciers. Indian courts may view these cases as frameworks for addressing the intricacies of corporate responsibility in climate-related legal actions. Through a careful analysis of the actions and regulations implemented in other jurisdictions, Indian courts can derive valuable insights on the incorporation of corporate responsibility within the framework of climate justice, all while maintaining a balance between economic interests and environmental stewardship. One possible direction for climate litigation includes claims associated with extreme weather events, which are occurring with greater frequency and intensity as a result of climate change. Indian courts may adjudicate cases involving government entities or corporations that do not implement sufficient preventative strategies or fail to adjust to climate-related challenges. Internationally, comparable cases have been initiated, including those in Harris County and York County in the United States, where judicial bodies mandated an examination of governmental actions aimed at addressing climate impacts. Indian courts may reference these precedents to gain insights into effectively addressing claims related to climate inaction or inadequate climate adaptation efforts. Given the significant implications of climate-related impacts, Indian courts have the potential to establish legal standards that compel government and corporate entities to meet their responsibilities in protecting communities from climate risks.

The judiciary's role in climate litigation in India will be crucial in connecting policy-making with effective climate action. The nation is currently facing the challenge of reconciling economic growth with environmental sustainability. Implementing a more systematic, rights-oriented framework for climate claims may facilitate effective climate governance. Through the adoption of international precedents and the adaptation of legal frameworks, the Indian judiciary has the potential to strengthen climate accountability, enhance resilience, and promote the right to a sustainable environment for all citizens.

IX. Conclusion

Climate change represents a significant global issue, affecting all nations and highlighting the interconnectedness of human experiences in its consequences. Courts in India, similar to those in the Global South, have started to play a crucial role in climate litigation, frequently confronting challenges that necessitate resistance to influential corporations and political entities. The significance of these contributions cannot be overstated and warrants increased acknowledgment, particularly in light of the obstacles encountered by developing nations, such as financial constraints, political opposition, and socioeconomic inequalities. Emphasizing these initiatives is essential for developing a thorough climate justice jurisprudence that recognizes the distinct viewpoints and difficulties faced by the Global South. The developed nations of the Global North have the opportunity to leverage these approaches, incorporating the principles established in the Global South to enhance their climate responses.

The judiciary in India, leveraging its extensive interpretative authority granted by the Constitution, has significantly contributed to the protection of citizens' rights to a healthy environment, which is recognized as a fundamental right under Article 21. Broadening this interpretation to include safeguards against climate change would strengthen this right, imposing

a responsibility on both the state and citizens to proactively mitigate climate risks. The judiciary has traditionally intervened in such instances where the executive and legislature have fallen a short, serving as a protector for the both current and future generations. Climate litigation presents an opportunity for the courts to safeguard the rights of present citizens while also ensuring the preservation of future generations' interests amid growing environmental challenges. The claims related to climate provide an opportunity for the Indian judiciary to embrace a progressive stance, emphasizing sustainability and resilience as essential components of climate adaptation. The judiciary in India is examining methods to assist victims of climate-related disasters, focusing on sustainable solutions in light of the country's vulnerability to such events. The COVID-19 pandemic has presented India with distinct challenges regarding waste accumulation and disposal, which carry significant implications for climate resilience and adaptation efforts. Addressing these concerns in climate litigation is likely to be crucial as the courts assess the environmental consequences of crises such as the pandemic.

Notable examples from the Global South illustrate the development of climate accountability. Instances like Ashgar Leghari in Pakistan, highlighting the necessity for government accountability, and the Carbon Majors petition, aimed at enforcing corporate responsibility for emissions, illustrate the capacity of climate litigation to ensure that influential entities are held responsible. The *Luciano Lliuya case*,²¹⁶ involving a plaintiff from the Global South suing a German utility company, exemplifies a framework for transnational climate claims. This case could inform Indian courts as they evaluate corporate and governmental accountability in relation to climate impacts.

The National Green Tribunal (NGT) plays a crucial role by possessing the authority to mandate the comprehensive climate impact assessments for developmental projects prior to their approval. Additionally, India may gain advantages by integrating a restorative justice framework in climate litigation, promoting engagement from victims, offenders, and the community to develop solutions for climate infractions. This participatory framework effectively addresses the requirements for climate justice and equity, highlighting the importance of accountability, reconciliation, and sustainable practices over the long term. In summary, the author believes that achieving climate justice in India necessitates a coordinated approach involving government, judiciary, and community engagement. Encouraging collaboration between the Global North and South is crucial, given that climate change represents a collective challenge. Recognizing and crediting the contributions of Global South courts enables the international community to collaboratively establish an inclusive and effective framework for climate jurisprudence. As India and other developing nations progress in climate litigation, these initiatives will significantly contribute to the attainment of sustainable development and climate justice for future generations.

²¹⁶ *Luciano Lliuya v. RWE AG*, Case No. 2 O 285/15 Essen Regional Court.