

# Climate Change Litigation & Environmental Constitutionalism

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**Abstract:** *The most urgent existential risk today is that of climate change. Legal systems all across the world have been required to act in response to climate change more and more in recent times. Climate change litigation is emerging as an important instrument through which individuals and organizations are challenging the liability of states and private organizations in contributing towards global warming and in failing to undertake sufficient measures to mitigate or adapt to climate change. One such key concept that has emerged as a crucial legal backdrop for climate change litigation is that of environmental constitutionalism—the recognition of environmental rights and obligations in constitutions and legal codes. This paper investigates the relationship between climate change litigation and environmental constitutionalism, especially within the Indian legal system. A discussion is presented on the development of environmental constitutionalism worldwide and the Indian constitutional approach through Article 21, 48-A, and 51-A(g). Further, landmark cases relating to climate change litigation are analyzed, including those from outside India. Also discussed are various models of constitutional environmental rights from other countries like South Africa, Brazil, Colombia, and Ecuador.*

**Keywords:** *Climate Change Litigation, Environmental Constitutionalism, Right to a Healthy Environment, Fundamental Rights, Indian Constitution,*

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*Public Interest Litigation, Intergenerational Equity, Sustainable Development, National Green Tribunal, Comparative Constitutional Law.*

## **Introduction**

Global warming is an issue of great concern today, characterized by high temperatures on earth, natural disasters, extinction of plants and animals, and rising sea levels, among others. In the past ten years, more laws have been put into effect regarding climate change issues, as there has been increased litigation on climate change forcing states and corporations to cut down carbon emissions and follow environmental law. Environmental constitutionalism plays a critical role in such laws, where constitutionalists support environmental protection as a basic right under the constitution.

Though India's Constitution does not include the explicit inclusion of a healthy environment as a right, it provides ample provisions for the protection of the environment. These rights have come into being due to certain judgements of the Supreme Court that recognize the right to a clean and healthy environment as a part of the basic right to life, which has been enshrined under Article 21 and backed by Directive Principles of State Policies and citizens' responsibilities toward preserving the environment. The most important milestone was the National Green Tribunal Act, passed in 2010.<sup>1</sup>

In the global scene, the Paris agreement has set binding obligations on temperature rise, which is based on domestic laws. This has been used by individuals and organizations in strategic litigation against the state under their constitutional rights in case of inadequate measures by the government. In the *Urgenda Foundation vs. State of the Netherlands* (2019), the court ruled that the state has an obligation to lower its greenhouse gas emissions, which has also influenced other cases in various European nations. In addition, the Colombian Supreme Court has declared that the Amazon Rain Forest has legal rights, while the Court of Pakistan has enforced climate policies through its constitutional rights.

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<sup>1</sup> Ghaleigh, Navraj Singh, Joana Setzer, and Asanga Welikala. "The complexities of comparative climate constitutionalism." *Journal of Environmental Law* 34.3 (2022): 517-528.

### *Foundations of Environmental Constitutionalism*

Environmental constitutionalism marks an evolution in jurisprudence: that of the acknowledgment that environmental protection is a constitutional concern rather than merely a legislative one. Environmental constitutionalism involves incorporating rights and duties related to the environment into the country's supreme law in a manner that makes such incorporation difficult to undo through regular legislation or executive action. Philosophically speaking, environmental constitutionalism has roots in various philosophies. The Indian philosophy of dharma included a duty towards protecting nature, as all things are considered part of nature itself. Similarly, there was the philosophy of public trust doctrine which originated from Roman law and provided that certain natural resources were the property of everyone and had to be maintained by the state in this interest. Finally, today's approach to environmental constitutionalism incorporates both the duty-based and the human rights approach in order to establish the idea that the environment is a prerequisite for all other rights including the right to life, health, sustenance, and water.<sup>2</sup>

The worldwide movement towards constitutional protection for the environment received considerable support from the UN Conference on the Human Environment, convened in Stockholm in 1972. India played an active role in the conference and made a specific commitment to environmental protection. According to the legal knowledge base context available, the amendments were made to the constitution through the 42nd Amendment Act, 1976, incorporating two vital clauses. The first clause, Article 48-A, was incorporated into the Directive Principles of State Policy, which stated, "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country." The second clause, Article 51-A(g), was added as one of the duties of citizens, "To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures." Although the two clauses do not form the basis for judicial enforcement in themselves, they have acted as constitutional benchmarks for Indian environmental law. According to the legal knowledge base context, the constitution did not make any reference to environmental concerns, although Article

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<sup>2</sup> Chatterjee, Subham. "Eco-constitutionalism in India: A Critical Analysis Through the Lens of the Environmental Justice." *Ecology, Environment & Conservation* (0971765X) 31 (2025).

47 directed the state to raise standards of living and improve public health conditions.<sup>3</sup>

A number of different constitutional frameworks have developed. The knowledge base context refers to the constitution of South Africa, the Constitution of 1996, which under Article 24 says explicitly that “everyone has the right... to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that... secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.” Such formulation is important because it clearly spells out what it is trying to say, how it links the issue of intergenerational equity into the framework, and how it balances environmental and economic development issues. There is also mention of Article 127 of the Venezuelan Constitution, which says, "It is the right and duty of each generation to protect and maintain the environment for its own benefit and that of the future world."<sup>4</sup>

In contrast, the Indian strategy has been rather indirect, yet just as effective. In the knowledge base context, it has been noted that the Supreme Court of India has accepted that "all human beings have a fundamental right to a healthy environment, consistent with their well-being, with an attendant duty to conserve and preserve the same in such a manner that present and future generations can know about them equally." This acceptance has come through the judicial interpretation of Article 21 (right to life), which includes the right to a wholesome environment, thereby making environmental protection a fundamental right, according to jurists. It has also been established that the right to pure air, clear water, and an unpolluted environment derives itself from the inalienable common law right to a clean environment, which is an essential part of the basic jurisprudence of the country.<sup>5</sup> Moreover, it is important to note that, according to the knowledge base context, all rules of Customary International Law that are not inconsistent with municipal law are deemed to be incorporated in national laws and are binding on Indian courts. Due to

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<sup>3</sup> Bhullar, Lovleen. "Environmental constitutionalism and duties of individuals in India." *Journal of Environmental Law* 34.3 (2022): 399-418.

<sup>4</sup> Singh, Manjit, and Sahibpreet Singh. "Constitutional Dimensions of Environmental Jurisprudence in India: An Analysis." *Indian Constitution: Changing Paradigms* (2025): 114-125.

<sup>5</sup> Vasudev, Eklavya. "Gatekeeper Constitutionalism: Exploring the Role of the Indian Judiciary in Environmental Constitutionalism and International Law Integration." *European Yearbook of Constitutional Law 2024: Varieties of Constitutionalism*. The Hague: TMC Asser Press, 2025. 129-151.

this approach, concepts like sustainable development, precautionary principle, and the polluter pays principle that evolved due to international environmental laws have come to be included in India's environmental jurisprudence.

Intergenerational equity, according to jurists like Professor Edith Brown Weiss, suggests that each generation holds the earth in trust for future generations and must conserve its natural resources. According to the knowledge base context, "but conservation always becomes second fiddle to economics during hard times." This highlights the need to enshrine environmental constitutionalism through constitutional provision in order to guard against any threats to the environment posed by economic interests. Public trust doctrine, another basic tenet of environmental constitutionalism, suggests that some natural resources like air, water, forests, and wildlife belong in trust to the people and cannot be alienated or destroyed for any personal gain. The principles of fundamental rights, directive principles, fundamental duties, customary international law, intergenerational equity, and public trust constitute the constitutional pillars on which climate change litigation stands. These principles guide courts to see that governments do their bit for climate justice and recognize that there can never be any talk of life without a sound climate system.

#### *The Indian Constitutional Framework for Environmental Protection*

The Indian Constitution, promulgated in the year 1950, had no specific mention about environmental protection. While focusing on the construction of the nation-state, its unity and socio-economic development, the makers of the constitution were unable to foresee the environmental challenges faced by India in later years. The only indirect inclusion was made under Article 47, where it is stated that "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties." According to the above-mentioned context of legal knowledge base, "environmental protection did not even appear in the Constitution until 1976." However, with the enactment of the 42nd Amendment Act, 1976, there was an important insertion in the Constitution, namely Articles 48-A and 51-A(g). Article 48-A states, "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country." According to the knowledge base context, with this amendment, "Forests" and "Wildlife" have been deleted from the State List and added to the Concurrent List, which means that the Central government can make laws in respect of these areas. Thus, through this provision, the Constitution has

provided for a dual system, wherein there is both a directive principle for the state and a fundamental duty for citizens.<sup>6</sup>

But the most important development in the environmental constitutional system of India is the interpretation of Article 21, where "no person shall be deprived of his life or personal liberty except according to procedure established by law." With its successive progressive interpretations, the Indian Supreme Court included the concept of right to life in a much broader sense, whereby it interpreted the right to life as also including the right to a good environment. The knowledge base context indicates that "Article 21 of the Constitution has provided 'Right to Life', which includes right to clean environment as a Fundamental Right." This was essential because environmental protection was previously considered to be a directive principle that did not provide a legal remedy against any violation of the principles. Instead, the court held that the right to life under Article 21 is meaningless in the absence of clean air, potable water, and non-polluted environment.<sup>7</sup>

The knowledge base context further notes the Supreme Court's endorsement of both the precautionary principle and the polluter pays principle under Indian environmental law. It is important to note that the Supreme Court stated that "in view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country." In essence, the precautionary principle states that where there is an apprehension of serious and irreversible harm, the absence of scientific evidence should not serve as justification for delaying preventative measures to curb environmental damage. On the other hand, the polluter pays principle advocates for the principle that whoever causes pollution should compensate accordingly, rather than the community at large having to shoulder that responsibility. Together with the sustainable development and public trust doctrines, these two principles have been recognized judicially as forming part of the Indian constitutional framework. Under the latter doctrine, which has been

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<sup>6</sup> Rajasugunasekar, D., and R. Santhi Devi. "Legal framework in India to protect the environment." *Ecological environment: a new perspective* 468.486 (2022).

<sup>7</sup> Satapathy, Smita. "Constitutional Provisions for The Protection of Environment in India." *Zenodo (CERN European Organization for Nuclear Research)* (2022).

judicially applied in India, the government acts as a trustee of certain natural resources, including air, water, forests, and wildlife, among others.<sup>8</sup>

Apart from these constitutional provisions, India has also adopted a detailed statutory framework regarding environmental law. The first environmental legislation of India was enacted under Article 252 of the Constitution with the consent of several states. The Act refers to The Water (Prevention and Control of Pollution) Act, 1974. This was followed by the enactment of the Air (Prevention and Control of Pollution) Act, 1981, and Environment (Protection) Act, 1986. The Environment Act is an example of a statute enacted under Article 253 of the constitution that allows Parliament to legislate for the implementation of international treaties and conventions. The Environment Act was enacted under Article 253 since it did not require state consent as per the knowledge base context. Some recent developments in legislation regarding environmental laws in India include the passage of the Energy Conservation (Amendment) Act, 2022, which provides for the creation of a domestic carbon market. The recent amendment to the Forest Conservation Act, 2023, and Biological Diversity Act, 2023, are intended to streamline various exemptions and benefit sharing systems respectively. The most important step taken by the government includes the initiation of the drafting process for the Climate Change Act.<sup>9</sup>

Environmental dispute resolution mechanism has also undergone evolution. The National Green Tribunal Act, 2010, provided for the creation of a special tribunal, which will have knowledge and expertise in environmental matters, having original as well as appellate jurisdiction over all civil cases where substantial question of law or fact arises in relation to environment. In light of the knowledge base, it can be inferred that "the court also evolved the environment of the protection in these statutes." Moreover, under the new legislation, namely the Bharatiya Nyaya Sanhita, 2023, replacing the Indian Penal Code, the provisions of public nuisance and environmental offence will still exist, albeit on a smaller scale. At present, Indian courts possess various instruments, such as fundamental rights, directive principles, fundamental duties, international law principles and statutory measures, within its

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<sup>8</sup> Singh, Manjit, and Sahibpreet Singh. "Constitutional Dimensions of Environmental Jurisprudence in India: An Analysis." *Indian Constitution: Changing Paradigms* (2025): 114-125.

<sup>9</sup> Satria, Rahmad. "The Role of Constitutional Law in Environmental Protection: Government Obligations and Legal Frameworks for Sustainable Development." *Journal of Law and Humanity Studies* 2.2 (2025): 34-41.

constitutional structure for dealing with various environmental problems. The question that emerges as climate change litigation is becoming more common is whether the existing constitutional and legal structure would prove effective or not against the systemic challenge posed by climate change.

### *The Rise of Climate Change Litigation: A Global Overview*

The area of climate change litigation has become one of the most vibrant and fast-growing areas of law in the twenty-first century. From being a few sporadic instances in the early part of the decade, the practice has become widespread, with several hundred claims made in all continents based on different legal theories and requesting different remedies. The knowledge base context sheds light on some of the key principles behind the wave of litigation. Noting that international environmental law had entered a period where it is not just subserving the interest of individual States, but is also looking beyond them and their parochial concerns, toward the greater interests of humanity and planetary welfare. This awareness of the need for legal considerations to take account of planetary welfare has been central in allowing the courts to tackle issues that are global in nature, spanning across time and borders. Another insight gained from the context is the early understanding by the courts that conventional inter partes adversarial methods would not suffice in addressing the issue of "imminence of serious or catastrophic environmental danger, especially to parties other than the immediate litigants."<sup>10</sup>

There are some strategic classifications of climate litigation. First of all, there is government accountability litigation, which accuses the state of not establishing adequate emission reduction targets or implementing climate policies already established by it. The most famous example of such a lawsuit comes from the Netherlands when one organization together with 900 people managed to prove that state has the duty of care regarding greenhouse gas emissions based on human rights and European Convention on Human Rights. Court decided to order the government to reduce emissions by at least 25% until 2020 as compared to 1990 level. As a result, a wave of litigation occurred across Europe including Belgium, France, Germany and Ireland, where courts ordered governments either to establish more ambitious climate targets or implement current policies. Moreover, in Germany, constitutional court found state legislation about climate insufficient as too much

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<sup>10</sup> Setzer, Joana, and Catherine Higham. "Global trends in climate change litigation." *Snapshot Policy Report. Grantham Research Institute on Climate Change and the Environment, LSE* (2022).

pressure is put on future generations which contradicted the principle of intergenerational equity contained in Basic Law.<sup>11</sup>

The second kind of lawsuit is climate accountability litigation against large companies who cause emissions. This type of lawsuits includes torts against companies that emit greenhouse gases to climate change. They include torts, product liability, consumer laws, or even corporate disclosure statutes. A Dutch court recently ruled that a large oil company should cut its emissions globally by 45% from its emission level in 2019 before 2030, arguing that the oil company breached the duty of care in Dutch law and European Convention on Human Rights. In this landmark judgment, the court ruled a private corporation to bear responsibility for its portion of global emissions. This decision has set a precedent in climate accountability cases brought against other fossil fuel companies in other countries. It is very related to the knowledge base context's discussion about the importance of "procedural rules" in addressing the issue of "imminence of serious or catastrophic environmental danger."

Thirdly, climate litigation grounded in human rights perceives climate change as a threat to basic human rights, particularly the right to life, health, sustenance, water, and a safe environment. This strategy has been more influential in developing countries. The Supreme Court of Pakistan used the right to life, public trust doctrine, and the principles of sustainable development to force the Pakistani government to enforce its National Climate Change Policy. In another instance, a judge ruled that the Amazon rainforest is a being with legal rights and ordered the government to take steps against deforestation activities in it. As for the knowledge base context, much attention is devoted to the nature rights movement in it. According to the literature in this context, almost fifty years ago, a legal scholar questioned "the historical legal premise, which treated nature, trees, and other such constituents of nature as objects in the eyes of the law."<sup>12</sup> Indeed, it was quite revolutionary since now courts in Columbia have adopted a legal principle known as biocultural rights that combine cultural and environmental concerns due to the significant connections

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<sup>11</sup> Mayer, Benoit, and Harro van Asselt. "The rise of international climate litigation." *Review of European, Comparative & International Environmental Law* 32.2 (2023): 175-184.

<sup>12</sup> Savaresi, Annalisa, and Joana Setzer. "Rights-based litigation in the climate emergency: mapping the landscape and new knowledge frontiers." *Journal of Human Rights and the Environment* 13.1 (2022): 7-34.

between nature and native populations. Similarly, in Bangladesh, courts have recognized the legal rights of rivers.

The fourth form is litigation based on youth claims that the government's failure to act regarding climate change is a violation of their basic rights and discriminatory towards their generation. These lawsuits have been lodged not only in the USA but also in Canada, India, Pakistan, and in various other countries. Although many cases have been hindered by obstacles relating to standing, they have certainly been successful in drawing attention to the matter and pressurizing governments. The reference in the knowledge base context to the UN Conference on Environment and Development of 1992 (Rio Principles), the Convention on Biological Diversity, the UN Framework Convention on Climate Change, and the 2015 Paris Accord establishes the treaty regime that forms the legal backdrop for such litigation against both governments and corporations.<sup>13</sup> Limiting warming below 2°C, with an aspirational target of below 1.5°C, is the objective of the Paris Agreement which now guides such lawsuits on the adequacy of national targets. The IPCC reports, including the latest Sixth Assessment Report, provide the science behind these litigations.

There has been an emerging trend where courts have tried to develop procedural innovation amidst the proliferation of climate change cases. Some of the procedural innovations include establishing standing for future generations, admissibility of scientific evidence, amicus curiae briefs from scientists, as well as justiciability of decision making in policy matters involving competing priorities. Context in terms of knowledge base observes that the Aarhus Convention on access to information, public participation, and access to justice in environmental matters remains one of the important international instruments despite India not being a signatory to the convention. It is worth noting that the principles set forth under the convention have played a critical role in shaping environmental law across the globe. In general, the global overview shows a clear trend of willingness among the courts to treat climate change as a legal matter and to interpret the constitution and statutes in relation to the climate change issue. The trend paves way for an analysis of climate litigation in India, which is covered in the following section.

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<sup>13</sup> Magnano San Lio, Roberta, et al. "How antimicrobial resistance is linked to climate change: an overview of two intertwined global challenges." *International journal of environmental research and public health* 20.3 (2023): 1681.

### *Climate Litigation in India: Trends and Challenges*

There have been many cases of climate litigation in India which have taken place mostly via the novel means of public interest litigation through Articles 32 and 226 of the Constitution by way of writ petitions to the Supreme Court and the High Courts respectively. The Indian judiciary has always been receptive to such environmental litigation and has relaxed the rules regarding standing to permit people and groups to take matters to court even where future generations stand to be affected by environmental problems. The knowledge base context is an example of how the Indian courts have interpreted the right to life guaranteed in Article 21 to include the right to a wholesome environment as the basis for climate claims. This is shown by the procedural innovation of public interest litigation which has played a large part in bringing about "a change in the legal context; the problems of the poor, environmental pollution could now come before the courts." Furthermore, the courts have stated that "the law should keep pace with changing socio-economic norms; where a law of the past does not fit in the present context, the Court should evolve new law in a public interest litigation."<sup>14</sup>

National Green Tribunal has become an important judicial body in climate litigation in India. The NGT is a statutory body established under the National Green Tribunal Act, 2010, and has both original and appellate jurisdiction for civil matters where there is a substantial question of law or fact related to the environment or implementation of the law relating to the preservation and conservation of the environment, as well as other issues including enforcement of any legal right relating to environmental protection. The knowledge base context focuses on powers and functions of NGT, indicating that the NGT has original jurisdiction over "substantial question relating to environment," including disputes arising out of implementation of any of the Acts mentioned in Schedule I of the National Green Tribunal Act, which include Forest (Conservation) Act, Air Act, Water Act, and Environment Protection Act. There have been several decisions of NGT on various issues concerning coal mining, thermal power plants, pollution due to industries, deforestation, and air quality. Among other things, the context notes that NGT has ruled that "construction of any project in the forests cannot be allowed" where diversion of forest land has not been approved. The Tribunal has also acknowledged the "very important role" played by forests in sustaining ecological balance and the

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<sup>14</sup> Talukdar, Shuma. "Challenges in climate litigation in India: analyzing the legal framework and its effects on climate action." *Climate Litigation in a Changing World: A Comparative Analysis of Similarities, Challenges and Pathways*. Cham: Springer Nature Switzerland, 2026. 265-277.

environment, and it has ordered the clearance of encroachments and illegal constructions in forest lands.<sup>15</sup>

One of the major trends in climate litigation in India has been the recognition of rights of nature and the conferment of legal personality on natural objects. In the knowledge base context, there is a lot of information regarding the same, where it has been stated that the courts have developed a theory of "biocultural rights," which not only protect the ecosystems but also the indigenous population dependent upon them. According to the context, it has been observed that glaciers, rivers, forests, and the Himalayas have been declared as juristic persons, thereby ensuring legal rights for them and enabling litigations on their behalf. The court noted that there was an alarming retreat of glaciers, where NASA photographs indicated the significant receding of glaciers over 25 years because of pollution and climate change. The court "categorically held that the Himalayan glaciers, streams, rivers, water bodies, and forests are living entities and have the right to be protected." The background highlights that future cases can use this judgment to safeguard forests, rivers, and animals. The declaration of natural objects as legal personalities is a groundbreaking development in India's environmental law, as it enables the court to order the protection of the environment as a matter of its own concern, apart from being a consequence of human rights.<sup>16</sup>

Although these progressive developments have occurred, climate litigation in India faces some major hurdles as well. Firstly, there is the challenge of causation, wherein associating specific emissions or activities with real climate damages is tough, and courts have been wary of dealing with the complexities of climate science in their deliberations. The knowledge base background does not solve this problem per se; instead, it highlights the need for scientific proof through the use of NASA photographs and global reports cited by the courts. The second hurdle is that of justiciability, which refers to the courts' ability to adjudicate on policy issues involving conflicting considerations of economic development and climate protection. The Indian courts have traditionally shied away from such matters,

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<sup>15</sup> Kumar, Parul. "Striving Towards 'The Good Life': What Environmental Litigation in India Can Tell Us About Climate Litigation in the Global South: *Vedanta Ltd v. State of Tamil Nadu and Others*, Supreme Court of India." *Transnational Environmental Law* 13.3 (2024): 636-651.

<sup>16</sup> Ohdedar, Birsha. "Climate adaptation, vulnerability and rights-based litigation: broadening the scope of climate litigation using political ecology." *Journal of Human Rights and the Environment* 13.1 (2022): 137-156.

except when there has been a clear violation of fundamental rights. The final hurdle pertains to compliance, where despite court pronouncements, enforcement continues to be poor, and according to the knowledge base background, as well as the world in general, "conservation, however, always takes a back seat in times of economic stress." <sup>17</sup>

Yet another issue with the present environmental legislation is the limited scope of existing laws in the context of climate change. The Environment Protection Act, 1986, does not contain any provisions regarding greenhouse gas emissions, and the jurisdiction of the NGT under this law is restricted to only civil matters. Criminal liability for environmental crimes, which exists under the Bharatiya Nyaya Sanhita, 2023, is still limited and seldom used in relation to climate change. The proposed Climate Change Act will remedy many of these shortcomings, as it will provide for emission reduction targets, a carbon trading scheme, and climate governance rules. However, due to the delay in the passage of the Climate Change Bill, litigants must depend on other pieces of legislation such as the Energy Conservation (Amendment) Act, 2022, which provides for a domestic carbon market and mandatory energy efficiency standards, and the Forest (Conservation) Amendment Act, 2023, which extends the coverage of forests to include additional areas while providing some exceptions.

#### *Environmental Constitutionalism in Comparative Perspective*

Although the Indian approach to environmental constitutionalism is unique in its focus on judicial interpretation of fundamental rights, it is a part of the international trend towards constitutionalisation of environmental protection. Various countries have taken diverse approaches, ranging from explicit to implicit; from rights-based to duty-based; from anthropocentric to ecocentric. All these different approaches provide interesting lessons for the future development of the Indian constitutional approach to environmental protection. In the given context for legal knowledge base, we find a detailed comparison of various constitutions that have included provisions for constitutional statements on important issues. According to the given context, Article 24 of the Constitution of South Africa of 1996 states that everyone has a right "...to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that, inter alia, secure

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<sup>17</sup> Varma, Harikrishnan Ramesh, Rahul B. Hiremath, and Ravi Sharma. "Emerging pathways in climate litigation: Transnational justice and the Global South." *Global Environmental Change* 95 (2025): 103084.

ecologically sustainable development and use of natural resources while promoting justifiable economic and social development." This provision is interesting because of its comprehensive nature—it combines the individual right with an intergenerational aspect, the legislative requirement, the idea of sustainable development, and the recognition of economic and social development. The South African method has had an impact on the jurisprudence of other African nations as well and has served as a model for constitutions around the world. In India, the judicial process has accomplished the same thing; however, South Africa shows how important it is to actually spell things out in the constitution.<sup>18</sup>

The knowledge base also draws upon Article 127 of the Venezuelan Constitution, which states that "it is the right and duty of each generation to protect and maintain the environment for their own benefit and that of the future world." What makes this particular article unique is the fact that it speaks about the right and duty of future generations, as well as the idea that the protection of the environment must be seen not just from the perspective of one nation but on the scale of the entire world. Venezuela's Constitution features elaborate provisions concerning ecological balance and biological diversity, as well as the state's responsibilities to prevent pollution. According to the knowledge base, the purpose of mentioning these examples is to demonstrate how constitutional statements regarding crucial questions may differ. Some Constitutions feature strong statements while others have particular articles on environmental concerns, and still others grant legislative powers in accordance with the distribution of powers principle.<sup>19</sup>

The most revolutionary changes have been witnessed in Latin American countries in terms of environmental constitutionalism through the inclusion of rights of nature in the constitutions of Ecuador and Bolivia. The context of knowledge base elaborates this concept by asserting that "a legal expert has raised the historical legal premise, which viewed nature, trees, and such like elements of nature as objects before the eyes of the law" about fifty years ago. This assertion was adopted through the constitution of Ecuador of 2008, wherein for the very first time "nature or Pachamama has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution." Nature enjoys legal personality

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<sup>18</sup> Amirante, Domenico. "Environmental constitutionalism through the lens of comparative law: new perspectives for the anthropocene." *Environmental Constitutionalism in the Anthropocene*. Routledge, 2022. 148-167.

<sup>19</sup> Frasca, Mattia. "Environmental Constitutionalism: a comparative study of Canada and Italy." (2023).

according to the Ecuadorian constitution; furthermore, it enjoys a right to be restored and anyone can claim for these rights before public institutions. In Bolivia, there is a law entitled 'the law of the rights of Mother Earth' which recognizes nature as having rights, and those include rights to life, diversity of life, water, clean air, balance, and restoration. Knowledge Base Context: It is noted in the knowledge base context that Colombian courts have developed a notion of biocultural rights, which include both cultural and environmental considerations. This development acknowledges the relationship that exists between ecosystems and the indigenous community. The knowledge base context further adds that the Amazonian forest ecosystem has received legal rights, while rivers in Colombia, India, Bangladesh, and New Zealand have received legal personhood status. The emergence of the above development marks the beginning of a paradigm shift from an anthropocentric model of environmental protection to ecocentrism.

Environmental constitutional rights in the developed world have come in different forms. For instance, France has an Environmental Charter adopted in 2004 but accorded constitutional status in 2005. It provides citizens with the right to a balanced and healthy environment. Moreover, there is a duty to participate in the preservation of the environment and avoid or rectify any harm done to it. In Germany, even though there is no express environmental right under the Constitution, there is an amendment in 1994 which adds Article 20a to the Basic Law. It states that "The State shall protect the natural foundations of life and animals... in the constitutional order, by legislation and in accordance with law and justice, by the executive and the judiciary." It was used in a climate change case brought before the German Federal Constitutional Court in 2021. In the judgment, the court held that the constitutional obligation imposed on the state to protect the climate by Article 20a meant that the state must ensure equal distribution of emissions reduction obligations among generations. Otherwise, the present legislation unfairly disadvantaged future generations.<sup>20</sup>

From this comparative study, a number of lessons can be drawn for India. The first lesson is that an explicit constitutional recognition of the rights, duties, and principles of environmental law serves to provide clear moral guidance to the judiciary while reducing the need to rely on broad judicial interpretations of laws intended for a purpose other than what was initially envisioned by the framers of the

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<sup>20</sup> Viola, Pasquale. "From the Principles of International Environmental Law to Environmental Constitutionalism: Competitive or Cooperative Influences?." *Environmental Constitutionalism in the Anthropocene*. Routledge, 2022. 127-147.

constitution. The second lesson is that recognizing rights of nature and/or legal personhood for natural objects provides an effective means of ensuring that ecosystems get protected independently of their utility to humans, a notion which has already been embraced by Indian courts in their recognition of glaciers, rivers, and forests as juristic persons. Constitutional provision recognizing the idea of intergenerational equity, as seen in the case of South Africa, Venezuela, and Germany, also contributes to giving legal backing to the process of youth-led climate litigation and planning in the long run. The inclusion of a language of sustainable development in the constitutional text, seen in the South African approach, can contribute to balancing environmental concerns and economic development, as is necessary for a developing country such as India.

### **Conclusion**

The challenge of climate change is the issue of the time, and the law in general and constitutional law, in particular, must evolve to respond effectively to it. Throughout this paper, we have analyzed the theory and practice of environmental constitutionalism from their inception to their application in climate litigation in various countries, with the Indian legal system being examined particularly carefully. The analysis has shown many achievements but also some areas for improvement. As the knowledge base context states, it is time to "move further" after the development of various constitutional norms. India has one of the most progressive environmental laws of any nation. It is characterized by extensive interpretation of Article 21 of the Indian Constitution, the development of the precautionary principle, polluter pays principle, public trust doctrine, sustainable development, and the granting of legal personhood to glaciers, rivers, forests, and the Himalayas. The development of the procedural aspect, such as public interest litigation, has played "a large part in bringing about" the emergence of environmental accountability and bringing issues related to poor people and nature destruction to court.

The knowledge base also cautions that "conservation, however, always takes a back seat in times of economic stress." This is a clear indication that the effectiveness of constitutional and legislative safeguards is dependent on the extent of their enforcement. The challenges posed by climate litigation in India are several: proving causality from specific emissions to actual harm; the justiciable nature of certain policy considerations that involve balancing development with environmental preservation; the restrictive scope of laws like the Environment Protection Act of

1986, which does not explicitly address greenhouse gases; the delays in the National Green Tribunal; and the lack of a dedicated climate law to set mandatory emissions reductions and regulatory frameworks. Comparative law has shown that there are alternative approaches that India could emulate even as it develops its own strategy. The international community's declaration of the right to a healthy environment as a human right by the United Nations General Assembly in 2022 offers additional normative force.

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