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CLIMATE CHANGE LITIGATION: CAN COURTS SAVE THE PLANET?

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ABSTRACT

Climate change litigation has emerged as a powerful legal response to the growing inadequacy of political processes in addressing the climate crisis. This paper examines whether courts can play a meaningful role in compelling climate action through constitutional, human rights, and environmental law frameworks. It analyses the concept and evolution of climate litigation, with particular focus on India's judicial approach under Article 21 and the role of the National Green Tribunal, alongside comparative global developments such as Urgenda, Leghari, and recent European human rights jurisprudence. While acknowledging significant limitations relating to separation of powers, standing, and causation, the paper argues that climate litigation remains an important complementary tool in advancing accountability, intergenerational equity, and climate governance.

INTRODUCTION

As the world grapples with unprecedented environmental challenges, an emerging battleground has taken shape within courtrooms across the globe. Climate change litigation represents a bold legal experiment one that asks whether judges, armed with constitutional principles and environmental laws, can compel governments and corporations to take meaningful action against the climate crisis. This phenomenon has transformed from a fringe legal strategy into a mainstream tool of environmental advocacy, raising fundamental questions about the separation of powers, judicial authority, and the role of law in addressing existential threats to humanity. The urgency driving this litigation cannot be overstated. With scientific consensus confirming that human activities are driving dangerous climate change,¹ traditional

¹ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis* (Cambridge University Press 2021).

political processes have often proven inadequate in delivering the swift, comprehensive action that climate scientists deem necessary. In this context, climate litigation has emerged as both a last resort and a powerful catalyst for change, forcing courts to grapple with complex questions of intergenerational equity, human rights, and the limits of judicial intervention in policy matters.

CONCEPT OF CLIMATE CHANGE LITIGATION

Climate change litigation encompasses a diverse array of legal actions seeking to address climate change through judicial intervention. These cases typically fall into several categories: rights-based claims asserting that climate change violates fundamental human rights, tort-based actions seeking compensation for climate damages, procedural challenges to inadequate environmental assessments, and cases demanding stronger regulatory action from governments.²

The conceptual foundation of climate litigation often rests on three pillars. First, the attribution science that links specific climate impacts to human activities and, increasingly, to particular actors. Second, the human rights framework that recognizes environmental protection as fundamental to the enjoyment of basic rights. Third, the principle of intergenerational equity, which posits that present generations have obligations to preserve the environment for future ones.³

What distinguishes climate litigation from traditional environmental lawsuits is its scope and ambition. Rather than challenging discrete projects or seeking specific remedies for localized harm, climate cases often demand systemic changes in energy policy, regulatory frameworks, and governmental priorities. This expansive approach has led to both groundbreaking victories and significant judicial reluctance.

JUDICIAL APPROACHES IN INDIA

India's approach to climate litigation has been fundamentally shaped by the expansive interpretation of Article 21 of the Constitution, which guarantees the right to life and personal liberty. The Supreme Court's jurisprudence has consistently recognized that this right

² Joana Setzer & Lisa Benjamin, *Climate Litigation in the Global South: Filling in Gaps*, 114 *Am. J. Int'l L.* 56, 58-62 (2020).

³ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* 23-45 (1989).

encompasses the right to a clean and healthy environment, creating a robust foundation for environmental litigation.⁴

The landmark case of *MC Mehta v. Union of India* established crucial precedents for environmental protection, with the Court holding that the right to life includes the right to live in a pollution-free environment.⁵ This decision laid the groundwork for subsequent climate-related jurisprudence by recognizing that environmental degradation poses a direct threat to constitutional rights.

Similarly, in *Subhash Kumar v. State of Bihar*, the Supreme Court explicitly linked environmental protection to the right to life, stating that "the right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life."⁶ These decisions have created a constitutional mandate for environmental protection that extends logically to climate action.

The establishment of the National Green Tribunal (NGT) under the National Green Tribunal Act, 2010,⁷ has provided a specialized forum for environmental disputes, including climate-related matters. The NGT's jurisdiction over environmental protection and forest conservation has enabled more focused and technically informed adjudication of climate issues, though its specific engagement with comprehensive climate litigation remains limited. Recent developments suggest growing judicial receptiveness to climate arguments. Indian courts have begun recognizing climate change as a pressing environmental issue requiring urgent attention, though they have yet to issue the kind of sweeping climate orders seen in other jurisdictions.

GLOBAL PERSPECTIVE

The global landscape of climate litigation has been marked by several watershed moments that have reshaped legal thinking about climate change. The Dutch case *Urgenda Foundation v. State of the Netherlands* stands as perhaps the most significant early victory, where the Hague District Court ordered the Dutch government to reduce greenhouse gas emissions by at least 25% by 2020 compared to 1990 levels.⁸ The court grounded its decision in human rights law

⁴ Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 S.C.C. 608 (India).

⁵ MC Mehta v. Union of India, (1987) 1 S.C.C. 395 (India).

⁶ Subhash Kumar v. State of Bihar, (1991) 1 S.C.C. 598 (India).

⁷ National Green Tribunal Act, 2010, No. 19, Acts of Parliament, 2010 (India).

⁸ Urgenda Foundation v. State of the Netherlands, ECLI:NL:RBDHA:2015:7196 (Rechtbank Den Haag June 24, 2015) (Neth.).

and the duty of care owed by the state to its citizens, establishing a template for rights-based climate litigation worldwide.

The case was upheld on appeal, with the Dutch Supreme Court affirming that the government's inadequate climate policy violated its human rights obligations under the European Convention on Human Rights.⁹ This decision has inspired similar litigation across Europe and beyond, demonstrating the potential for courts to mandate specific emissions reductions.

In the United States, *Juliana v. United States* represents one of the most ambitious climate cases ever filed, with young plaintiffs arguing that the federal government's actions promoting fossil fuel use violate their constitutional rights to life, liberty, and property.¹⁰ While the case has faced significant procedural hurdles, it has succeeded in keeping constitutional climate arguments in the public discourse and has inspired similar youth-led litigation globally. Pakistan's *Leghari v. Federation of Pakistan* marked a significant victory in the Global South, where the Lahore High Court recognized that climate change posed a threat to fundamental rights and ordered the government to establish a climate change commission and implement the National Climate Change Policy.¹¹ This decision demonstrated that climate litigation could succeed even in jurisdictions with less developed environmental jurisprudence.

More recently, the European Court of Human Rights' decision in *Verein Klima Seniorinnen Schweiz and Others v. Switzerland* has expanded the scope of climate rights under international human rights law, ruling that Switzerland's inadequate climate policies violated the applicants' rights under the European Convention on Human Rights.¹² This decision establishes important precedents for transnational climate litigation and the extraterritorial application of human rights obligations.

LIMITATIONS AND CRITICISMS

Despite notable successes, climate litigation faces substantial limitations and criticisms that constrain its effectiveness as a tool for addressing climate change. The most fundamental challenge lies in the separation of powers doctrine, which limits judicial authority to intrude upon executive and legislative functions. Courts are often reluctant to issue orders that effectively require governments to reshape energy policy or allocate budgetary resources,

⁹ *State of the Netherlands v. Urgenda Foundation*, ECLI:NL:HR:2019:2007 (Hoge Raad Dec. 20, 2019) (Neth.).

¹⁰ *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020).

¹¹ *Ashgar Leghari v. Federation of Pakistan*, W.P. No. 25501/2015 (Lahore High Court Green Bench Sept. 4, 2015) (Pak.).

¹² *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App. No. 53600/20 (Eur. Ct. H.R. Apr. 9, 2024).

viewing such matters as beyond their institutional competence.¹³ Standing requirements present another significant hurdle, particularly in jurisdictions with restrictive rules about who can bring climate cases. The diffuse and long-term nature of climate harm makes it difficult for plaintiffs to demonstrate the direct, particularized injury often required for standing, though some courts have begun to relax these requirements for climate cases.

Attribution challenges compound these difficulties. While climate science has advanced significantly in linking specific emissions to climate impacts, establishing legal causation between particular defendants' actions and specific harms remains complex. This is particularly problematic in tort-based climate litigation, where plaintiffs must demonstrate clear causal chains between defendants' conduct and their injuries.

Moreover, critics argue that climate litigation may actually impede effective climate action by creating an illusion of progress while failing to deliver meaningful emissions reductions. The slow pace of judicial proceedings and the limited enforceability of many climate judgments raise questions about whether litigation is an efficient use of limited advocacy resources.¹⁴

There are also democratic legitimacy concerns about unelected judges making policy decisions that properly belong to elected officials. This criticism gains force when courts issue broad injunctions or mandates that effectively require governments to restructure their energy systems or economic priorities.

WAY FORWARD

The future of climate litigation will likely depend on several key developments. First, continued advances in attribution science will strengthen the evidentiary foundation for climate cases, making it easier to establish clear links between specific emissions and particular harms.

Second, the evolution of human rights law to more explicitly encompass climate protection will provide stronger legal foundations for rights-based climate cases.

Courts must also develop more sophisticated approaches to remedial questions in climate cases. Rather than issuing broad mandates that may exceed judicial competence, courts could focus on procedural remedies that ensure adequate consideration of climate factors in governmental

¹³ Michael Gerrard & Gregory Wannier, *Obstacles to Enforcement of Climate Change Judgments*, in *Threatened Island Nations: Legal Implications of Rising Seas and a Changing Climate* 367, 370-75 (Michael Gerrard & Gregory Wannier eds., 2013).

¹⁴ Brian Preston, *The Contribution of the Courts in Tackling Climate Change*, 28 *J. Envtl. L.* 11, 35-40 (2016).

decision-making, or declaratory judgments that clarify legal obligations without prescribing specific policy outcomes.

The integration of intergenerational equity principles into legal frameworks represents another promising avenue. Laws and constitutional provisions that explicitly recognize the rights of future generations could provide stronger foundations for climate litigation while addressing democratic legitimacy concerns.

International cooperation will be crucial for addressing the transnational nature of climate change. The development of international legal frameworks that facilitate climate litigation across borders could enhance the effectiveness of judicial climate action. Finally, climate litigation must be understood as one component of a broader strategy for climate action rather than a panacea. The most successful climate litigation has occurred in conjunction with strong political movements and policy advocacy, suggesting that legal action alone cannot solve the climate crisis.

CONCLUSION

Climate change litigation represents both the promise and the limits of law as a tool for addressing existential challenges. While courts cannot single-handedly save the planet, they can play a crucial role in clarifying legal obligations, compelling governmental action, and providing forums for marginalized voices in climate governance.

The evolution of climate litigation from a novel legal theory to an established feature of environmental law reflects both the urgency of the climate crisis and the adaptability of legal systems to address new challenges. As the climate emergency deepens, courts worldwide will face increasing pressure to grapple with questions that blur traditional boundaries between law and policy, present and future, and national and global responsibility.

The ultimate measure of climate litigation's success will not be the number of favorable judgments or the elegance of legal reasoning, but whether judicial intervention contributes to the rapid decarbonization necessary to prevent catastrophic climate change. In this light, climate litigation represents not an end in itself, but a means to the larger goal of creating a sustainable and just world for current and future generations. The courts alone cannot save the planet, but they may yet prove essential allies in humanity's greatest challenge.