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CLIMATE LITIGATION AND ENVIRONMENTAL CONSTITUTIONALISM: A COMPARATIVE ANALYSIS OF INDIA, THE GLOBAL SOUTH, AND NORTH

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Abstract

This paper analyses climate litigation and environmental constitutionalism of the Global South (India, Brazil, South Africa) alongside the Global North (EU, USA, Germany), and makes the case that differing legal frameworks constitute more profound structural inequalities of climate governance. Using case studies, the author shows that Southern courts give primacy to community-based, action-oriented claims, such as pollution being linked to the right to life under Article 21 of the Constitution, while Northern systems look more to formalistic compliance with the law by pouring procedural requirements like emission targets into a statute book. At the same time, there are systemic gaps: the South has severe enforcement deficits, as evidenced by India's National Green Tribunal's abysmal funding, while the North has to contend with rampant legalised irresponsibility, demonstrated by Shell's irresponsibility for the oil spills in the Niger Delta.

The research highlights developing directions– youth-driven lawsuits (*Held v. Montana*, 2023), Indigenous advocacy (Petition of Torres Strait Islanders to the UN), and Rights of Nature (*Atrato River Case of Colombia*)– that fill this gap. It recommends a hybrid approach that combines the Southern emphasis on distributive justice with Northern focus on the institutional depth, framing constitutional change (e.g. climate rights nurturing), judicial capacity development (UNEP Judicial Initiative), and transnational discourse (India's citation of *Urgenda*) activism. This paper argues that courts can integrate ecological responsibility and social justice, and through this transformation, shift the focus of climate litigation to one that fosters intergenerational and interspecies justice: the eco-centric form of constitutionalism.

Keywords– Climate change litigation, Environmental constitutionalism, Global South, India, Rights of Nature, Transnational Justice.

I. Introduction

The climate emergency is no longer just a scientific challenge, and is becoming one of the most important constitutional and legal arguments of the 21st century. Environmental rights, governmental responsibilities, and business liability are being viewed more and

more as a matter of constitutional law, which is fuelling a new direction of climate litigation¹⁸³⁸. This is evident from the Netherlands' seminal case of *Urgenda*¹⁸³⁹ where the court ordered government's emission reductions, or Pakistan's *Leghari v. Federation of Pakistan* (2015)¹⁸⁴⁰ where a court found the failure to address climate

¹⁸³⁸ United Nations Environment Programme, *Global Climate Litigation Report: 2023 Status Review* (DEL/2550/NA, Law Division, UNEP 2024)

¹⁸³⁹ *Urgenda Foundation v State of the Netherlands*, Supreme Court of the Netherlands, 20 December 2019, ECLI:NL:HR:2019:2007 (The Netherlands)

¹⁸⁴⁰ *Leghari v. Federation of Pakistan*, Lahore High Court, 4 September 2015, W.P. No. 25501/2015 (Islamic Republic of Pakistan)

change to be a breach of fundamental rights. Both cases signal a move towards litigating upon climate governance. The phenomenon of judicial activism demonstrates the growing legal and political power of environmental constitutionalism, which refers to the integration of environmental rights and obligations within constitutional texts, and underscores its importance as a mechanism for achieving climate justice.¹⁸⁴¹

Key Legal Concepts

1. Climate changes suits: Actions intended to penalize states, firms or people for using resources irresponsibly or for not doing sufficient work in their activities in mitigating the fallout of the activities them self or accommodating for them. ' It covers the sphere of constitutional issues (for instance, it includes rights claims), administrative issues (for example, it includes permits for fossil fuels burning), and judicial issues (like it includes tort claims for damages inflicted by climate changes)

Central Argument

The analysis of climate litigation in the Global South – exemplified by India's public interest litigation (PIL) system, and Latin America's Buen Vivir principles – suggests that such actions stem from community-focused, rights-based claims to correct inequitable distributions. The Global North, on the other hand, focuses on institutional responsibility and procedural adherence, which, in the case of the EU, centres around achieving emission goals, and in the case of shareholder litigation, defers to the corporation.¹⁸⁴² Regardless of these observations, this paper seeks to identify systemic gaps such as, enforcement deterioration in the South, and lack of accountability, or, corporate impunity in the North. Then, it proceeds to construct a paradigm

that blends the South's rightist approach with the North's adherence to discipline in order to unite in the climate justice struggle.¹⁸⁴³

Comparative and Doctrinal Framework

This paper uses comparative legal methodology for the analysis of climate cases and their relevant constitutional contexts in three jurisdictions:

1. Global South: India (judicial activism under Article 21) Brazil (deforestation lawsuits) and South Africa (Section 24 litigation).
2. Global North: Netherlands (Urgenda doctrine), other Europe (Germany's constitutional climate cases), and The USA (youth-led cases that were dismissed).¹⁸⁴⁴

Qualitative data is obtained from landmark judicial decisions, the constitution, and other documents such as UNEP's Global Climate Litigation Report 2023. The research zeroes in on the post-2000 contemporary climate litigation cases while expecting to utilize some anterior instances (e.g., MC Mehta v. Union of India)¹⁸⁴⁵

Why This Matters

Given that the Global South is weathering the impacts of climate change the most despite their low contribution to historical emissions, their courts are proving to be arenas of intergenerational equity and climate reparations.¹⁸⁴⁶ Conversely, 92% of excess CO₂ emissions since the industrial revolution can be attributed to the Global North which is now receiving litigation cases demanding increased accountability to the harms they have brought and continue to impose.¹⁸⁴⁷ Because of this, the need to reconceptualize environmental constitutionalism as a global project is the is the

¹⁸⁴¹ May JR and Daly E, *Global Environmental Constitutionalism* (first published 2014, Oxford University Press 2014)

¹⁸⁴² Kotzé LJ, 'The Anthropocene, Earth system vulnerability and socio-ecological injustice in an age of human rights' (2019) 10(1) *Journal of Human Rights and the Environment* 62
<<http://dx.doi.org/10.4337/jhre.2019.01.04>> accessed 31 March 2025

¹⁸⁴³ The Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report*. (Sixth Assessment Report, IPCC 2023)

¹⁸⁴⁴ Boyd DR, *The Environmental Rights Revolution A Global Study of Constitutions, Human Rights, and the Environment* (University of British Columbia Press 2011)

¹⁸⁴⁵ *MC Mehta v Union of India*, Supreme Court of India, 20 December 1986, 1987 SCR (1) 819 (India)

¹⁸⁴⁶ Ganguly S, *Deliberating Environmental Policy in India: Participation and the Role of Advocacy* (Taylor & Francis Group 2015)

¹⁸⁴⁷ Hickel J, 'The World's Sustainable Development Goals Aren't Sustainable' (*Foreign Policy*, 30 September 2020)
<<https://foreignpolicy.com/2020/09/30/the-worlds-sustainable-development-goals-arent-sustainable/>> accessed 30 March 2025

rationale sufficient.¹⁸⁴⁸ This will integrate distributive justice with fairness.

II. Review of Existing Scholarship and Legal Commentary

1. Existing Research on Climate Litigation

As new methods of climate governance are developed, climate litigation has shifted from a one-dimensional legal tactic into a global phenomenon. In its early years, it was taught as a mechanism for compliance with US environmental law, including the Clean Air Act¹⁸⁴⁹. With the signing of the Paris Agreement, there has been a marked increase in post-2015 rights-based claims, particularly in the Global South¹⁸⁵⁰. *Oposa v. Factoran* (1993)¹⁸⁵¹ in the Philippines for example was the first case to recognize intergenerational equity as a legal right and subsequently influenced *Leghari v. Pakistan* (2015).³

In the Global North, more attention has been paid to the questions of state accountability. The *Urgenda Foundation v. Netherlands* (2019)² case proved that courts are willing to enforce emission reduction targets, a trend which can also be observed in Germany with *Neubauer v. Germany* (2021)¹⁸⁵² where the Federal Constitutional Court ruled that climate policy inaction is a violation of children and youth's fundamental rights and freedoms. Whether or not courts engage in "political questions" like in *Juliana v. United States* (2020) is now the topic of fierce scholarly debate.¹⁸⁵³

2. Gaps in Scholarship

There remain three important gaps that pose contending problems to the growing interest in climate litigation.

1. Procedural Barriers to Global South Access:

Most Southern jurisdictions still suffer from systemic undersupply of justice,¹⁸⁵⁴ despite significant judicial milestones in India the MC Mehta case comes in the mind. India's National Green Tribunal (NGT) is in sore need of judges, too¹⁸⁵⁵; its 40% vacancy rate in judgeships does not make for timely environmental decision making.

2. Failure to Over Reliance Southern Innovation:

Southern solutions, for instance, Colombia's Atrato river case from 2016¹⁸⁵⁶ wherein the court awarded legal person status to rivers, is often neglected in the region's academic discourse unlike Northern's *Urgenda* case that dominates. Such biases sustain the falsehood of there being a deficit of "mature" climate jurisprudence in the Global South.

3. Corporate Accountability: The gif company liability trend is gaining traction in the Northern courts, often illustrated with *Milieudefensie v. Shell* (2021)¹⁸⁵⁷; Southern courts, on the other hand, have been beastly trying to assert jurisdiction over Transnational Corporations like Chevron who has notoriously avoided responsibility for crude oil spills in the Amazon Basin of Ecuador. In *Milieudefensie*, the Hague District Court held that Shell owed a duty of care not only to Dutch citizens but also to other affected populations, thus widening the applicability of domestic tort law and its extraterritorial reach. This ruling was grounded in climate obligations and human rights governance where any sovereign state and subject of international law is free to join multilateral agreements—imposing a binding target on reduction of emissions by an entity which had never before been done legally is

¹⁸⁴⁸ Sands P, 'Climate Change and the Rule of Law: Adjudicating the Future in International Law' (2016) 28(1) *Journal of Environmental Law* 19 <<http://dx.doi.org/10.1093/jel/eqw005>> accessed 31 March 2025

¹⁸⁴⁹ *The Making of Environmental Law* (University of Chicago Press 2006)

¹⁸⁵⁰ Setzer J and Higham C, *Global trends in climate change litigation: 2021 snapshot* (Policy Report 2021, Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science 2021)

¹⁸⁵¹ *Oposa v. Factoran*, Supreme Court of the Philippines, 30 July 1993, 224 S.C.R.A. 792 (1993) (Philippines)

¹⁸⁵² *Neubauer et al. v Germany*, German Constitutional Court, 24 March 2021, 1 BvR 2656/18 (Germany)

¹⁸⁵³ *Juliana v United States*, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 17 January 2020, 947 F.3d 1159 (9th Cir. 2020) (United States of America)

¹⁸⁵⁴ Gill G, *Environmental Justice in India The National Green Tribunal* (Routledge 2017)

¹⁸⁵⁵ 'No single judge bench can hear cases at NGT: SC | India News - Times of India' (*The Times of India*, 31 January 2018)

<<https://timesofindia.indiatimes.com/india/no-single-judge-bench-can-hear-cases-at-ngt-sc/articleshow/62725740.cms>> accessed 27 June 2025

¹⁸⁵⁶ *Center for Social Justice Studies et al. v. Presidency of the Republic et al.*, Constitutional Court of Colombia, 10 November 2016, T-622/16 (Colombia)

¹⁸⁵⁷ *Milieudefensie v Royal Dutch Shell*, District court of The Hague, 26 May 2021, ECLI:NL: RBDHA:2021:5337 (The Netherlands)

unprecedented. This development reflects a more progressive judicial attitude where it is possible to assert liability against parent firms for harmful impacts resulting from the operational domain and harm forecasting within their subsidiaries or value chains. In contrast, the Global South regions, which suffer from the most severe forms of environmental harm, often encounter barriers such as lack of enforcement mechanisms and corporate opposition when trying to impose liability. The Chevron case¹⁸⁵⁸ illustrates this well: Although the plaintiffs won a positive judgment, they could not enforce it internationally because of jurisdictional and arbitral constraints. The inequitable distribution of political and economic power coupled with institutional weakness in the Global South reveals why there is such a stark absence of corporate accountability.

3. Theoretical Frameworks

This article applies three concurrent theories in order to study the patterns of climate litigation:

1. Climate Justice Constitutionalism (May & Daly): This approach argues that to accommodate climate change's differential impacts, constitutions ought to include provisions for distributive justice⁴. For example, in India, Article 21 (Right to Life) has been judicially extended to encompass the right to clean air and water, thus allowing lower socio-economic groups to sue the polluters.¹⁸⁵⁹

2. Ecological Rule of Law (Kotzé): Kotzé states that the rationality of a legal system is demonstrated by its provision for governance of the environment. Ecological considerations should supersede economic expansion⁵. An example is Germany's 2021 Climate Protection Act, which aims for the country to reach carbon neutrality by 2045.¹⁸⁶⁰

3. Intergenerational Equity (Weiss): This principle calls for states to be guardians of natural resources as a legacy to later generations¹⁸⁶¹. It is what drives cases such as *Held v. Montana* (2023) in which the American judiciary came to grant legal standing to children in lawsuits regarding climate damage.¹⁸⁶²

4. Bridging the North South Divide

There are new calls for a transnational judicial dialogue aimed at unifying the climate change jurisprudence. For instance, Urgenda's reference by the Indian Supreme Court in *Rajendra Singh v. Union of India* (2020) demonstrates willingness to accept cross-jurisdictional influences. On the contrary, some warn against "legal transplants" that do not consider the socio-economic context.

III. Environmental Constitutionalism: Global Trends

The South and North differ considerably on socio-political environmental responsibilities recognition strategies, and the same is reflected on the Global South. In the populous nations of the South, India is a good example of a state that follows a rights-based approach to environmental constitutionalism. The supreme court of India has provided wide meaning to Article 21 of the Constitution (the fundamental right to life), and now includes within it 'right to live in a pollution free environment' as was confirmed in *Subhash Kumar v. State of Bihar* (1991)²². This enabling jurisprudence has facilitated notable decisions like *MC Mehta v. Union of India* (1987)⁸ where the Court ordered industrial establishments along the Ganges River to use pollution abatement technologies, thus grounding a constitutional morality. Aside from justiciable rights, there are provisions in India's Directive Principles of State Policy (Article 48A) and Fundamental Duties of the State and Citizens (Article 51A(g)) that seek to protect the

¹⁸⁵⁸ Pigrau A, 'The Texaco-Chevron case in Ecuador: Law and justice in the age of globalization' (2014) 5(1) *Revista Catalana de Dret Ambiental* <<http://dx.doi.org/10.17345/rcda1437>> accessed 30 March 2025

¹⁸⁵⁹ *Subhash Kumar v State of Bihar*, Supreme Court of India, 9 January 1991, [1991] 1 S.C.R. 5 (India)

¹⁸⁶⁰ 'Federal Climate Action Act (Bundes-Klimaschutzgesetz – KSG)' (*Gesetze im Internet*) <www.gesetze-im-internet.de/englisch_ksg/englisch_ksg.html> accessed 30 March 2025

¹⁸⁶¹ Weiss EB, *In fairness to future generations: International law, common patrimony, and intergenerational equity* (United Nations University 1988)

¹⁸⁶² *Held v State of Montana*, First Judicial District Court, Lewis and Clark County, Helena, 14 August 2023, No. CDV-2020-307 (USA)

environment but are not enforceable. In *State of Uttarakhand v. Mohd. Salim* (2020)¹⁸⁶³, for example, these provisions have been purposely used in public interest litigation (PIL), where the court has reiterated the need for a collective approach to the claimed environmental protection. On the other hand, a lack of express constitutional climate rights leads to attempts by courts to ascribe existing climate harms to other frameworks, which results in obscurities.

Latin America presents an additional rights-oriented framework in the form of the *Buen vivir* principle, which was incorporated into the constitutions of Ecuador and Bolivia in 2008 and 2009 respectively. Indigenous cosmologies inform the *Buen Vivir* philosophy which recognizes nature or Pachamama as a being with rights and places the preservation of ecological balance over extractive development¹⁸⁶⁴. In Colombia, the Constitutional Court invoked this principle in the *Atrato River Case* (2016), granting the river legal personhood and ordering its protection through a collaborative guardianship scheme with Indigenous peoples. A similar approach is found in South Africa where Section 24 provides for a right to an “environment not harmful to health or well-being,” which is implemented through proactive judicial activism such as *Fuel Retailers Association v. Director-General* (2007)¹⁸⁶⁵, where environmental protection was regarded as a matter of social justice. There remain, however, systemic issues. The National Green Tribunal (NGT), which is supposed to resolve environmental disputes, is fully handicapped with a 40% judicial vacancy rate and is unable to administer justice in more than 60% of cases¹⁸⁶⁶. In Brazil, the judiciary’s efforts to stop the deforestation of the Amazon in the face of

Bolsonaro’s regime was met with politically charged resistance, highlighting the fragility of environmental constitutionalism in the face of authoritarianism.¹⁸⁶⁷

In contrast, the Global North favours the procedures and institutions more. Germany’s amendment to its constitution in 2021 that included an ‘obligation to protect the climate’ is one example. The Federal Constitutional Court’s ruling in *Neubauer v. Germany* (2021) made it clear that there had been this shift when it ruled that targets for reducing emissions were so low as to be inadequate and, therefore, violated the fundamental freedoms of the youth by overly burdening the future generations. *Affaire du Siècle* (2021)¹⁸⁶⁸ where, because of the government’s failure to fulfil its climate obligations, it was sued and fined €1billion, had a basis in France’s five-article Constitution (2005) on Environment, which had 2008 constitutional status. The European Union’s Treaty of the Functioning of the European Union (TFEU) places even greater emphasis on environmental governance in its Article 191 which directs the incorporation of climate considerations into all policies. There is, however, a constant tendency to ignore the poor and powerless in this procedural emphasis. As an example, the EU puts primary focus on compliance with regulations on emission reporting, completely ignoring the negative impacts of such a focus as the carbon tax, which hits low-income families hardest.

The United States does not have any constitutional rights pertaining to the environment, and instead relies on statutory measures like the Clean Air Act. In the case *Massachusetts v. EPA* (2007)¹⁸⁶⁹, the Supreme Court accepted the treatment of CO₂ as a

¹⁸⁶³ *State of Uttarakhand v Mohd Salim*, High Court of Uttarakhand, 20 March 2017, (2020) SCC OnLine SC 204. (India)

¹⁸⁶⁴ “The Ecuadorian Constitution was the first national constitution to give rights to nature | FDSD’ (FDSD) | ...linking democracy and sustainable development) <<https://fdsd.org/ideas/ecuadorian-constitution-rights-to-nature/#:~:text=Article%2071,structure,%20functions%20and%20evolutionary%20processes.>> accessed 31 March 2025

¹⁸⁶⁵ *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* (CCT67/06) [2007] ZACC 13; 2007 (10) BCLR 1059 (CC); 2007 (6) SA 4 (CC) (7 June 2007)

¹⁸⁶⁶ ‘Is red-tapism leading to National Green Tribunal's premature death?’ (*India Today*, 26 August 2017) <www.indiatoday.in/mail-today/story/national-green-tribunal-high-court-bjp-1031669-2017-08-26> accessed 27 June 2025

¹⁸⁶⁷ Amazon Watch, ‘Complicity in Destruction III’ (2020) <<https://amazonwatch.org/assets/files/2020-complicity-in-destruction-3.pdf>> accessed 30 March 2025

¹⁸⁶⁸ (*Climate Change Litigation Databases - Sabin Center for Climate Change Law*) <https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20211021_NA_decision-2.pdf> accessed 31 March 2025

¹⁸⁶⁹ *Massachusetts v. EPA*, Supreme Court of the United States, 2 April 2007, 549 U.S. 497 (USA)

pollutant under existing law, yet avoided providing constitutional justification as reasoning, which reveals a judicial hesitance. Such reluctance is made evident in *Juliana v. United States* (2020), wherein portions of youth plaintiffs' arguments were declared as non-justiciable "political questions". On the other hand, Northern corporations take advantage of jurisdictional gaps to not take responsibility for transboundary damage. The Global North's failure to constitutionalize extraterritorial liability is evident from Shell's activities in the Niger Delta in Nigeria which resulted in massive oil pollution.¹⁸⁷⁰

Comparative lacunae further delineate systemic inequities. Lack of funding is prevalent in the Southern world – India spends under 0.1% of its GDP on environmental governance – as the North shirks responsibility by outsourcing 23% of their emissions to Southern supply chains.¹⁸⁷¹ Germany embodies these phenomena with the €4.35 billion "elite capture" fossil fuel contract compensation spent under their 2021 Coal Phaseout Law.¹⁸⁷² These different perspectives demonstrate the necessity of constitutional arrangements that reconcile the South's rights-based approach to political action with the North's legalistic approach.

IV. Climate Litigation Trends: A Comparative Analysis

Climate litigation has become one of the foremost fronts for realizing custodial governance obligations on the environment. In the Global South, litigation of issues of this nature is often pegged on grassroots movements and public interest litigations, which carry a more liberal undertone. For example, India's judiciary has been at the frontier of this phenomenon with its broad interpretations of Article 21. The *MC Mehta v. Union of India* (1986) case concerning

the pollution surrounding the Taj Mahal was one of the first instances of exercising constitutional provisions for protecting cultural and environmental heritage by mandating the relocation of polluting industries and a transition to cleaner fuels within the Taj Trapezium Zone. The same trend was followed in the judgment of *Virender Gaur v. State of Haryana* (1995)¹⁸⁷³, which granted the right to life, and in doing so, granted protection to the environment, thereby necessitating planning of cities with an ecological balance. All these cases illustrate a tendency in the Global South where litigation is aimed at addressing pressing socio-ecological problems like pollution in Delhi or deforestation in the Amazon. In Brazil, *PSB V. Brazil* (2020)¹⁸⁷⁴ contested the Bolsonaro administration's attacks on the Amazon Fund, which was a key policy for preserving the rainforest, and the Supreme Court ruled that the failure to act to ameliorate the climate amounted to a breach of the constitutional obligation to safeguard the environment. In Africa, the case of *Earthlife Africa V. Minister of Environmental Affairs* (2017)¹⁸⁷⁵.

The Global South's dependence on public interest litigation (PIL) demonstrates how it has come to democratize legal standing. In *Leghari v. Pakistan* (2015), a farmer was able to convince the Lahore High Court to order the government to enforce its National Climate Change Policy by arguing that the lack of action on climate issues breached fundamental rights to life, dignity, and property. In the case of *Pandey v Union of India* (2017), a nine-year-old petitioner brought forth a case seeking more ambitious climate action which invoked Article 21 of the Constitution. This illustrates the growing trend of youth-led constitutional approaches within Indian climate litigation

This is quite different from the Global North, where standing criteria are generally more

¹⁸⁷⁰ Amnesty International, *NEGLIGENCE IN THE NIGER DELTA* (AFR 44/7970/2018, Amnesty International 2018)

¹⁸⁷¹ United Nations Environment Programme, 'Environmental Rule of Law: First Global Report' (*Environmental Rule of Law: First Global Report*, 6 July 2019) <www.unep.org/resources/assessment/environmental-rule-law-first-global-report> accessed 27 June 2025

¹⁸⁷² Ember Energy, 'Germany's flawed assumptions behind €4.4bn lignite compensation' (*Germany's flawed assumptions behind €4.4bn lignite compensation*, 16

May 2021) <<https://ember-energy.org/latest-insights/germanys-flawed-assumptions-behind-e4-4bn-lignite-compensation/>> accessed 27 June 2025

¹⁸⁷³ *Virender Gaur v State of Haryana* (1995) 2 SCC 577 (SC India).

¹⁸⁷⁴ *PSB v Brazil* (2020) ADPF 760 (Supreme Federal Court of Brazil).

¹⁸⁷⁵ *Earthlife Africa v Minister of Environmental Affairs* (2017) 65662/16 (South Africa High Court).

demanding and thus restrict access to justice. A case in point is the refusal of the U.S. Supreme Court to hear *Juliana v. United States* where young people were suing the government to force it to take action on climate change. Most of the Justices dismissed the case as a non-justiciable “political question”

In the Global North, climate change litigation is primarily focused on the responsibility of institutions for their actions and inactions, and their citizenship. These are illustrated by the *Urgenda Foundation v The Netherlands* (2019). The Dutch Supreme Court’s ruling mandated the government to lessen emissions by 25% by 2020. The court justified this ruling within the context of the European Convention on Human Rights (ECHR) alongside the State’s duty of care. This ruling opened the door for further similar litigation in other European nations, for example *Neubauer v Germany* (2021) where the Federal Constitutional Court was compelled to order reduced emission cuts in order to conserve the freedom of future generations.

Nonetheless, both regions grapple with inherent issues. Lack of enforcement in the Global South severely undermines judicial victories. The NGT in India is politically obstructed and perpetually underfunded, resulting in 40% of its decisions remaining unimplemented as of 2023¹⁸⁷⁶. In Brazil, the PSB deforestation ruling decreases rates of deforestation but does not actually solve the problem, demonstrating the gap between legal mandates and local reality. The Global North is not only burdened with sustaining a policy of corporate forgiveness. Although Northern corporations are externally harming the Global South, the case of *ClientEarth v. Shell* was a huge step forward. Jurisdictional abuse and lackadaisical enforcement in Nigeria have enabled Shell, who has caused over 16,000 oil spills in the Niger Delta region since 1976, to escape meaningful accountability.

It appears that there is a slow amalgamation of methods due to new developments. In Sharma

v Minister for Environment (2021), the Federal Court of Australia determined, at least provisionally, that the government had a duty of care to young people in relation to avoiding harmful impacts of climate change. Though this decision was later reversed, it ignited substantial discussion concerning fiduciary responsibilities relating to climate issues.

In yet another, youth-driven case, *Held v. Montana* (2023)—which involved US students claiming a constitutional right to a “clean and healthful environment” – mirrors that of the Global South.

In the same fashion, the Indian Supreme Court’s decision in *in re: Protection of Great Indian Bustard*¹⁸⁷⁷ in 2023 referred to the *Urgenda* case’s solar energy expansion rationale as an example of the allowance of expansive cross-jurisdictional teaching. All of these cases suggest the outline of a new form of South African climate change law which captures the latter’s emphasis on distribution and the former’s focus on procedure.

V. Lacunae in Contemporary Legal Systems

The procedural pursuit of climate justice through litigation and constitutionalism is bedevilled by systemic shortcomings which tell a much more profound and complex structural imbalance. In the South, strong political bias and rampant corruption invariably work against the enforcement of judicial instructions. This has been the predicament of India’s National Green Tribunal (NGT), which was formed to resolve environmental conflicts judiciously. Even though the NGT issued a landmark ruling in 2019 to stop the deforestation of Aarey Forest in Mumbai, it suffers from chronic underfunding and a staggering vacancy rate of 40%, which leads to over 60% of its decisions remain unimplemented.

Likewise, Brazil’s judiciary has also suffered significant losses, although it was constitutionally entitled to defend the Amazon, during the Bolsonaro administration. After the

¹⁸⁷⁶ National Green Tribunal, Annual Report 2022-23 (2023) 22.

¹⁸⁷⁷ *In re: Protection of Great Indian Bustard* (2023) Writ Petition (Civil) No. 838/2019 (SC India).

landmark PSB v. Brazil ruling in 2021 that commanded the Amazon Fund's restoration, executive defiance ensued, as the following year saw a 22% increase in deforestation after non-compliance¹⁸⁷⁸. This hyper-politicization of environmental governance is indicative of a larger tendency in the South – the erosion of judicial independence from authoritarian rule or corporate capture.¹⁸⁷⁹

The corporates' responsibility for their actions is still missing. In Ecuador, for instance, Chevron is able to avoid responsibility for the oil spills in the Amazon rainforest even when Pachamama's rights are recognized by the constitution. The Global South has to deal with the imposition of transnational corporations (TNCs) and regulation is almost non-existent. The long running case of Chevron v. Donziger is illustrative. The U.S. Second Circuit Court punished Donziger, the plaintiffs' lawyer, for suing Chevron. This case exemplifies how Northern legal systems protect corporations from Southern claims and perpetuate hegemony. Even in the South Africa, where Section 24 of the constitution establishes strong duties to take care of the environment, TNCs like Sasol refuse to meet the agreed targets for reduction of emissions because of the gaps in the laws.

These TNCs have been able to exert the existing legal frameworks so as to extend their control. In the rest of the Global North, the voids of power created are filled by default favouritism grown towards the elites. No attempt by the judiciary to rule on climate such as "political questions" has done anything but suppressed rights-based claims. The case of Juliana v. United States is a perfect example where the plaintiffs, young people, stated that not taking action on climate change was unconstitutional, only to get their case dismissed as they were asking for change that would most definitely never happen under the current government.

Implementation of emission reduction measures was blocked for the full exercise of executive discretion in R (Friends of the Earth) v. Heathrow Airport Ltd (2020)¹⁸⁸⁰, just as courts of the Ninth Circuit noticed in United States v. State of California. The goals of the were not met since the UK Supreme Court authorized the establishment of the Heathrow Airport due to low economic productivity growth. Such cases show a greater attitude among the Northern nations that seem to emphasize procedural justice at the cost of suffocating substantive justice and giving more latitude to national governments to ignore tough climate pledges.

This is made worse by corporate immunity. While Northern companies continue their business of externalizing harms to the Global South, the v. case in the Netherlands was progressive in that it set a target of a 45% reduction in emissions to be achieved by 2030. Jurisdictional gaps and lack of enforcement in host countries allow Shell's operations in the Niger Delta in Nigeria to continue unencumbered after over 16,000 oil spills in 1976. Additionally, these Northern countries are constitutionally able to shift blame for approximately one-fourth of the emissions they allow being used directly within their borders to the Global South where a supply chain-based outsourcing occurs.

This phenomenon illustrates more deeply the concept of climate colonialism, whereby the Global North continues to enjoy disproportionate advantages from extractive economies while relegating environmental harm and legal liability to the Global South.

Germany's Coal Phaseout Law set compensation of €4.35 billion to fossil fuel firms and further demonstrates how the North policies focus on the appeasement of corporate interests at the expense of equitable transitions.¹⁸⁸¹

These systemic flaws demonstrate the urgent need for reforms that aim at bridging the

¹⁸⁷⁸ Amazon Watch, *Complicity in Destruction IV* (2023) 9.

¹⁸⁷⁹ Upendra Baxi, 'The Coloniality of Climate Litigation: A TWAIL Perspective' (2023) 24 *J Hum Rts & Env't* 45, 52.

¹⁸⁸⁰ R (Friends of the Earth) v Heathrow Airport [2020] UKSC 52.

¹⁸⁸¹ Clean Energy Wire, 'Germany's Coal Exit Compensation' (2021)

enforcement deficits in the South with the accountability deficits in the North, fostering a transnational legal culture based on equity and efficacy. These reforms are further exemplified with the Global South's rights-based systems, such as India's NGT which is unable to enforce its orders, and EU's rigid emission reporting systems that do not account for the socio-economic impact of exacerbated carbon taxes.

VI. Innovative Solutions: Bridging the Divide

The gaps within the scope of climate litigation and its constitutional-integration form suggest an approach that seeks to balance the ethos of the Global South with the proceduralism of the Global North. An amalgam of Southern and Northern environmental constitutionalism would aid in creating a macro transnational legal order that could tackle the climate crisis by incorporating the South's focus on community rights and distributive justice as well as the North's institutional accountability.

This model integrates "legal transplants," which entails successful judicial strategies being adapted to a recognized socio-cultural milieu. The Global North can learn from the South's liberal standing doctrines that support the participation of underrepresented groups in climate litigation. Dutch Urgenda ruling, which learned from India's public interest litigation (PIL) system, shows how jurisdictions can learn from each other¹⁸⁸². The South, on the other hand, can adopt the North's corporate liability systems, for instance, India's Environment Protection Amendment Bill, 2023, which aims at imposing stricter sanctions on transnational corporations (TNCs) breaching ecological standards, is similar to the *EU Corporates Sustainability Due Diligence Directive*¹⁸⁸³. Such reciprocal borrowing may help address the enforcement gaps in the South and the accountability deficits in the North.

Equally as important is judicial capacity-building. Since 2019, the United Nations Environment Programme (UNEP) Judicial Initiative on Climate Law has taught over 2,500 judges of different jurisdictions around the world on climate law and Southern judiciaries remain greatly resource-poor. The National Judicial Academy in India might partner with the Federal Environmental Agency of Germany to establish climate law modules incorporating India's rights-based approach (e.g. MC Mehta v. Union of India) and Germany's enforcement-oriented emission control know-how¹⁸⁸⁴. They could also institutionalize these processes through regional organizations like the African Court on Human and Peoples' Rights by creating special climate benches which would operate like the Indian National Green Tribunal (NGT) to deal with the backlog of climate related cases.¹⁸⁸⁵

Governments must also undertake constitutional changes that mandate the recognition of rights and obligations pertaining to the climate. Writ of *Kalikasan* from the Philippines, which allows citizens to file a suit against breaches of the environment, can help in providing procedural environmental rights to the Southern constitutions¹⁸⁸⁶. In North Germany's 2021¹⁸⁸⁷ constitutional amendment, which legally obligates the government to maintain "natural livelihoods for future generations," there is potential for similar adaptations in the United States, especially in regards to climate change litigation which is nearly non-existent due to lacking environmental federalism. Despite Ecuador's recognition of Pachamama's (nature's) and its rights being enforced poorly, it is an example of the shifts that eco-centric constitutionalism brings to the purpose of legal frameworks.¹⁸⁸⁸

To achieve corporate accountability, there is a need to remove cross-border jurisdictional

¹⁸⁸² Shyam Divan, *Environmental Law and Policy in India* (3rd edn, Oxford University Press 2020) 215.

¹⁸⁸³ EU Directive 2022/2464 (Corporate Sustainability Due Diligence).

¹⁸⁸⁴ German Environment Agency, *Climate Protection Law Training Module* (2021).

¹⁸⁸⁵ African Court on Human and Peoples' Rights, *Advisory Opinion on Climate Change* (2023).

¹⁸⁸⁶ Philippines Supreme Court, *Rules of Procedure for Environmental Cases* (2010).

¹⁸⁸⁷ German Basic Law, Art 20a (2021 Amendment); Douglas A Kysar, 'What Climate Change Can Do About Tort Law' (2011) 41 *Env'tl L* 1, 15.

¹⁸⁸⁸ Ecuador Constitution, Art 71 (2008); Eduardo Gudynas, 'Buen Vivir: Today's Tomorrow' (2011) 54 *Dev* 441.

protections given to TNCs. The proposed EU Carbon Border Adjustment Mechanism (CBAM) has the potential to be widened to bring claims against Northern corporations for extraterritorial environmental damage based on the carbon footprint of imports¹⁸⁸⁹. Such as, linking Shell oil spills within the Niger Delta, Nigeria which ecologically damaged the region by \$12 billion, could be enforced under CBAM if associated with EU supply chain regulations. At the same time, Southern countries need to implement proactive due diligence legislation which mandates environmental protection like the French Duty of Vigilance Law¹⁸⁹⁰. The stride taken by India in its 2023 amendment to the Companies Act requiring mandatory climate risk disclosure for large corporates is a step in the right direction.

These innovations provided new opportunities for reform. The case of Atrato River in Colombia (2016), which made Indigenous people legal guardians of the river, illustrates how participatory governance can enhance compliance. In the same vein, the *Te Awa Tupua Act*¹⁸⁹¹ (2017) in New Zealand, which conferred legal personality onto Whanganui River, incorporates Indigenous metaphysics into legislation, something that could be replicated by India's Ganga River Rejuvenation Authority. The youth-led case of *Held v. Montana* (2023), which recognized the right to a "clean and healthful environment" as a constitutional right, shows the impact of intergenerational equity in reconciling different forms of rights and actions

As can be expected, these responses require transnational judicial conversation. The Indian Supreme Court's reference to *Urgenda* in *in re: Protection of Great Indian Bustard in 2023* shows increasing acceptance of jurisdictional boundaries. Establishing such dialogue via the Global Judicial Institute on the Environment could also invite more universal climate law that reconciles the distributive justice claims of the

South with the procedural justice expectations from the North.¹⁸⁹²

VII. Future of Climate Litigation: Trends & Predictions

Grassroots initiatives, judicial creativity, and global legal conversations are the primary factors contributing to the rapid evolution of climate litigation. Youth-induced lawsuits, which frame inactivity in climate change as a breach of rights for succeeding generations, are perhaps the most radical. A U.S. district court granted victory to the young plaintiffs in *Fellow v. Montana* (2023), as it was the first case in U.S. history to acknowledge their constitutional right to a "clean and healthful environment," constituting a landmark victory for climate activism among the youth. In a parallel development, six Portuguese children brought action before the European Court of Human Rights (ECHR) in *Duarte Agostinho v. Portugal* (2023) to sue 33 states for failing to adequately cut emissions. These children, along with other petitioners, claimed their "right to life" and "right to privacy" was being negatively impacted by the lack of action taken over climate policies. All these examples suggest a trend towards the acknowledgment of children and future generations of the world as rights holders, a notion that has for a long time been a staple of the Global South and its activism in *Leghari v. Pakistan* (2015).

Indigenous issues are gradually becoming of primary importance to climate law, especially in the southern hemisphere. As part of Australia's Torres Strait Islander communities, the Torres Strait Islanders made a submission to the UN Human Rights Committee in 2022, claiming that the government's failure to act on climate change breached its obligation to protect their culture and life, as enshrined in the International Covenant on Civil and Political Rights. The *Koh v. Australia* ruling, which Australia blames climate change for violating their rights, is the first in the

¹⁸⁸⁹ European Commission, 'Carbon Border Adjustment Mechanism' (2023).

¹⁸⁹⁰ French Duty of Vigilance Law (2017); Business & Human Rights Resource Centre, *Corporate Legal Accountability Annual Review* (2023) 7.

¹⁸⁹¹ New Zealand *Te Awa Tupua Act* (2017)

¹⁸⁹² Global Judicial Institute on the Environment, *Strategic Plan 2021-2025* (2021)

world where a court action imposed a climate obligation on Indigenous people. Additionally, Colombia's Constitutional Court advanced this trend in *Future Generations v. Presidency* (2023) when the court ruled the government must consult Indigenous groups before permitting fossil fuel exploitation in the Amazon. Most importantly, these rulings exemplify the ability of Indigenous worldviews such as *Buen Vivir* and *Pachamama* to transform environmental constitutionalism towards more progressive nations.

The inclusion of "Rights of Nature" into legislative is yet another new development. Ecuador's granting "legal personhood" in 2008 to nature is something that formed and is still fuelling many similar approaches across the globe. In 2023, the High Court in Uttarakhand in India labelled the Ganges and Yamuna Rivers as legal persons and placed state guardians to ensure their protection. The application of the Whanganui River as a legal person in the Te Awa Tupua Act (2017) has had consequences for U.S. towns like Pittsburgh, which in 2023 granted legal personhood to the rivers in order to prevent fracking attempts. These phenomena go against the scope of traditional legal anthropocentrism which, at the same time, supports the ecocentric constitutionalism of the Global South and gives the North an opportunity to come to terms with the limitations of economic growth in relation to ecological concerns.

There are other more radical gaps emerging on climate activity. There is a growing acceptance of the climate-procedural constitutionalism also, where the courts order the government to ensure that participative and open policymaking is done. The *Grande-Synthe* case (2023) is an important one in which the French Council of State instructed the government to account for its aligned, and provide evidence of how its policies are aligned to the Paris Agreement 1.5° C goal, and not just give vague promises. Shareholder activism is another growing domain: in *ClientEarth v. Shell* (2023), the UK Supreme Court allowed a climate lawsuit to be brought against Shell's directors for not putting

some credible transition plan in place in relation to climate risk, which is now seen as part of the corporate fiduciary duty. Cases like these represent what is termed the Northern turn, where climate obligations become integrated into governance and alongside the Southern turn whereby state responsibility assists the achievement of climate goals.

These phenomena will most likely be reinforced by the transnational judicial dialogue. The Indian Supreme Court referred to the *Urgenda* case while *In re: Protection of Great Indian Bustard* that involved balancing solar energy growth against biodiversity conservation. This illustrates the western region's potential for cross-jurisdictional learning. In the same vein, the advisory opinion of The African Court on Human and Peoples' Rights on climate change of 2023 which incorporated the *Atrato River Case* from Colombia illustrates the increasing contribution of the Global South to international climate law. There is an increasing citation of foreign judgments by courts, thus a global constitutional common good is being inaugurated that fuses the South's notions of distributive justice with the North's procedural claims.

VIII. Conclusion

The challenge posed by the climate crisis cannot be classified environmental or scientific; it also has important legal implications. In this regard, this paper identified climate litigation and environmental constitutionalism as two 'complex' and 'interstanding' spheres that are developing simultaneously but separately in the Global South and North. In the South, as illustrated by India's litigation, it is motivated by collective, rights-oriented claims aimed at resolving socio-ecological injustices. Courts in India, Colombia, and Pakistan have incorporated concepts like constitutional morality, claiming that a state's failure to act on climate change violates human rights and nature's rights, thus constituting abuse of the right to life. On the other hand, in the North, the Netherlands *Urgenda* ruling and the German constitutional amendments on climate illustrate an emphasis

on action, sustainability and responsibility internally and externally, focusing on meeting quantitative emission objectives, due diligence from large companies, and administrative accountability.

Whereas both approaches remain constrained by systemic inequities. The enforcement gaps, politicized judiciaries,¹⁸⁹³ and corporate accountability within the Global South's progressive jurisprudence undermines it. In spite of India's National Green Tribunal daring mandates, it suffers from underfunding and slow implementation. In the meantime, Brazil's Amazon Fund ruling has also failed to slow deforestation because of political pressure. The Global North struggles with the rigidity of procedure and extraterritorial harm. The refusal of Northern courts to entertain "political questions," as in *Juliana v. United States*, and the exploitation of jurisdictional boundaries by foreign business, like Shell's operations in the Niger Delta, creates a climate injustice system.

These differences, nevertheless, also allow for collaboration. The increasing number of youth-led lawsuits, claims from Indigenous peoples, and Rights of Nature cases point toward an increasing South-North collaboration. *Held v. Montana* (2023) and *Future Generations v. Presidency* (2023) are examples of how courts in the US and Colombia respectively are blending the South's focus on distributive justice with the North's emphasis on procedural justice accountability.

The Indian Supreme Court's referral to *Urgenda* in the *Great Indian Bustard* case and the African Court's reference to the Colombian *Atrato River* decision further illustrate the possibilities of transnational judicial communication to construct a climate law system.

In order to achieve this, the following three reforms are necessary:

1. Penalize Damage to Climate: Proposed constitutional frameworks of Global South

nations ought to strive towards granting climate protection as a justiciable right, emulating the *Writ of Kalikasan* and Germany's 2021 amendment. This right does not need to wait for formal textual recognition; it can be woven into operative legal and constitutional frameworks through dynamic judicial reasoning, or evolutionary jurisprudence, which considers constitutional evolution in its interpretation. Simultaneously, countries from the Global North need to take responsibility for transboundary environmental damages by implementing systems of extraterritorial corporate liability, possibly under the scope of the EU Carbon Border Adjustment Mechanism (CBAM). Nonetheless, these proposals raise concerns regarding their effectiveness in practice. There are uncertainties on enforcement mechanisms for climate rights, jurisdictional limits on extraterritorial claims, risks of green protectionism or disproportionate burdens on developing countries. Such a framework would need to aim high while upholding equity, accountability, adaptability principles.

2. Increase Investment in Judicial Education: The UNEP Judicial Initiative on Climate Law seeks to enhance procedural rigor and environmental adjudicative capacity in Global South judges while integrating rights-based reasoning and extraterritorial responsibility to climate jurisprudence in Global North judges. Before Central European specialist regional jurisdiction courts are established, the African Court on Human and People's Rights should create climate specialized chambers for more effective integration of jurisprudence.

3. Diversify Political Representation: The *Atrato River* judgment and the Colombian youth climate litigation showcase precedent-setting cases which collectively illustrate how participatory methods may be integrated into environmental governance. These rulings illustrate the necessity to move beyond symbolic victories by granting decision-making processes

¹⁸⁹³ 'Evaluating the National Green Tribunal after nearly a Decade: Ten Challenges to Overcome - NLIU Law Review' (NLIU Law Review) <https://nliulawreview.nliu.ac.in/journal-archives-2/evaluating-the-national-green-tribunal-after-nearly-a-decade-ten-challenges-to-overcome/?utm_source=

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that are central to climate action the inclusion of Indigenous peoples, youths, and other marginalized communities towards enduring structural participation.

Moving forward is premised on nothing less than a complete overhaul of the very notion of constitutionalism itself. Environmental constitutionalism needs to move beyond its anthropocentric framework to embrace ecological holism and equity across generations as its primary tenets. Courts of the Global South have brought about a revolutionary transformation by granting the status of legal persons to rivers, forests, and ecosystems, thereby expanding the horizon of environmental jurisprudence beyond anthropocentric constructs. While such judgments—such as in India, Colombia, and New Zealand—bear witness to a forward-looking ecological consciousness, they also set up complex conflicts of rights. For instance, the granting of person status to natural entities may invoke tension between the ecological interests and the socio-economic rights of local populations dependent upon those ecosystems. A probing analytical scrutiny of such possible rights conflicts—particularly in land use, indigenous autonomy, and state developmental priority cases—would greatly add richness to the normative foundation of such jurisprudence and make it more applicable in practice. The North also needs to move away from meeting emission quotas towards engaging with the morality of climate damage.

The Urgenda and Leghari cases demonstrate how the courts do not only exist as judicial referees, they serve a deeper role as stakeholders in humanity's well-being. The climate change issue requires us to revisit the social contract. It is more than a mutual agreement between individuals and nation-states. It is also a promise made across generations, species, and ecosystems. In this task, the Southern Global rights-based approach and the Northern Global focus on procedures are not dichotomies; they are two sides of one reality: achieving climate justice is

at the same time fulfilling constitutional mandates.



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