
INNOVATION IN CLIMATE CHANGE LITIGATION STRATEGY - AN INDIAN PERSPECTIVE

Karthika A, Mugil College of Law

“The environment is where we all meet; where we all have a mutual interest; it is the one thing all of us share.”

- Lady Bird Johnson

ABSTRACT

The Global legal systems are becoming increasingly crucial in determining how governments and corporates respond to the challenges posed by climate change. There has been a rise in climate-related litigation in Indian courts, where the effects of climate change are most noticeable. To effectively manage the complex and dynamic nature of this issue, innovative legal strategies are needed; the mere existence of climate litigation is insufficient. Indian courts are globally renowned for their development of environmental jurisprudence and are poised to gain recognition for their climate-related judicial interpretations. The article analyses how innovative litigation tactics are impacting India's legal framework. It also provides an overview of climate litigation strategies, innovative use of international laws and conventions, and recent case laws that demonstrate the judiciary's inventive and dynamic response to climate change.

Keywords: climate litigation in India, environmental jurisprudence, judicial strategies for climate change, innovative legal approaches, international climate law.

INTRODUCTION

Climate change poses a threat not just to the environment but also to economies, human rights, and public health and is one of the most serious challenges of the 21st C. India is one of the nation's most susceptible to the effects of climate change and has seen a rise in climate-related cases. The Paris Agreement was adopted on December 2015, to ensure the global temperature does not rise to more than 2 degree Celsius from pre-industrial levels. In 2018, the Intergovernmental Panel on Climate Change predicted that, should the current rate of emissions continue, the global average temperature will increase by 1.5 degrees Celsius above pre-industrial levels at some point between 2030 and 2052¹. As an outcome, there has been a noticeable trend in recent years towards deeper climate concerns and attempts to mitigate the effects of climate change at the international, national, and local levels. Implementing international agreements like the Paris Agreement, expanding the definition of constitutional rights and imposing the "Polluter Pays" principle on major companies and sectors of the economy transforms India's climate litigation environment in to different arena.

The article explores the transformation of India's climate litigation environment. It examines corporate accountability, highlights landmark court decisions, and analyses how international laws and conventions influences domestic environmental laws. With the judiciary at the vanguard of the fight for climate justice, India's experience provides important insights into the dynamic and inventive law to protect the planet for future generations.

NEW HORIZONS IN CLIMATE LITIGATION

1. EXPANSION OF ART 21

The courts have interpreted Article 21 of the Indian Constitution, which guarantees the right to life, broadly to encompass the right to a clean and healthy environment. This has given climate litigation a strong foundation. Litigants may contend that government inactivity on climate issues directly jeopardizes citizens' health and well-being by drawing a connection between climate change and human rights.

The Supreme Court of India has been continuously making effort to protect the environment through its different judgment and recognizing such a right through right to clean environment.

¹ IPCC, available at <https://www.ipcc.ch/sr15/chapter/spm/> (last visited on Oct 9 2024)

In the case of Articles 14 and 21, this right is considered an extension to the right to a healthy environment. Even in latest judgement lays down a solid constitutional perspective for Climate Justice and right to be protected from adversities caused due to lack of environmental integrity, making it binding precedent on future environmental litigations and policy makings in country.

In *Ridhima Pandey v. Union of India*², the petitioner argued that existing environmental rules should be enforced more effectively to address climate change. This petition emphasized that several environmental rules and regulations in India, if strictly enforced, might considerably contribute to reducing the effects of climate change.

In 2024 ruling³, the SC focused on the long-term impacts of deforestation on India's climate resilience, urging the government to enact stricter forest protection laws. It reiterated that under Article 21, citizens have a right to live in a healthy environment, including protection from climate-related disasters exacerbated by deforestation.

In very recent case⁴, the SC has established a new constitutional right to be protected from the adverse effects of climate change, deriving this from Article 21 and Article 14 of the Indian Constitution. Ultimately, this judgement affirms that environmental protection is an integral part of the right to life and equality, calling for urgent and sustained actions to combat climate change.⁵

2. PUBLIC INTEREST LITIGATION AS A STRATEGIC TOOL

One of the first challenges in climate litigation is the question of Locus Standi, the legal right to bring a case. Locus Standi is an essential for initiating legal proceedings. According to the traditional rule, only a person whose own right was in jeopardy was entitled to seek remedy.⁶ This traditional doctrine was also detrimental for the poor community of India as it disallowed any concerned citizen to sue on behalf of the underprivileged class in the court of law.⁷

² Ridhima Pandey v. Union of India, MANU/GT/0113/2019.

³ In Re: T. N. Godavarman Thirumulpad v. Union of India and Others, [2024] 1 S.C.R. 704

⁴ M.K. Ranjitsinh & Ors. V. Union of India, MANU/SC/0274/2024.

⁵ Aditi Srivastava, From Bustards To Benchmarks: Constitutional Right Against Climate Change Impact, MANUPATRA, (11 Oct 2024, 7:00pm), <https://articles.manupatra.com/article-details/FROM-BUSTARDS-TO-BENCHMARKS-CONSTITUTIONAL-RIGHT-AGAINST-CLIMATE-CHANGE-IMPACT>

⁶ Arindam Basu, Climate Change Litigation In India: Seeking A New Approach Through The Application Of Common Law Principles, Vol 1, ENVIRONMENTAL LAW & PRACTICE REVIEW, NALSAR, at 42, 2011, <http://www.commonlii.org/in/journals/NALSAREnvLawPRw/2011/3.pdf>.

⁷ RAMCHANDRA GUHA, JUAN MARTINEZ ALIER, VARIETIES OF ENVIRONMENTALISM: ESSAYS NORTH AND SOUTH, 37 (Routledge 1997)

Considering the global scope of the problem, proving an injury in the context of climate change can be difficult. Because of the growth of PIL, standing has historically been interpreted liberally in India, especially when it comes to environmental issues. This has been essential in enabling the hearing of climate-related litigation.

In *Massachusetts v. EPA*⁸, the U.S. Supreme Court granted standing to the state of Massachusetts by recognizing the state's interest in protecting its coastlines from rising sea levels caused by climate change. The Court ruled that the harm to Massachusetts was both concrete and imminent, even though the state's contribution to and experience of climate change were indirect and shared with the rest of the world. However, such rulings remain rare, and many plaintiffs struggle to meet the stringent standing requirements in climate cases.

***Tehri Bandh Virodhi Sangarsh Samiti v. State of Uttar Pradesh*⁹**

In this case, the petitioners challenged the construction of the Tehri Dam on the grounds that it would have a detrimental environmental impact, including the displacement of people and destruction of ecosystems. The Court allowed citizens and NGOs to file petitions concerning large-scale environmental damages, opening the door for more climate-related PILs to be brought forward

3. THE ROLE OF THE NATIONAL GREEN TRIBUNAL (NGT)

Few specialist Environmental Courts and Tribunals were formed throughout Europe in the 1970s. In 2016, there were more than 1,200 Environmental Courts and Tribunals worldwide¹⁰. The National Green Tribunal Act of 2010 (NGT Act) was passed by the Indian parliament while the feasibility of having green courts with specific environmental jurisdiction apart from the regular judicial system was being considered globally. The National Green Tribunal is a vital component of environmental protection since it offers a specialised platform for addressing environmental laws, regulations and ensuring environmental justice.¹¹

⁸Massachusetts v. EPA, 549 U.S. 497 (2007).

⁹ Tehri Bandh Virodhi Sangarsh Samiti v. State of Uttar Pradesh ,AIRONLINE 1990 SC 299

¹⁰ GEORGE PRING & CATHERINE PRING, ENVIRONMENTAL COURTS AND TRIBUNALS: A GUIDE FOR POLICY MAKERS available at <https://www.ajne.org/sites/default/files/resource/publications/7182/unep-ects-guide.pdf> (last visited on 12 Oct 2024, 5:30pm)

¹¹Unnati Tripathi , Prof. Dr. Rituraj Sinha, The Role of National Green Tribunal in Safeguarding of Environment with Respect to Constitution of India ,International Journal for Multidisciplinary Research (IJFMR), pg 1 (Volume 6, Issue 2, March-April 2024) <https://www.ijfmr.com/research-paper.php?id=19207>

In *Shailesh Singh v. State of Uttar Pradesh*¹², the NGT ordered the closure of polluting industries in Uttar Pradesh, highlighting the Tribunal's role in holding businesses accountable for their environmental impact. The case demonstrated how the NGT is willing to take proactive steps to reduce the pollution that exacerbates climate change.

In another case¹³ The SC examined the powers of the NGT in dealing with climate-related disputes, particularly in urban planning and development. Owing to potential negative environmental effects, such as exacerbating the city's carbon footprint, the NGT had issued orders prohibiting construction projects in some neighbourhoods of Delhi. In affirming the NGT's crucial role in climate litigation, the Supreme Court maintained the Tribunal's jurisdiction to enforce environmental safeguards on urban growth.

4. CORPORATE ACCOUNTABILITY

Corporate social responsibility is becoming a significant aspect of modern business practice. "CSR" refers to open, truthful, and moral business operations that uphold the law, community norms, environmental rules, and human dignity. This strategy are essential to society and corporate entities can actively and significantly contribute to the development of healthy ecosystems. The term "Green CSR," or corporate environmental responsibility, originated from the notion of CSR and describes the self-adopted goals of organizations with the intention of reducing their negative impact on the environment.¹⁴

In *Taj Trapezium Case*¹⁵, the SC issued directives ordering the relocation or closure of 292 industries from the Taj Trapezium, which released hazardous chemicals like sulfurdioxide that caused the 'acid rain', which damages the Taj Mahal's marble.

In another case¹⁶, the SC emphasized the ethical and legal obligations of firms to compensate victims of industrial disasters. This case originated from the Bhopal gas disaster. The SC upheld compensation, rehabilitation, and environmental restoration as essential components of corporate responsibility. In *Sterlite Copper Case*¹⁷ highlighted this approach, where Vedanta

¹²Shailesh Singh v. State of Uttar Pradesh, (2017) 05 NGT CK 0060

¹³ Delhi Development Authority v. National Green Tribunal (2013) 11 SCC 383

¹⁴ Elliot Sharpe et al, [https://www.cell.com/one-earth/pdf/S2590-3322\(22\)00327-X.pdf](https://www.cell.com/one-earth/pdf/S2590-3322(22)00327-X.pdf), (last visited 12 Oct 9.45pm)

¹⁵ M.C. Mehta v. Union of India, (1997) 2 SCC 353

¹⁶ Union Carbide Corporation v. Union of India, 1989 SCC (2) 540

¹⁷ Sterlite Industries (I) Ltd. Etc. Etc vs Union Of India And Ors, 2013 (4) SCC 575

was penalized for contributing to severe air and water pollution in Tamil Nadu. Although the case was focused on industrial pollution, it exemplifies how courts are using established principles to address climate-related damage.

5. INNOVATIVE USE OF INTERNATIONAL LAW

Indian courts have always relied on foreign precedents and rulings as sources of authority and incorporate innovative ideas from international environmental law into local jurisprudence . The environmental legal system has been continuously maintained by the Supreme Court by using international jurisprudence, as a result, ideas like the public trust doctrine, the polluter pays principle, the precautionary principle, and intergenerational equity are incorporated into the legislation.¹⁸

The Indian Constitution is structured on several Articles, such as 48–A and 51–A[g], that list the nation's environmental obligations to protect its natural resources. The Union or Central Government of India, acting under Article 253, adopted the Water [Prevention and Control of Pollution] Act, 1974, and the Water [Prevention and Control of Pollution] Cess Act, 1977, in accordance with the Stockholm Declaration of 1972. In addition, the Constitution provides procedures in Articles 252 and 253 for adopting national legislation regarding the needs of the State.

The Environmental Action Programme was developed in 1993 with the aim of enhancing services and incorporating environmental issues with diverse development initiatives in India, in accordance with the framework of the Indian Constitution and the Rio Conference of 1992.

*Court on Its Own Motion v. State of Himachal Pradesh*¹⁹ utilized international standards to argue for the protection of fragile ecosystems from climate impacts, showing how international commitments can be used innovatively in domestic litigation.

6. THE CHALLENGES FACED BY JUDICIARY

Judiciary faces challenges when framing issues in climate litigation. Courts may lack the

¹⁸ Eeshan Chaturvedi , Climate Change Litigation: Indian Perspective , German Law Journal pp. 1459–1470, 1465, (2021), available at <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/8776773582C54FE6715472733A8516D4/S2071832221000857a.pdf/climate-change-litigation-indian-perspective.pdf>

¹⁹ Court on Its Own Motion v. State of Himachal Pradesh,(2018) 5 SCC 742

scientific expertise, judicial difficulties and evidence or resources to adequately evaluate complex climate issues.

One of the legal concerns is Judges could render inflexible decisions and show partiality toward particular parties in environmental disputes. The criminal jurisdiction of environmental courts and the requirement for expert opinion are other difficulties. There is no judicial review or criminal appeal jurisdiction that the High Court's exercise over the NGT. Subject to the applicable procedural law, parties or the state government must appear before the regular criminal court appellate with jurisdiction over offenses under the Penal Code or Special Acts.²⁰

The idea that a special court is required to provide the appropriate knowledge to the intricate technical challenges in environmental matters or the court may appoint special masters are the main justification. However, these are merely hypothetical, and the judiciary has significant challenges when it comes to matters requiring expert views.

MAJOR DOCTRINES AND LANDMARK DECISIONS BY JUDICIARY

*Indian Council for Enviro-Legal Action v. Union of India*²¹

Enforcement agencies are under an obligation to strictly enforce environmental laws. The 'polluter pays' principle which is a part of the basic environmental law of the land requires that a polluter bear the remedial or clean-up costs as well as the amount payable to compensate the victims of pollution.

In *M.C. Mehta v. Union of India*²², a petition was filed under Article 32 of the Constitution of India, seeking closure of a factory engaged in manufacturing of hazardous products. While the case was pending, oleum gas leaking out from the factory injured several persons. The significance of the case lies in its formulation of the general principle of liability of industries engaged in hazardous and inherently dangerous activity.

²⁰ Amit kumar, challenges in the working of environmental courts in india, vol 6,issue 2 ,475,international journal of research and analytical reviews , (may 2019), available at https://www.researchgate.net/publication/366974276_Challenges_in_the_working_of_Environmental_Courts_in_India

²¹ Indian Council for Enviro-Legal Action v. Union of India,(1996) 5 SCC 281

²² M.C. Mehta v. Union of India, (1987) AIR 1086

Vellore Citizens' Welfare Forum v. Union of India²³

The 'precautionary principle' requires government authorities to anticipate, prevent and attack the causes of environmental pollution. This principle also imposes the onus of proof on the developer or industrialist to show that his or her action is environmentally benign

Bangalore Medical Trust v. B.S. Muddappa²⁴

The power conferred under an environmental statute may be exercised only to advance environmental protection and not for a purpose that would defeat the object of the law.

M.C. Mehta v. Kamal Nath²⁵

The state is the trustee of all natural resources which are by nature meant for public use and enjoyment. The public at large is the beneficiary of the seashore, running waters, air, forests, and ecologically fragile lands. These resources cannot be converted into private ownership.

Re: T. N. Godavarman Thirumulpad v. Union of India & Others²⁶

The judgement stated that the minimum width of the ESZ "may be diluted in overwhelming public interest," but for that purpose the state or Union Territory concerned shall approach the Central Empowered Committee (CEC) and Ministry of Environment, Forest and Climate Change and both of these bodies would give their respective opinions/recommendations before the court.

M.K. Ranjitsinh & Ors. v Union of India²⁷

The Hon'ble Supreme Court, through its latest judgment dated 21 March 2024, has recognized a right to be free from the adverse effects of climate change as a distinct right. The Court said that Articles 14 and 21 of the Indian Constitution are important sources of this right and the SC noted that the right to a healthy environment, safe from the ill-effects of climate change was a fundamental human right.

²³ Vellore Citizens' Welfare Forum v. Union of India, AIR 1996 SC 2715

²⁴ Bangalore Medical Trust v. B.S. Muddappa, AIR 1991 SC 1902

²⁵ M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388

²⁶ Re: T. N. Godavarman Thirumulpad Vs Union of India & Others, (2024)1 S.C.R. 704

²⁷ M.K. Ranjitsinh & Ors. V. Union of India, MANU/SC/0274/2024

• THE FORGOTTEN REMEDIES:-

The principles have been established. But, often we rush to the higher courts, forgetting the remedies that are available at the district level. They should be properly utilised: they ensure greater participation of local residents, who should in these matters be more concerned and more effective.²⁸ There are remedies such as CHAPTER XI (B- Public Nuisance) and (C- Urgent cases of nuisance or apprehended danger) section 163 of BNSS.²⁹, Criminal Prosecution under CHAPTER- XV from Sections 286 to 297 (Offences Affecting Public Health, Safety, Convenience, Decency and Morals) of BNS, Suits concerning Public nuisances and other wrongful acts affecting the public under section 91 and Representative suits under Order 1 Rule 8 of the CPC.³⁰

CONCLUSION

Though there are many obstacles in the way of its framing, climate litigation is an essential tool for tackling the global climate catastrophe. Complicating efforts to gain judicial remedies for climate-related harms are issues including locus standing, judicial difficulties and the need for expert opinion. It might take creative legal approaches and more precise scientific attributions to get over these obstacles as courts around the globe continue to debate these problems. Global reactions to climate change in the years to come will probably be greatly influenced by the changing terrain of climate litigation.

²⁸ Kachrual Bhaigirath Agrawal Vs. State of Maharashtra (2005) 9 SCC 36 (paragraph 10).

²⁹ Ratlam Municipality Vs. Vardhichand) AIR 1980 SC 1622.

³⁰ HIGHCOURT CHATTISGARH, Leaving Better World: Role Of Judiciary In Protecting Environment, This Talk Was Delivered On 14.09.2013 In The Inaugural Function Of Indian Law Institute, available at https://highcourt.cg.gov.in/artical/Role_Judiciary_Pro_Env.html, (last visited on 13 Oct 2024)