

Climate Litigation and Constitutional Courts: Advancing Intergenerational Environmental Rights Through Constitutional Adjudication

Sneha U^{1*} and Bhuvaneshwari B²

^{1*,2}Student, Jain (Deemed To Be University) School Of Law, Bengaluru, Karnataka, India

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Abstract

Climate change has intensified the need for legal frameworks that recognise environmental protection as an essential component of constitutional governance. In recent years, climate litigation has emerged as a significant pathway through which constitutional courts interpret and enforce environmental rights, particularly in relation to future generations. This paper examines how constitutional adjudication has contributed to the development of intergenerational environmental rights within environmental constitutionalism. The paper traces the evolution of environmental rights from implicit protections under the right to life and dignity toward recognition of the right to a clean, healthy, and sustainable environment. Through a doctrinal and comparative analysis of landmark judicial developments including *Urgenda Foundation v. Netherlands*, *Leghari v. Federation of Pakistan*, *Minors Oposa v. Factoran*, and leading environmental jurisprudence under the Indian Constitution, the study highlights how courts have invoked doctrines such as the precautionary principle, sustainable development, and the public trust doctrine to conceptualise climate inaction as a constitutional violation. These cases illustrate a growing judicial willingness to recognise the climate crisis as a rights-based concern and to impose obligations on the State to protect present and future generations from environmental harm. At the same time, the paper evaluates institutional and normative challenges associated with climate constitutionalism, including separation of powers, institutional competence, democratic legitimacy, and enforceability of judicial mandates. Constitutional litigation therefore operates as both a catalyst and a safeguard within climate governance. The paper concludes that climate litigation before constitutional courts represents an evolving but powerful instrument for promoting intergenerational environmental justice. By embedding environmental protection within the constitutional order, courts help transform climate action from policy choice into constitutional obligation grounded in rights, duties, and the ethical imperative to safeguard future generations.

Corresponding Author:

Sneha U^{1*}

Student, Jain (Deemed To Be University) School Of Law, Bengaluru, Karnataka, India

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1. INTRODUCTION

Climate change has moved decisively beyond the domain of environmental policy into the core of constitutional governance. Rising global temperatures, intensifying extreme weather events, sea-level rise, biodiversity loss, and ecological degradation now pose direct and systemic threats to life, health, housing, food security, livelihood, cultural survival, and human dignity. These impacts are not evenly distributed: they disproportionately burden vulnerable populations and,

crucially, future generations who have contributed least to the crisis. Consequently, the climate emergency challenges the traditional temporal boundaries of constitutional rights and the scope of state obligations. Constitutions were historically designed to regulate power among present institutions and citizens. Climate change, however, is a long-duration phenomenon, where present decisions produce irreversible consequences for people not yet born. This temporal disjunction has forced constitutional theory to evolve.

Increasingly, courts are called upon to determine whether state inaction on climate mitigation and adaptation violates fundamental rights, and whether constitutional guarantees can extend protection across generations. Constitutional courts worldwide have therefore become central arenas for climate governance. Petitioners frame climate inaction not merely as policy failure but as a violation of fundamental rights, transforming climate disputes into constitutional claims. This trend reflects what scholars describe as environmental constitutionalism, a global movement integrating environmental protection into constitutional interpretation and enforcement (Boyd, 2012). Within this framework, intergenerational justice - the duty to protect the environmental interests of future generations - has emerged as a foundational normative principle (Weiss, 1989). This paper argues that climate litigation has transformed constitutional courts into key institutions for advancing intergenerational environmental rights. Through rights-based reasoning, courts have recognised climate change as a constitutional harm, imposed affirmative obligations on states, and developed doctrines bridging environmental protection and human rights. At the same time, such judicial intervention raises complex questions concerning separation of powers, institutional competence, democratic legitimacy, and enforceability. By analysing comparative jurisprudence and Indian constitutional developments, this paper demonstrates that constitutional adjudication, while not a substitute for political action, plays a crucial role in embedding climate responsibility within the constitutional order.

2. ENVIRONMENTAL CONSTITUTIONALISM AND INTERGENERATIONAL JUSTICE

2.1 *Environmental Constitutionalism*

Environmental constitutionalism refers to the incorporation of environmental protection into constitutional law through explicit rights, state duties, directive principles, or judicial interpretation of existing guarantees such as the right to life, health, dignity, and equality (Daly and May, 2018). Over 150 national constitutions now recognise environmental rights or duties in some form, reflecting a global normative shift that treats ecological protection as a matter of constitutional concern rather than mere policy preference (Boyd, 2012). This constitutionalisation produces several legal consequences. First, it elevates environmental protection to the highest normative plane, placing it alongside civil and political rights. Second, it transforms environmental governance from discretionary executive policy into a binding legal obligation subject to judicial review. Third, it enhances justiciability, allowing affected persons to challenge environmentally harmful state action or inaction. Even in jurisdictions without explicit environmental rights, courts have derived such protections from existing constitutional provisions. Rights to life, dignity, privacy, property, and equality have been interpreted to encompass environmental quality. This interpretive approach allows courts to respond to emerging ecological threats without formal constitutional amendment, demonstrating the dynamic character of constitutional law.

2.2 *Intergenerational Justice*

Intergenerational justice is rooted in the principle that present generations hold the Earth's natural resources in trust for future generations and must ensure ecological sustainability (Weiss, 1989). It underpins sustainable development discourse and is

increasingly recognised in constitutional adjudication. The concept rests on three core duties: conservation of options, conservation of quality, and conservation of access. Intergenerational equity operates both substantively and procedurally. Substantively, it requires preserving environmental systems to ensure that future persons enjoy a comparable quality of life. Procedurally, it demands that long-term environmental consequences be considered in present decision-making. Courts are uniquely positioned to enforce intergenerational justice because constitutional interpretation inherently involves normative reasoning. By recognising foreseeable environmental harm as a rights violation, courts extend constitutional protection beyond present temporal boundaries. This shift reflects an evolving understanding that constitutional rights are not static but must adapt to long-term systemic threats such as climate change.

2.3 *Theoretical Foundations: Transformative Constitutionalism And Constitutional Temporality*

Climate constitutionalism cannot be fully understood without situating it within broader constitutional theory. Two theoretical frameworks are particularly relevant: transformative constitutionalism and constitutional temporality. Transformative constitutionalism views constitutions not merely as power-limiting instruments but as vehicles for long-term social transformation. It emphasises the role of courts in realising substantive justice, protecting vulnerable groups, and advancing collective welfare. Climate litigation aligns with this model because it expands constitutional protection to ecological conditions necessary for human survival. Environmental degradation disproportionately affects marginalised communities, indigenous peoples, coastal populations, and the rural poor. Judicial recognition of climate rights therefore reflects the constitution's transformative mandate to address structural inequalities and ensure dignified life conditions. The second framework is constitutional temporality, which examines how constitutions operate across time. Traditional constitutional design assumes contemporaneity - that the constitution governs relationships among present actors. Climate change disrupts this assumption. Emissions released today affect atmospheric systems for centuries, meaning present governance decisions directly shape the rights and freedoms of future generations. Constitutional courts, through climate adjudication, effectively reinterpret "the people" as including not only current citizens but also those yet unborn. This temporal extension of constitutional protection represents a significant jurisprudential shift. Courts are redefining constitutional community as intergenerational, recognising that rights cannot be secured for present populations by sacrificing future ones. In this sense, climate constitutionalism transforms the constitution into an instrument of long-term stewardship rather than short-term governance.

3. CLIMATE LITIGATION AS A CONSTITUTIONAL STRATEGY

Climate litigation initially emerged through tort law and administrative law challenges to environmental approvals. Over time, however, litigants increasingly adopted constitutional strategies, arguing that state inaction on climate change violates fundamental rights. This shift reflects recognition that climate change is a systemic risk implicating state duties at the highest level.

This constitutional framing has three major consequences (Setzer and Higham, 2022):

- Recognition of climate harm as rights harm – Climate impacts are reframed as violations of rights to life, health, housing, food, water, culture, and dignity.
- Imposition of positive state duties – Courts move beyond restraining unlawful action to requiring mitigation, adaptation planning, and policy implementation.
- Creation of accountability mechanisms – Judicial oversight, reporting requirements, and structural remedies enhance enforcement.

Constitutional courts increasingly treat climate change as a systemic threat requiring rights-based intervention, especially where political processes fail to address long-term risks adequately due to short electoral cycles and economic pressures.

3.1 Typology of Climate Constitutional Litigation

Climate litigation before constitutional courts can be categorised into distinct but overlapping types, each reflecting different dimensions of rights protection.

Mitigation cases focus on reducing greenhouse gas emissions. These cases argue that inadequate mitigation violates rights to life and dignity by exposing populations to foreseeable climate harms. *Urgenda* and the German Constitutional Court decision exemplify this category, where courts require states to adopt scientifically grounded emission reduction pathways.

Adaptation cases concern state failure to implement climate resilience measures. The Pakistani *Leghari* decision falls into this category, as it addressed delays in implementing national climate policy affecting water, agriculture, and disaster preparedness.

Procedural climate cases emphasise participatory rights, transparency, and environmental impact assessments. These cases link constitutional guarantees of due process and public participation to climate governance, ensuring that long-term ecological consequences are assessed before approving development projects.

Intergenerational and youth-led cases focus on standing for future generations. *Oposa* and the Colombian Amazon decision demonstrate how courts recognise youth plaintiffs as representatives of future constitutional interests.

Rights of nature cases expand constitutional subjects beyond humans, granting ecosystems legal personality. While controversial, such recognition reflects judicial attempts to protect ecological systems foundational to human survival.

This typology shows that climate constitutionalism is not confined to emission targets but encompasses governance, participation, accountability, and ecological integrity.

4. COMPARATIVE JURISPRUDENCE

4.1 Netherlands: *Urgenda Foundation v. State of the Netherlands*

In *Urgenda* (2019), the Dutch Supreme Court held that inadequate climate mitigation violated obligations to protect the rights to life and well-being under the European Convention on Human Rights. The Court ordered the government to reduce emissions by at least 25% compared to 1990 levels. It recognised climate change as a “real and immediate risk” and affirmed that courts may require states to adopt minimum mitigation standards.

The decision is transformative because it established that climate mitigation is a legal duty derived from rights protection rather than a political choice.

4.2 Germany: *Neubauer v. Germany*

The German Federal Constitutional Court (2021) held that insufficient emission reduction pathways disproportionately burden future generations, violating constitutional rights. The Court emphasised that delaying mitigation shifts drastic restrictions onto young and future persons, thereby infringing their freedom rights. This judgment explicitly constitutionalised intergenerational justice.

4.3 Pakistan: *Leghari v. Federation of Pakistan*

The Lahore High Court held that government delay in implementing climate policy violated fundamental rights to life and dignity. The Court created a Climate Change Commission to supervise implementation, demonstrating structural remedies in climate adjudication.

4.4 Philippines: *Minors Oposa v. Factoran*

The Philippine Supreme Court recognised that minors could represent future generations in environmental litigation. It affirmed that the right to a balanced and healthful ecology extends to generations yet unborn, establishing intergenerational standing.

4.5 Colombia: *Future Generations v. Ministry of Environment*

The Colombian Supreme Court declared the Amazon rainforest a subject of rights and recognised the rights of future generations threatened by deforestation. The Court ordered action plans and participatory governance.

5. INDIAN CONSTITUTIONAL JURISPRUDENCE

5.1 Constitutional Framework

India's Constitution integrates environmental protection through:

- Article 21 – Right to life
- Article 48-A – State duty to protect environment
- Article 51-A(g) – Citizen duty

5.2 Expansion Under Article 21

In *Subhash Kumar* (1991), pollution-free water and air were recognised as part of the right to life. In *Virendra Gaur* (1995), environmental protection was linked to human dignity.

5.3 Doctrinal Development

Indian courts developed:

- Precautionary principle (*Vellore Citizens*, 1996)
- Polluter pays principle
- Public trust doctrine (*M.C. Mehta v. Kamal Nath*, 1997)
- Sustainable development

5.4 Climate Relevance

Though India lacks a single *Urgenda*-style mitigation judgment, courts address air pollution, deforestation, EIA processes, and urban planning - all central to climate governance. The doctrinal foundation for climate constitutionalism is firmly established.

5.5 Indian Constitutionalism, Public Trust, And Climate Governance

Indian constitutional jurisprudence provides fertile ground for climate constitutionalism. The public trust doctrine, as articulated in *M.C. Mehta v. Kamal Nath*, establishes that the state holds natural resources in trust for the people. This doctrine inherently implies intergenerational responsibility: trusteeship is meaningless if resources are irreversibly degraded for short-term gain. Climate stability, clean air, forests, rivers, and biodiversity can all be conceptualised as trust assets. Indian courts also employ continuing mandamus, a unique supervisory mechanism in public interest litigation. In environmental matters such as Ganga pollution control and Delhi air quality, the Supreme Court has issued ongoing directions, appointed expert committees, and monitored compliance. This procedural innovation demonstrates institutional capacity for long-term environmental supervision, which could extend to climate governance. Furthermore, climate change intersects with constitutional equality. Vulnerable populations - informal workers, coastal communities, farmers, and indigenous groups - face disproportionate climate risks. By linking environmental protection with Articles 14 and 21, courts can frame climate action as essential to preventing unequal exposure to harm. Thus, Indian constitutional law already contains doctrinal tools for recognising climate stability as a constitutional entitlement.

6. ROLE OF CONSTITUTIONAL COURTS IN ENFORCING INTERGENERATIONAL RIGHTS

Courts perform three key roles:

- Rights recognition – Framing climate harm as constitutional harm.
- Positive duties – Requiring mitigation, adaptation, and planning.
- Structural supervision – Commissions, monitoring, continuing mandamus.

Courts thus act as guardians of constitutional temporality, ensuring present governance does not undermine future rights.

7. DEMOCRATIC LEGITIMACY AND JUDICIAL ROLE IN CLIMATE GOVERNANCE

Judicial involvement in climate policy raises concerns regarding democratic legitimacy. Critics argue that courts lack technical expertise, risk overstepping institutional boundaries, and undermine elected decision-making. Climate mitigation involves economic planning, energy transitions, and budgetary allocation - domains traditionally reserved for the political branches.

However, constitutional adjudication in climate matters does not entail judicial governance of policy details. Rather, courts establish minimum constitutional standards derived from fundamental rights. They intervene primarily where political inaction threatens basic rights or where governments fail to meet their own legal commitments. This role aligns with the judiciary's core function as guardian of constitutional supremacy. Moreover, democratic processes often exhibit short-termism. Electoral cycles incentivise immediate economic gains over long-term environmental protection. Future generations, who cannot vote, are structurally excluded from political representation. Courts, insulated from electoral pressures, can correct this representational deficit by safeguarding long-term constitutional interests. Judicial remedies in climate cases also tend to be structural rather than prescriptive. Courts require states to formulate and implement

plans consistent with scientific evidence but do not dictate specific policy instruments. This approach preserves executive flexibility while ensuring rights protection. Thus, climate constitutionalism does not displace democracy; it reinforces constitutional democracy by ensuring that governance respects both present and future rights.

8. CHALLENGES

- Separation of powers – Risk of judicial overreach, though courts act when rights are threatened.
- Institutional competence – Scientific complexity addressed through expert bodies.
- Enforcement gaps – Orders may face implementation resistance.
- Equity concerns – Climate action must balance intergenerational and present social justice.

9. WAY FORWARD

- Explicit recognition of the right to a healthy environment
- Interpreting Article 21 to include climate stability
- Youth standing
- Specialised climate benches
- Judicial standards rather than policy micromanagement
- Integration of climate considerations into constitutional review of development policies
- Strengthening scientific expertise within judicial processes

10. CONCLUSION

Climate litigation represents a decisive constitutional shift from viewing environmental protection as policy discretion to recognising it as a matter of fundamental rights and state obligation. Courts across jurisdictions increasingly treat climate change as a systemic threat to life, dignity, health, and equality, thereby elevating climate governance to the level of constitutional accountability. Crucially, this jurisprudence extends constitutional protection beyond present populations, affirming that future generations form part of the constitutional community whose rights cannot be compromised by present inaction. Through doctrines such as public trust, precaution, and sustainable development, constitutional courts have begun embedding intergenerational justice into rights interpretation. Comparative decisions from Europe, South Asia, and Latin America demonstrate a converging judicial understanding that postponing mitigation shifts disproportionate burdens onto younger and unborn persons, undermining substantive rights guarantees. These rulings redefine state responsibility in an era of planetary risk. The Indian constitutional framework, particularly Article 21 jurisprudence and the public trust doctrine, contains strong foundations for similar developments. While courts must respect institutional limits, their role in climate cases is to enforce minimum constitutional standards, not design policy. Climate constitutionalism thus signals an evolution of constitutional democracy toward long-term ecological stewardship, aligning rights protection with the ethical demands of a shared and fragile planetary future.

Conflict of Interest

Conflict of interest declared none.

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