

## CLIMATE CHANGE LITIGATION: TRENDS AND FUTURE DIRECTIONS

---

**Anushka Jaiswal\***

*“Climate change litigation provides civil society, individuals, and others with one possible avenue to address inadequate responses by governments and the private sector to the climate crisis.”*

### ABSTRACT

*Climate change litigation has emerged as a significant legal strategy to address the impacts of global warming, with a rising number of cases being filed worldwide. This article looks at the most recent developments and potential paths for climate change lawsuits. It highlights important trends in litigation, including the rise of lawsuits calling on governments and businesses to mitigate or adapt to climate change, the rising participation of non-governmental organizations, and the utilization of human rights defences to bolster legal claims. The article also discusses significant victories and difficulties that plaintiffs have encountered, such as jurisdictional problems, the difficulty of establishing causality, and the differing degrees of judge openness to considering climate science. The article predicts there will likely be more climate litigation in the future due to growing public engagement, changing legal doctrines, and improved scientific understanding of the effects of climate change. More creative legal strategies, such as the application of fresh legal theories and the use of international venues, are probably in store for the future of climate litigation. In the end, climate change litigation has the potential to significantly impact the legal landscape in the battle against environmental degradation by helping to shape global climate policy and requiring businesses to answer for their role in causing climate change.*

**Keywords:** Climate, Human Rights, Legal Doctrines, Jurisdiction, Environment.

### INTRODUCTION

Climate change is used to describe long-term variations in temperature and weather patterns.

Significant volcanic eruptions or variations in the sun's activity might be the source of these swings. But since the 1800s, human activity, primarily the burning of fossil fuels like coal, oil,

---

\*BA LLB, SECOND YEAR, CHRIST UNIVERSITY, DELHI NCR.

and gas, has been the main driver of climate change. As a result of the burning of fossil fuels, greenhouse gases are released into the atmosphere, enveloping the earth like a blanket and trapping solar heat, raising global temperatures.<sup>1</sup>

Climate change has an impact on our jobs, housing, safety, food production, and general health. Residents of underdeveloped countries and tiny island nations are already more vulnerable to the consequences of climate change. Prolonged droughts are increasing the danger of starvation, while conditions like sea-level rise and saltwater intrusion have progressed to the point that whole populations have had to evacuate. It's anticipated that more individuals may be relocated in the future due to weather-related incidents.

Change at the systemic level is necessary to address climate change. A variety of tools, from social movements to politics and economics, are needed to bring about change; one such instrument is the law, which can alter conduct and, eventually, societal norms. Recognizing injustice can help the law hold people accountable and eventually bring about larger changes in society.<sup>2</sup> A rising understanding of the law's ability to enforce environmental protection and spur legislative action has led to the emergence of climate change litigation as a key tool in the worldwide struggle to counteract the negative consequences of climate change. Climate change litigation has changed over the past several decades from classic environmental cases focusing on resource management and pollution to intricate legal disputes addressing the wider effects of global warming. A greater comprehension of climate science and the growing need to reduce and adapt to the effects of climate change are what are driving this change.

Key trends in this area show that the range of defendants in lawsuits is broadening; in addition to governments and large corporations, especially those involved in the fossil fuel sector, financial institutions and other organizations whose operations have a substantial impact on greenhouse gas emissions are also being sued. The emphasis on human rights has changed significantly. Numerous litigants contend that insufficient action on climate change infringes on fundamental rights to life, good health, and property, disproportionately harming disadvantaged groups like Indigenous people. The way that human rights and climate change

---

<sup>1</sup> Ani Gevorgyan, 'Climate Change' (*ArcGIS Story Maps*, 2024)  
<<https://storymaps.arcgis.com/stories/ec89092a504e4d1a91c5c44a0957fc81>>

<sup>2</sup> 'How can the law fight climate change?' (*Client Earth*, 2023)  
<<https://www.clientearth.org/latest/news/howcan-the-law-fight-climate-change/>>

interact highlights a larger movement toward climate justice by highlighting the moral and social aspects of environmental stewardship.

### **CLIMATE LITIGATION AS CLIMATE ACTIVISM**

A new phase of climate action that combined old physical tactics of confrontational protest with contemporary internet tactics was spurred by the aspirations for and disastrous failure of the UNFCCC's 2009 Copenhagen COP. The increasing dissatisfaction of climate activists led to a return to the courts to contest climate inaction, which in turn rekindled interest in the prospect of climate litigation<sup>3</sup>. Even more unexpected is the rise of active legal mobilization in the courts that coincided with other kinds of activity in the years after the Paris Agreement was signed in 2015. Similar to environmental advocacy, environmental litigation is not a novel tactic. Environmental activism has historically included litigation as a tactic, being undertaken in addition to other mobilization strategies.

Litigation about climate change has been more prevalent in recent years as a means of influencing policy decisions and/or altering business and social behaviour.<sup>4</sup> With this strategy, supporters use the legal system to push for ambitious climate change, looking beyond the short-term results of specific lawsuits. There has been some success in defending states against lawsuits aiming to boost mitigation ambition. Lawsuits are also being filed against major emitters or states to recover damages or expenses brought on by climate change. Prominent rulings regarding climate change have garnered significant interest from the media and academic community.

Different approaches are being taken to combat climate change by new laws and regulations. Parallel to this, legal techniques are also changing. The key trends in climate litigation are:

Litigation has been brought against governments to make them accountable for climate change, including the growing volume of claims about human rights.

Litigation brought against corporate actors - banks and businesses involved in the oil and gas industry are becoming more and more common examples of these.

---

<sup>3</sup> Kim Bouwer and Joana Setzer, 'Climate Litigation as Climate Activism: What Works?' (*The British Academy*, 2020) <<https://www.thebritishacademy.ac.uk/publications/knowledge-frontiers-cop26-briefings-climate-litigation-climate-activism-what-works/>>

<sup>4</sup> Hilson, 'New social movements: the role of legal opportunity' (*Journal of European Public Policy*, 2002) <<https://doi.org/10.1080/13501760110120246>>

Litigation action was brought about based on allegations of "greenwashing," or making false environmental claims - and growing worries about the discrepancy in responsibility between the goal of reaching net Zermishandlell and the real situation in Paris.

One of the recent trends that is altering the landscape of environmental and climate activism is the rise in the use of lawsuits by activists.<sup>5</sup> Many types of parties are involved in litigation, either as defendants or as claims. In general, people and non-governmental organizations (NGOs) are initiating legal actions against corporate and government defendants to promote increased ambition in reducing greenhouse gas emissions. Government officials and industry players have also utilized litigation to oppose stricter regulatory limits.<sup>6</sup> In private legal actions about climate change, local and regional governments also represent themselves as plaintiffs against large carbon and oil producers. Remarkably absent from both the research and the courts when it comes to climate-related lawsuits are organizations that are part of the supply chain that contributes to deforestation, such as the plastics and meat industries.

### **HOW DOES LITIGATION REPRESENT CLIMATE GOALS?**

Even while bringing a lawsuit is one tactic available to climate campaigners, the legal system is not simple or standardized. There are many different campaigns and approaches to litigation, as will be discussed below. This diversity likely reflects the desire to take advantage of quick legal opportunities, the interests or experience of litigants and their attorneys, a response to particular events, or, on the other hand, the degree to which current activity reflects a particular, targeted strategy. Researchers looking at climate litigation have proposed a variety of typologies to organize the cases that are now in Court, such as those based on the kind of plaintiff, the kind of legislation, the type of Court, and the type of remedy. Since then, several papers and policy documents have been added to this kind of study by examining the patterns in global climate change litigation as well as the important questions that courts must answer when considering these cases.

The following three categories illustrate how climate litigation interacts with various types of climate goals:

---

<sup>5</sup> Nina Hall et al, 'Transnational Advocacy and NGOs in the Digital Era: New Forms of Networked Power.' (*International Studies Quarterly*, 2019) < <https://doi.org/10.1093/isq/sqz052>>

<sup>6</sup> Markell & Ruhl, 'An empirical assessment of climate change in the Courts: A new jurisprudence or business as usual?' (*Florida Law Review*, 2012) < <https://scholarship.law.ufl.edu/flr/vol64/iss1/2>>

First, a proactive targeting of high-carbon projects or policies, including, in some cases, the whole state's climate policy and targets, reflects a tactical strategy in climate litigation. Legally technical challenges to infrastructure projects, such as public law challenges to legal faults in development consents for high-emitting infrastructure, are examples of this kind of "hit the target" activity.<sup>7</sup> In such circumstances, the legal processes would focus on the legal defects in the consent, but the ultimate objective of the action would be to prevent the infrastructure from being completed. The current policy challenges are primarily found in national-level challenges to mitigation or adaptation ambition. Notable cases in this regard include the now-famous *Urgenda v. The Kingdom of the Netherlands* and *Leghari v. Federation of Pakistan* rulings, which successfully contested state climate ambition in both Pakistan and the Netherlands. Collaboration has been made easier by the climate movement's internationalization and networking, especially when it comes to these issues.

Second, lawsuits may also be used as a "stepping stone," part of a larger plan by social movements or groups, which may involve utilizing various forms of activism to initiate or prepare the way for lawsuits or filing lawsuits to guarantee the sustainability of current programs. For example, advocates for divestiture employ lawsuits.<sup>8</sup> As an alternative, NGOs may employ gentler tactics to position lawsuits as a potential final resort. Client Earth, for example, has employed a "long-game" approach in its campaigns about pensions and carbon targets. Even if it's possible to argue that climate activism is a return to direct action, such as organizing physical protests and lawsuit efforts, it shows a noteworthy and nuanced strategy that aims to seriously undermine the risk profiles of large corporations.

"Name and shame" cases make up a third type of case; their purpose is to draw attention to the glaring discrepancy between words and deeds. Litigation is taken to contest the legality of certain policies and activities when governments declare themselves committed to the Paris Agreement yet carry out actions that contradict it. An example is activities against fossil fuel firms because of their seeming support for the Paris Agreement but concurrent advocacy against climate policies and continuous discovery and investment in more oil and gas production. These corporations are deceiving investors about serious threats to their company arising from climate change, or they are purposefully misleading customers about the key role

---

<sup>7</sup> Saiger, 'Domestic Courts and the Paris Agreement's Climate Goals: The Need for a Comparative Approach' (*Transnational Environmental Law*, 2020) <[doi:10.1017/S2047102519000256](https://doi.org/10.1017/S2047102519000256)>

<sup>8</sup> Franta, 'Litigation in the fossil fuel divestment movement' (*Law & Policy*, 2017) <<https://doi.org/10.1111/lapo.12086>>

their products play in creating climate change, as demonstrated by another case of a similar nature.

## GLOBAL VIEW OF CLIMATE LITIGATION

Global climate ambition is still insufficient to address the severity of our current climate catastrophe.<sup>9</sup> The world community is still far from fulfilling the aims and objectives of the Paris Agreement, even despite improvements in the mitigation and adaptation targets of individual nations and the many corporate commitments to attain net-zero emissions in the future. In response, people have turned to courts, tribunals, quasi-judicial bodies, or other adjudicatory bodies, including special procedures of the United Nations and arbitration tribunals, as well as women's and human rights groups, communities, Indigenous groups, businesses, and national and subnational governments, seeking relief through:

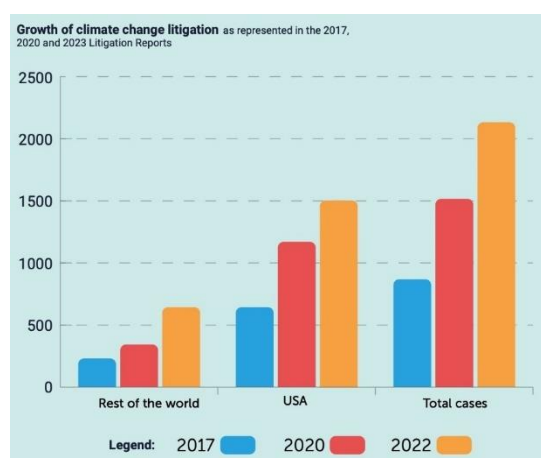
The application of current climate legislation

Including climate action in current legislation about energy, the environment, and natural resources

Directives to politicians, decision-makers, and corporations to address climate change with more rigour and ambition

Defining human rights and duties in a way that takes climate change into account

Restitution for damages caused by climate change



<sup>9</sup> 'Global Climate Litigation Report' (*United Nations Environment Programme, 2023*)  
<<https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review>>



## THE INDIAN CONTEXT OF CLIMATE CHANGE LITIGATION

India now ranks third in the world for carbon emissions, but data points to a rapid overtaking of China and the US shortly due to the country's growing reliance on fossil fuels for energy, as well as the fact that 29% of its people live in poverty and lack access to power.<sup>10</sup> India faces a challenging task in attempting to strike a balance between the conflicting demands of energy security, economic expansion, and climate change mitigation.

The Indian judiciary has been actively involved in tackling environmental conservation and human rights matters. Environmental lawsuits are brought mostly through Public Interest Litigation (PILs), which permits parties lacking locus standi to bring legal action in Court for matters of public interest, frequently based on human rights concerns. Because its rulings influence the actions of regulatory authorities and mould environmental governance systems, India has been overreaching and selectively progressive when it comes to the environment and climate change.<sup>11</sup>

With promises of business-friendly regulations and economic growth, the Narendra Modi administration took office. The first step was a drastic revision of environmental legislation that aimed to do away with protections for procedures like environmental and forest clearances. After that, there were attempts to modify the regulations about property acquisition so that businesses could easily get land. Climate change initiatives are part of this larger aim of neoliberal expansion. To mitigate the effects of climate change, the government has concentrated on afforestation and renewable energy.

Climate change litigation is a relatively new field in India. The National Green Tribunal has received a case that specifically calls on the Court to become involved in combating climate change.<sup>12</sup> Prior to this lawsuit, environmental activists and organizations had not explicitly advocated for involvement in climate change, despite the fact that they had often petitioned the courts to address environmental concerns ranging from pollution to deforestation, though it may have come up in the judgment's broader context. However, the courts have played a

---

<sup>10</sup> Jocelyn Temperly, 'The Carbon Brief: India Available' (*Carbon Brief*, 2019)  
< <https://www.carbonbrief.org/the-carbon-brief-profile-india> >

<sup>11</sup> Geetanjoy Sahu, *Environmental Jurisprudence and the Supreme Court* (Orient Blackswan 2014)

<sup>12</sup> Lavanya Rajamani, 'Rights Based Climate Litigation in Indian Courts: Potential, Prospects and Potential Problems' (*Center for Policy Research Working Paper*, 2013)

significant role in pressuring the government to safeguard the environment, serving as a check on regulatory failures to address environmental challenges.

### **CLIMATE CHANGE IN THE COURTS**

As said previously, environmental activists and attorneys have not given enough attention to climate change lawsuits. Furthermore, a number of these instances have brought environmentally damaging behaviours to the attention of the judiciary via the lens of climate change. The National Green Tribunal and the High Court of Delhi, Allahabad, have heard the most important matters that came up.

In *Manushi Sangathan v. Government of Delhi*<sup>13</sup>, the petitioners used the IPCC's fourth assessment report, which supported policies that encouraged the use of more fuel-efficient vehicles, to challenge a ban on cycle rickshaws. The High Court held that the ban on operating cycle rickshaws was arbitrary and infringed upon the right to a living for the drivers of these vehicles.

In *We the People v. Union of India*<sup>14</sup>, the petitioners contested the removal of trees in Uttar Pradesh to make room for new roadways, arguing that this action contributed to global warming. They further claimed that no new trees were being planted to make up for the ones that had been lost. The Allahabad High Court ruled that to make up for the trees that had been taken down, more trees had to be planted.

In *Ridhima Pandey v. Union of India*<sup>15</sup>, a nine-year-old from Uttarakhand, Ridhima Pandey, filed a petition against the government's inactivity on climate change before the National Green Tribunal in 2017. The applicant is relying on the Public Trust Doctrine, the intergenerational equality concept, the sustainable development principle, and the precautionary principle as outlined in Section 20 of the National Green Tribunal Act, 2010<sup>16</sup>. The application also highlights the issue of numerous environmental laws not being implemented, in particular the Environmental Impact Assessment Notification of 2006, the Air (Prevention and Control of Pollution) Act of 1981<sup>17</sup>, the Environment (Protection) Act of 1986<sup>18</sup>, and the Forest

---

<sup>13</sup> *Manushi Sangathan v. Government of Delhi* [2007] W.P. (C) 4572

<sup>14</sup> *We the People v. Union of India* [2010] AHC 5750 [2010]

<sup>15</sup> *Ridhima Pandey v. Union of India* [2017] NGT

<sup>16</sup> National Green Tribunal Act, 2010 s (20)

<sup>17</sup> Air (Prevention and Control of Pollution) Act, 1981

<sup>18</sup> Environment Protection Act, 1986



(Conservation) Act of 1980<sup>19</sup>, which has resulted in the negative effects of climate change nationwide.

The Supreme Court of India rendered its first climate verdict in a highly lauded decision recently in *M.K. Ranjitsinh & Ors. v. Union of India & Ors*<sup>20</sup>. The Court used Article 21 and Article 14 of the Constitution to establish the right to be free from the negative impacts of climate change. The ruling of the Supreme Court is an important step in connecting human rights and climate change. The Court starts by looking into the situation of the great Indian bustard and compiling a list of the hazards that this endangered species is facing. The Court states that "among the many threats that exacerbate the challenges faced by these vulnerable species are pollution, climate change, predators, and competition with invasive species."

By doing this, the Court is already acknowledging that it is necessary to consider other environmental impacts, such as pollution, in addition to climate change while examining this case. The opposite side of the right to a clean and healthy environment is the expansion of the right to life, including the right to be free from the negative consequences of climate change. This strengthens and unites the many jurisprudential perspectives on the ecological issue. The Court observes that "the right to life is not fully realized without a clean environment which is stable and unimpacted by the vagaries of climate change," further reinforcing the connections between environment and climate. In some respects, protecting oneself against the effects of climate change and maintaining a clean environment go hand in hand.

## FUTURE DIRECTIONS

Climate Change Litigation has developed into a vital forum for tackling the complex issues raised by climate change on a worldwide scale. Recent trends point to a rise in litigation of all kinds that target different parties, such as businesses, governments, and financial institutions. These legal proceedings frequently seek to hold organizations responsible for their contributions to greenhouse gas emissions, compel legislative changes, and enforce current environmental legislation. An increasing number of lawsuits are being carefully constructed to set legal precedents that will have an impact on more comprehensive climate policy. It is believed that using this strategy will force systemic change in addition to individual verdicts.<sup>21</sup>

---

<sup>19</sup> Forest Conservation Act, 1980

<sup>20</sup> *M.K. Ranjitsinh & Ors. V. Union of India & Ors.* [2024] W.P. (C) 838 SCC

<sup>21</sup> 'Global Climate Litigation Report' (*United Nations Environment Programme*, 2023)

<<https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review>>

The increasing focus on human rights in climate lawsuits is a noteworthy trend. A growing number of litigants are presenting climate change as a human rights problem, claiming that it is against fundamental rights to life, health, and property to not minimize its effects and adapt to them. This strategy has gained popularity in human rights organizations and international tribunals, highlighting the global scope of climate justice and putting pressure on countries to enact more aggressive climate policies<sup>22</sup>.

In addition, the financial industry is increasingly the focus of climate lawsuits, which accuse banks, insurers, and investors of funding fossil fuel projects<sup>23</sup>. These legal actions aim to draw attention to the monetary concerns posed by climate change and promote a move towards more sustainable financial practices. Furthermore, attribution science is becoming more and more important in supporting responsibility claims by connecting particular environmental harm to the actions of certain companies.

Going forward, it is anticipated that climate litigation will increase due to the developing legal theories and the increasing urgency of the climate catastrophe. More creative legal defences and a wider range of plaintiffs - including Native American tribes, young activists, and cities - are to be expected<sup>24</sup>. Courts worldwide will probably be more open to hearing lawsuits related to the worsening effects of climate change, which might result in historic rulings that hasten climate action. In the end, climate litigation is an essential instrument for improving environmental governance, encouraging responsibility, and guaranteeing a fair and efficient global response to climate change.

---

<sup>22</sup> 'Global Climate Litigation Report' (*United Nations Environment Programme*, 2023)

<<https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review>>

<sup>23</sup> Maria Antonia Tigre, 'The Status of Global Climate Litigation: Tracking the Evolution of Legal Action' (*Columbia Law School*, 2023) <<https://blogs.law.columbia.edu/climatechange/2023/07/27/the-status-of-global-climate-litigation-tracking-the-evolution-of-legal-action/>>

<sup>24</sup> 'Global Climate Litigation Report' (*United Nations Environment Programme*, 2023)

<<https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review>>