



SHIFTING THE CLIMATE BATTLEFIELD: CORPORATE GOVERNANCE IN THE CROSSHAIRS

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ABSTRACT

Litigation over climate change has developed into a pivotal new stage known as Climate Litigation 2.0, in which corporate actors and their governance frameworks are increasingly being held accountable rather than governments. Courts are examining the credibility of transition plans, exposing ambiguous "net zero" pledges as possible greenwashing; they are testing the extent of directors' duties by asking whether boards that ignore climate risks violate fiduciary and statutory obligations; and litigants are pursuing strategic international filings, using supranational forums like the International Court of Justice and the European Court of Human Rights to set global precedents. Drawing from precedents such as Urgenda v. Netherlands, McVeigh v. REST, ClientEarth v. Shell, and Duarte Agostinho v. Portugal, this study examines the potential effects of Climate Litigation 2.0 in India under the Companies Act, 2013 and SEBI's sustainability disclosure framework, while placing it within the broader context of corporate governance and international law. It contends that this new wave represents a notable change, with corporate governance, financial regulation, and cross-border adjudication all incorporating climate accountability, which was previously limited to public law.

Keywords: Climate Litigation 2.0, Directors' Duties; Transition Plans, Greenwashing, Corporate Governance, International Climate Law, SEBI BRSR, Strategic Litigation.

I. INTRODUCTION

Worldwide legal, political, and economic frameworks are being shaped by the urgent reality of climate change, which is no longer a distant concern. Courts have become crucial platforms for

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promoting accountability as global warming worsens, leading to the emergence of what is now known as climate litigation. Historically, governments were the main target of this lawsuit, which is sometimes referred to as "Climate Litigation 1.0." The petitioners aimed to force governments to enforce their international commitments or to enact more robust climate policies. This first wave is best exemplified by landmark cases like *Urgenda v. Netherlands* (2015)¹, in which the Dutch government was ordered to reduce emissions in accordance with scientific targets. Nonetheless, litigation tactics are changing as governments enact more laws pertaining to climate issues and as businesses maintain their significant control over global supply chains and carbon emissions.

This development, which is frequently referred to as Climate Litigation 2.0, denotes a move away from government-only accountability and toward corporate responsibility and international legal tactics. This phase is distinguished by the fact that corporations are no longer protected from climate claims simply because they are private organizations. Instead, directors, boards, and shareholders are finding themselves at the centre of litigation, with claimants asserting that ignoring climate risks may amount to a breach of fiduciary duties, negligence, or misrepresentation.

The responsibilities of directors are one of the biggest changes in Climate Litigation 2.0. Corporate boards are required by law to act carefully, competently, and in the best interests of their stakeholders and the company. Courts and regulators are increasingly realizing that climate change presents significant risks to the long-term viability of businesses. Cases like *McVeigh v. REST in Australia* (2020)² have demonstrated how corporate executives and pension funds can be held responsible for their failure to take climate risks into account when making investment and governance decisions. Similar arguments could be made in India under the Companies Act, 2013³, which requires directors to act with due diligence and in good faith. This duty may also extend to environmental risks that have an impact on long-term corporate interests.

The increased examination of transition plans is another characteristic of Climate Litigation 2.0. Even though many businesses openly pledge to reach "net zero" goals by 2050 or sooner, these commitments frequently lack sound implementation plans. These discrepancies have

¹ *Urgenda Foundation v. State of the Netherlands* [2015] HAZA C/09/00456689 (District Court of The Hague)

² *McVeigh v. Retail Employees Superannuation Trust (REST)* (Federal Court of Australia, settled 2020)

³ Companies Act 2013 (India), ss 134, 166

given rise to charges of greenwashing, in which businesses deceive stakeholders about their actual environmental impact. This trend is best illustrated by the well-known *ClientEarth v. Shell* case in the UK⁴, where shareholders contested Shell's transition plan's suitability considering the Paris Agreement. This move shows that courts are prepared to investigate the veracity of private companies' decarbonization plans in addition to government pledges.

The emergence of strategic international filings is a third characteristic that distinguishes Climate Litigation 2.0. To obtain remedies that go beyond national borders, litigants are increasingly turning to international tribunals, human rights organizations, and supranational courts. For instance, young petitioners petitioned the European Court of Human Rights in *Duarte Agostinho v. Portugal*⁵ to hold several states responsible for climate damage that crosses international borders. The growing importance of international adjudication is also reflected in the United Nations General Assembly's 2023 request for an advisory opinion from the International Court of Justice⁶ regarding states' climate obligations. These changes have an impact on domestic legal systems and create new avenues for transnational accountability.

Considering this, this article explores how a significant change in the governance of climate change is reflected in Climate Litigation 2.0. It places the trend in the context of international discussions about corporate governance and assesses its effects on India, where new disclosure laws like SEBI's Business Responsibility and Sustainability Reporting (BRSR) framework⁷ and statutory corporate duties may serve as the basis for legal action. This article argues that Climate Litigation 2.0 is not merely a continuation of earlier trends but a paradigm shift embedding climate accountability within corporate governance, financial regulation, and international law.

II. THE SHIFT TO CLIMATE LITIGATION 2.0

There has been a significant change in climate litigation over the last 20 years. Actions against governments, with claimants requesting that states enact stricter mitigation laws, enforce environmental regulations, or fulfill their international climate commitments, were the main

⁴ *ClientEarth v. Shell plc and Others* [2023] EWHC 1137 (Ch)

⁵ *Duarte Agostinho and Others v. Portugal and 32 Other States* (pending before the European Court of Human Rights, App no 39371/20)

⁶ UNGA Res 77/276 (29 March 2023) 'Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change'

⁷ Securities and Exchange Board of India (SEBI), 'Business Responsibility and Sustainability Reporting (BRSR) Framework' (Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2021/562, 10 May 2021)

feature of what academics refer to as Climate Litigation 1.0. This first wave was exemplified by the historic ruling in *Urgenda v. Netherlands* (2015)⁸, which mandated that the Dutch government cut national greenhouse gas emissions. The Supreme Court of India has also frequently interpreted Article 21 of the Constitution to include the right to a clean and healthy environment as part of the right to life⁹. These cases established important precedents and mostly addressed state accountability, which shielded corporations—the biggest emitters—from direct legal action.

There has been a significant change with Climate Litigation 2.0. It shows an understanding that when private companies have such a significant impact on global emissions, financial flows, and transition routes, governments cannot be the only targets of legal action. The invocation of directors' duties, judicial review of corporate transition plans, and the use of strategic international filings to get around domestic restrictions and establish wider precedents are the three distinguishing characteristics of this second wave.

A. Directors' Duties

Acting in the best interests of their companies and stakeholders is a statutory and fiduciary duty for corporate directors. Climate risk is becoming more widely acknowledged as a significant financial and governance issue. A pension fund admitted in *McVeigh v. REST* (Australia, 2020)¹⁰ that neglecting to take climate risks into account could be a breach of fiduciary duty. Similarly, an Australian court affirmed in *ASIC v. RI Advice Group* (2022)¹¹ that directors' duties of care and diligence were breached by their failure to manage climate-related risks. As demonstrated in *ClientEarth v. Shell Directors* (UK, 2023)¹², where directors were charged with failing to align Shell's strategy with the Paris Agreement, shareholder activism has also broadened these discussions. Even though the claim was rejected, it marks a significant shift in the accountability of corporate boards. Sections 134 and 166 of the Companies Act, 2013¹³ may be construed in the Indian context to broaden directors' responsibilities to take long-term climate risks into account, opening the door for potential future legal action.

⁸ *Urgenda Foundation v. State of the Netherlands* [2015] HAZA C/09/00456689 (District Court of The Hague)

⁹ *MC Mehta v. Union of India* (1987) 1 SCC 395; *Subhash Kumar v. State of Bihar* (1991) 1 SCC 598

¹⁰ *McVeigh v. Retail Employees Superannuation Trust (REST)* (Federal Court of Australia, settled 2020)

¹¹ *ASIC v. RI Advice Group Pty Ltd* [2022] FCA 496

¹² *ClientEarth v. Shell ple and Others* [2023] EWHC 1137 (Ch)

¹³ Companies Act 2013 (India), ss 134, 166

B. Transition-Plan Scrutiny

The demand for credibility and transparency in corporate transition plans is another tenet of Climate Litigation 2.0. Even though many businesses have made "net zero by 2050" promises, authorities are increasingly questioning whether these promises are sincere or just greenwashing. An example of the increasing judicial willingness to examine corporate decarbonization strategies is the Dutch court's decision in *Milieudefensie v. Shell* (2021)¹⁴, which mandated that Shell cut its global carbon emissions by 45% by 2030. The legal risk of ambiguous or deceptive transition plans is further highlighted by cases brought against TotalEnergies in France under the Duty of Vigilance Law¹⁵. The Business Responsibility and Sustainability Reporting (BRSR) framework¹⁶ was introduced by the Securities and Exchange Board of India (SEBI) for India, and it requires listed companies to report on their sustainability and environmental performance. Although regulatory, this framework may be put to the test in court in the future, particularly if it turns out that corporate disclosures are deceptive or at odds with India's climate pledges.

C. Strategic International Filings

Using international and supranational forums to obtain rulings that cut across national boundaries is the third aspect of Climate Litigation 2.0. Six Portuguese youths are demanding accountability from several states for transboundary climate harm in the case of *Duarte Agostinho v. Portugal and 32 Other States*¹⁷, which is currently pending before the European Court of Human Rights. The growing importance of international adjudication is also reflected in the United Nations General Assembly's 2023 request for an advisory opinion from the International Court of Justice (ICJ)¹⁸ regarding states' climate obligations. These cases establish strong precedents that have the power to affect national courts all over the world. These developments could offer significant interpretive guidance in domestic climate litigation for

¹⁴ *Milieudefensie v. Royal Dutch Shell plc* (District Court of The Hague, 26 May 2021, C/09/571932 / HA ZA 19-379)

¹⁵ Loi n° 2017-399 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (Duty of Vigilance Law), France

¹⁶ Securities and Exchange Board of India (SEBI), 'Business Responsibility and Sustainability Reporting (BRSR) Framework' (Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2021/562, 10 May 2021)

¹⁷ *Duarte Agostinho and Others v. Portugal and 32 Other States* (pending before the European Court of Human Rights, Application No. 39371/20)

¹⁸ UNGA Res 77/276 (29 March 2023) 'Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change'.

India, a country whose judiciary has historically been open to international environmental principles like intergenerational equity¹⁹ and sustainable development.

Collectively, these three changes show that Climate Litigation 2.0 represents a paradigm shift in accountability rather than just a continuation of earlier tactics. The emphasis has shifted from domestic courts to international judicial arenas, from aspirational promises to verifiable transition plans, and from state failure to corporate governance. This change emphasizes the fact that states, businesses, and international legal organizations must now all be held accountable for climate governance.

III. TRANSITION-PLAN SCRUTINY

The emphasis placed by courts and regulators on the legitimacy of corporate transition plans is a second characteristic that sets Climate Litigation 2.0 apart. Companies from a variety of industries have made bold promises to reach "net zero" or "carbon neutrality" over the last ten years, frequently by 2050. Although these declarations show that climate risks are being acknowledged, they have also come under fire for not having specific plans, quantifiable goals, or legally binding enforcement measures. Courts are now being asked to determine whether companies are making promises and whether those promises can withstand legal and scientific scrutiny, which has led to a new wave of litigation.

The most well-known example of this trend is the Dutch case of *Milieudefensie v. Royal Dutch Shell* (2021)²⁰. Considering the Paris Agreement, the Hague District Court ruled that Shell must cut its global carbon emissions by 45% by 2030, highlighting the inadequacy of voluntary pledges and broad goals. The court established that corporations can be held accountable for deceptive or inadequate climate strategies by clearly framing Shell's poor transition strategy as a breach of its duty of care. For the first time, a multinational company was required by law to match its transition plan with global climate targets.

In a similar vein, *ClientEarth v. Shell* (2021–2023)²¹ advanced the discussion in the UK by concentrating specifically on corporate governance. The environmental law NGO ClientEarth represented shareholders in their argument that Shell's directors had violated their fiduciary

¹⁹ *Vellore Citizens' Welfare Forum v. Union of India* (1996) 5 SCC 647

²⁰ *Milieudefensie v. Royal Dutch Shell plc* (District Court of The Hague, 26 May 2021, C/09/571932 / HA ZA 19-379)

²¹ *ClientEarth v. Shell plc and Others* [2023] EWHC 1137 (Ch)

duties under the Companies Act by approving a transition plan that was at odds with international climate goals. Even though the High Court rejected the claim, the case brought to light a significant shift: the suitability of transition plans is increasingly being contested in court rather than being a matter of voluntary disclosure.

Under its Duty of Vigilance Law²², which mandates that big businesses detect and stop environmental and human rights violations connected to their operations, France provides yet another instructive example. Lawsuits against TotalEnergies have questioned whether its climate transition plan is adequate, showing how accountability can be enforced through statutory frameworks. Together, these cases show how transition-plan scrutiny, which focuses on the discrepancy between corporate climate commitments' words and deeds, has emerged as a crucial litigation tool.

This change is still in its infancy in India, but it has enormous promise. With the introduction of the Business Responsibility and Sustainability Reporting (BRSR) framework²³ by the Securities and Exchange Board of India (SEBI), listed companies are required to report on their environmental, social, and governance (ESG) performance, including risks and goals related to climate change. Although the BRSR is presently a regulatory document, companies that are found to have misrepresented their progress or offered ambiguous transition plans that are at odds with India's Nationally Determined Contributions (NDCs) under the Paris Agreement may be sued based on the disclosures made in the report. NGOs, shareholders, or even impacted communities may contend that deceptive transition plans violate both statutory disclosure requirements and Article 21 constitutional rights, given India's long history of public interest litigation.

As a result, the examination of transition plans signifies a structural change in the way courts and regulators require climate accountability, rather than just a technical problem with corporate reporting. Transition plans are now viewed as legally binding commitments whose legitimacy, openness, and conformity to international climate goals can and will be put to the test in court rather than as aspirational corporate policies.

²² Loi n° 2017-399 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (Duty of Vigilance Law), France

²³ Securities and Exchange Board of India (SEBI), 'Business Responsibility and Sustainability Reporting (BRSR) Framework' (Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2021/562, 10 May 2021)

IV. STRATEGIC INTERNATIONAL FILINGS

The increasing use of strategic international filings, in which litigants seek remedies for climate inaction in supranational and international legal forums, is the third distinguishing feature of Climate Litigation 2.0. This illustrates the insufficiency of disjointed domestic responses as well as the transnational character of climate change. In addition to holding individual states responsible, litigants are attempting to shape the development of international law itself by presenting climate harm as a matter of global justice, intergenerational equity, and international human rights.

Duarte Agostinho and Others v. Portugal and 32 States, which is currently pending before the European Court of Human Rights²⁴, is among the most well-known instances. Six young Portuguese people have claimed that their rights to life and family life under the European Convention on Human Rights are being violated by the collective inaction of European governments in enacting appropriate climate policies. Crucially, the case aims to create extraterritorial accountability because Portugal suffers from climate harms caused by the emissions of several states. A positive decision would be revolutionary because it would hold states legally responsible for their contributions to global warming outside of their borders, transcending national boundaries.

Another example of how youth-led climate litigation is redefining climate change as a fundamental rights issue is the American case of *Juliana v. United States (2015–present)*²⁵. The plaintiffs contend that the public trust doctrine and their constitutional rights to life, liberty, and property are violated by the U.S. government's support of the fossil fuel industry. Despite procedural challenges, the case has changed the global conversation by igniting parallel litigation tactics in different jurisdictions and proving that climate change is a rights-based issue rather than just a policy issue.

The United Nations General Assembly's 2023 request for an Advisory Opinion from the International Court of Justice (ICJ)²⁶ regarding states' obligations regarding climate change is the most important development. The ICJ is being asked to clarify whether current international

²⁴ *Duarte Agostinho and Others v. Portugal and 32 Other States* (pending before the European Court of Human Rights, Application No. 39371/20)

²⁵ *Juliana v. United States 217 F Supp 3d 1224 (D Or 2016)*, appeal pending

²⁶ UNGA Res 77/276 (29 March 2023) 'Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change'.

legal principles, such as the no-harm rule, human rights treaties, and the doctrine of intergenerational equity, require states to take more aggressive climate action. The request was started by Vanuatu and is backed by more than 130 nations. The ICJ's ruling would have enormous persuasive power and influence the course of both domestic and international climate litigation, even though advisory opinions are not legally binding.

This growing litigation landscape has also attracted the attention of other international organizations. While the International Tribunal for the Law of the Sea²⁷ is looking into states' obligations under the UN Convention on the Law of the Sea with regard to climate change, the Inter-American Court of Human Rights²⁸ is reviewing requests for an advisory opinion on the environmental aspects of human rights. These cases demonstrate how climate accountability is being examined in a variety of legal contexts, supporting the notion that climate change is a basic issue of justice under international law rather than just an environmental one.

This trend has significant ramifications for India. International jurisprudence could be strategically invoked by Indian petitioners, especially youth movements and NGOs, to support domestic Public Interest Litigations (PILs). For instance, under Article 21 of the Constitution, which guarantees the right to life, litigants may contend that India has violated the constitution by failing to implement credible corporate transition plans or fulfil its climate obligations under the Paris Agreement²⁹. One could use the persuasive power of an advisory opinion from the International Court of Justice (ICJ) or rulings from organizations such as the European Court of Human Rights (ECHR) to show that climate inaction violates international legal commitments to which India has acceded.

This is better explained by a hypothetical example: if it is demonstrated that SEBI-mandated Business Responsibility and Sustainability Reports (BRSR)³⁰ are ambiguous or deceptive, litigants may contend that companies not only violate their domestic disclosure requirements but also jeopardize India's commitments under international climate law. Like the Juliana case, youth organizations could create petitions claiming that insufficient climate policies harm future generations and violate both international and domestic human rights norms.

²⁷ International Tribunal for the Law of the Sea, 'Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law' (Case No 31, pending).

²⁸ Inter-American Court of Human Rights, 'Request for Advisory Opinion on the Climate Emergency and Human Rights' (2023, pending)

²⁹ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 177

³⁰ SEBI, BRSR Circular (10 May 2021)

Therefore, a daring reorientation of climate litigation is represented by strategic international filings. Using supranational forums, litigants push international organizations to elucidate states' obligations, increase accountability across national boundaries, and establish persuasive precedents for domestic courts. This path offers India the chance to integrate global climate accountability into its domestic legal system by bridging the gap between changing international law and constitutional rights jurisprudence.

V. CHALLENGES AND CRITICISM

Despite being a revolutionary development in environmental law, Climate Litigation 2.0 is not without its conceptual, legal, and practical difficulties. The legitimacy, enforceability, and political ramifications of such litigation are challenging issues raised by the very attempt to extend accountability from states to corporations and from national courts to international forums. The main objections to this recent spate of climate cases are examined in this section.

A. Doctrinal and Legal Challenges

The possibility of judicial overreach is one of the main objections. Courts are being asked to examine corporate transition plans, director decisions, and even the suitability of government climate policies. Such decisions, according to critics, necessitate intricate technical and economic balancing, which is better left to legislatures and regulators rather than the courts. It is instructive to note that the UK's High Court was hesitant to question corporate strategy in the dismissal of *ClientEarth v. Shell*³¹, highlighting the fact that courts lack the authority to impose specific business policies.

Uncertain legal standards are another problem. The inclusion of climate risk in directors' responsibilities is still developing, in contrast to more well-established duties like negligence or fiduciary duty. Inconsistent jurisprudence across jurisdictions may result from courts' disagreements over whether climate inaction qualifies as a legal violation. Because they are caught between ambiguous obligations and litigation risks, this uncertainty may deter both corporations and investors.

³¹ *ClientEarth v. Shell plc and Others* [2023] EWHC 1137 (Ch)

B. Enforcement Barriers

Enforcement is still a significant barrier, even in cases where litigants are successful. For example, although Shell's worldwide operations are well outside of Dutch jurisdiction, the *Milieudefensie v. Shell*³² ruling requiring emission reductions is legally binding in the Netherlands. The practical impact of such rulings is diminished because national courts have limited authority to enforce remedies against multinational corporations that operate internationally.

Enforcement challenges are even more severe for international filings. Despite their persuasiveness, the International Court of Justice's³³ advisory opinions are not legally binding. States that are unwilling to put climate action ahead of economic interests may also disregard decisions made by regional human rights courts³⁴. Critics caution that such litigation runs the risk of becoming symbolic rather than transformative in the absence of strong enforcement mechanisms.

C. Practical and Financial Limitations

Litigation over climate change is known to require a lot of resources. Building a case frequently calls for cross-border cooperation, expert testimony, and substantial scientific evidence. These expenses may discourage underprivileged populations—the very populations most impacted by climate change—from using the legal system. Strategic litigation is frequently dominated by wealthy NGOs and global networks, which raises questions regarding representation and inclusivity.

In contrast, corporations can use substantial financial and legal resources to file counterclaims, prolong proceedings, or pursue settlement strategies that weaken accountability. The democratizing potential of climate litigation may be undermined by the extreme disparity in resources.

³² *Milieudefensie v. Royal Dutch Shell plc* (District Court of The Hague, 26 May 2021, C/09/571932 / HA ZA 19-379)

³³ UNGA Res 77/276 (29 March 2023) 'Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change'.

³⁴ *Duarte Agostinho and Others v. Portugal and 32 Other States* (pending before the European Court of Human Rights, Application No. 39371/20)

D. Political Economy Concerns

India and other developing nations make a compelling argument: vigorous climate litigation may make it more difficult for them to pursue industrial development and the reduction of poverty. Holding companies responsible is important, but too much litigation could discourage investment, especially in energy-intensive industries that are still vital to growth. Additionally, there is a chance that climate law imported from Western settings will not accurately represent the Global South's developmental realities.

Furthermore, corporate lobbyists frequently depict climate lawsuits as a type of "shareholder activism" that compromises corporate independence and breeds regulatory ambiguity. Policymakers who worry that excessively aggressive litigation will stifle innovation or force businesses to relocate operations to less restrictive jurisdictions have taken up this argument.

E. The Indian Context

Although there is a lot of promise for Climate Litigation 2.0 in India, there are also particular difficulties. Public Interest Litigations (PILs) have historically allowed the judiciary to take the initiative, but extending constitutional rights to impose corporate climate obligations may go beyond the bounds of judicial interpretation. In addition, courts may be reluctant to get involved in corporate governance for fear of being accused of judicial activism.

Furthermore, frameworks like the Business Responsibility and Sustainability Report (BRSR) have only lately been introduced by Indian regulators like SEBI³⁵. It could be challenging for courts to hold people accountable for poor transition plans in the absence of specific statutory requirements. Lastly, India's reliance on coal and other carbon-intensive industries, which are both economically and politically sensitive, makes enforcement more difficult.

F. Critique of Effectiveness

Despite its prominence, academics warn that litigation is just one strategy for combating climate change. Laws, regulations, and systemic adjustments to markets and technology are all necessary for structural transformation. Global emissions may not be significantly reduced by litigation that places an undue emphasis on symbolic wins, such as compelling a business to

³⁵ SEBI, BRSR Circular (10 May 2021)

make more robust disclosures. Additionally, there is a chance that over-legalization will prevent climate change from being addressed through democratic, policy-driven means and instead trap it in courtrooms.

All things considered, Climate Litigation 2.0 must strike a careful balance. It raises valid concerns about judicial competence, enforcement gaps, financial barriers, and political economy constraints, even though it is an inventive attempt to enforce climate accountability. These issues need to be carefully navigated for nations like India, where there are significant developmental needs as well as climate vulnerabilities. To ensure that litigation supports policy reform rather than replaces it, courts must be able to balance respect for institutional boundaries with creative rights-based enforcement. This will determine the future of climate litigation.

VI. THE INDIAN CONTEXT AND WAY FORWARD

A. Current Legal and Regulatory Framework

India's role in global climate governance is complicated. Being one of the fastest-growing economies in the world and a major emitter of greenhouse gases, its actions will have a big impact on whether international climate targets are met. However, India also has urgent needs for development, such as reducing poverty, building out infrastructure, and ensuring energy security. The development of climate law and litigation in the nation is influenced by these two realities.

The basis for environmental jurisprudence is found in the Indian Constitution. The Supreme Court has interpreted Article 21 of the Right to Life broadly, encompassing the rights to sustainable development, clean air, and a healthy environment. Public Interest Litigations (PILs) have been used to constitutionalize environmental issues, as evidenced by cases like *MC Mehta v. Union of India* (1987 onward)³⁶ and *Subhash Kumar v. State of Bihar* (1991)³⁷. Even in the absence of clear statutory provisions, this judicial activism has produced a favorable environment for climate-related claims.

Pollution control and conservation are governed by the Environment (Protection) Act of 1986³⁸ and related laws. These frameworks offer regulatory oversight, but they are not made especially

³⁶ *MC Mehta v. Union of India* (1987) 1 SCC 395

³⁷ *Subhash Kumar v. State of Bihar* (1991) 1 SCC 598

³⁸ Environment (Protection) Act 1986 (India)

to handle corporate transition plans or climate risks. On the other hand, the Securities and Exchange Board of India (SEBI)³⁹ and the Companies Act of 2013⁴⁰ are the main sources of corporate accountability. Directors are required by Sections 134 and 166 of the Companies Act to act in good faith, safeguard stakeholders' interests, and guarantee truthful disclosure of material risks.

Top listed companies are required to report on their Environmental, Social, and Governance (ESG) performance, including climate-related disclosures, under the Business Responsibility and Sustainability Reporting (BRSR) framework⁴¹, which was introduced by SEBI in 2021. Although progressive, BRSR is still focused on disclosure and does not yet impose significant requirements on businesses to reduce emissions or implement sound transition plans.

B. Embedding Climate Risk in Directors' Duties

The responsibilities of directors represent the first significant avenue for India to adopt Climate Litigation 2.0. As demonstrated by the cases of *McVeigh v. REST (Australia)*⁴² and *ASIC v. RI Advice (Australia)*⁴³, courts around the world are beginning to acknowledge that neglecting to take climate risk into account is a breach of fiduciary duty. Sections 134 and 166 of the Companies Act, 2013⁴⁴ allow for the extension of this reasoning for India.

Litigants may contend that directors breach their duty of care and stakeholder loyalty when they do not incorporate climate risks into decision-making. For example, boards of carbon-intensive corporations may be challenged by shareholders if they approve projects that are at odds with India's Nationally Determined Contributions (NDCs) under the Paris Agreement⁴⁵. In addition to promoting climate accountability, such assertions would bring corporate governance into compliance with international sustainability standards.

India might think about issuing regulatory guidance that specifically acknowledges climate risk as a component of fiduciary duties to strengthen this avenue. In addition to giving directors

³⁹ Companies Act 2013 (India), ss 134, 166

⁴⁰ Securities and Exchange Board of India Act 1992 (India)

⁴¹ SEBI, BRSR Circular (10 May 2021)

⁴² *McVeigh v. Retail Employees Superannuation Trust (REST)* (Federal Court of Australia, settled 2020)

⁴³ *ASIC v. RI Advice Group Pty Ltd* [2022] FCA 496

⁴⁴ Companies Act 2013 (India), ss 134, 166

⁴⁵ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 177

clarity, this would enable shareholders and non-governmental organizations to hold boards responsible through shareholder activism or legal action.

C. Scrutinizing Corporate Transition Plans

Assessing the suitability of corporate transition plans is the second pillar. Courts around the world have started to invalidate ambiguous or deceptive net-zero commitments, as demonstrated by the French Duty of Vigilance case⁴⁶ and the Dutch case of Milieudefensie v. Shell⁴⁷. Since businesses are already required to reveal their sustainability plans, the BRSR framework⁴⁸ offers India a regulatory entry point.

In addition to regulatory non-compliance, litigants may contend that inadequate or deceptive disclosures under BRSR violate statutory and constitutional obligations. For example, a coal-based business that claims "long-term carbon neutrality" without a solid plan may be sued for deceit, which would be detrimental to the public and shareholders. NGOs could bring public interest lawsuits (PILs) claiming that this kind of corporate greenwashing violates the rights to clean air and health guaranteed by Article 21.

To put this into practice, SEBI might require independent third-party audits of transition plans, much like it does for financial audits, to make sure that company climate pledges are supported by science. The notion that transition plans are legally binding obligations rather than aspirational documents could be strengthened if courts were to consider poor plans as actionable harm.

D. Strategic Use of International Jurisprudence

Integrating global climate jurisprudence into Indian litigation is the third route. Indian litigants could strategically use these international developments as persuasive authorities, as the ICJ is

⁴⁶ Loi n° 2017-399 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (Duty of Vigilance Law), France

⁴⁷ Milieudefensie v. Royal Dutch Shell plc (District Court of The Hague, 26 May 2021, C/09/571932 / HA ZA 19-379)

⁴⁸ SEBI, BRSR Circular (10 May 2021)

preparing an advisory opinion⁴⁹ on states' climate obligations and cases such as *Juliana v. US*⁵⁰ and *Duarte Agostinho (ECHR)*⁵¹ are promoting rights-based climate claims.

For instance, Indian youth movements may file a Public Interest Litigation (PIL) based on *Juliana's* case, claiming that insufficient climate policies violate intergenerational equity, a principle established in *Vellore Citizens' Welfare Forum v. Union of India (1996)*⁵². Similarly, NGOs could use the upcoming ICJ ruling to claim that India is in violation of both its domestic constitutional duties and its international commitments under the Paris Agreement⁵³ by allowing carbon-intensive industries to operate without sound mitigation plans.

By placing domestic claims within the larger global movement toward rights-based climate accountability, such tactics would bolster the legitimacy of Indian climate litigation.

E. Challenges for India

But there are some obstacles in India's way of Climate Litigation 2.0.

1. *Judicial Hesitancy*: Out of concern for charges of judicial overreach, courts may be hesitant to impose corporate climate obligations.
2. *Regulatory Gaps*: Existing frameworks, such as BRSR, are toothless and focused on disclosure. Corporate accountability is still restricted in the absence of clear statutory obligations.
3. *Developmental Limitations*: Being a developing country that depends on coal and heavy industry, aggressive climate litigation runs the risk of conflicting with the demands of economic growth and energy security.
4. *Enforcement Issues*: Even if courts acknowledge their climate-related responsibilities, it is still difficult to enforce decisions against large companies or supply chains.

⁴⁹ UNGA Res 77/276 (29 March 2023) 'Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change'.

⁵⁰ *Juliana v. United States* 217 F Supp 3d 1224 (D Or 2016), appeal pending

⁵¹ *Duarte Agostinho and Others v. Portugal and 32 Other States* (pending before the European Court of Human Rights, Application No. 39371/20)

⁵² *Vellore Citizens' Welfare Forum v. Union of India* (1996) 5 SCC 647

⁵³ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 177

F. Way Forward

Several actions are required to overcome these obstacles and incorporate climate accountability:

1. *Statutory Reforms*: Change the Companies Act to specifically include climate risk and sustainability in the responsibilities of directors.
2. *Strengthened Disclosures*: Extend BRSR regulations to require transition plans that are supported by science and are subject to independent audits.
3. *Judicial Training*: To better prepare courts to manage complex litigation, increase judicial capacity in international law and climate science.
4. *PIL Innovation*: Motivate youth organizations and NGOs to frame climate claims in terms of international human rights obligations, intergenerational equity, and Article 21.
5. *Policy Integration*: Make sure that private actors directly support national climate commitments by connecting India's corporate accountability frameworks with its NDCs.
6. *Collaborative Governance*: Encourage multi-stakeholder discussions among corporations, civil society, and regulators to align legal, economic, and environmental objectives.

India is on the cusp of the second phase of climate litigation. The nation has the means to adjust international trends to its own domestic conditions thanks to its strong constitutional jurisprudence, vibrant civil society, and new sustainability laws. India can set the standard for climate litigation that strikes a balance between pressing climate obligations and developmental priorities by incorporating climate risk into corporate governance, closely examining transition plans, and strategically referencing international jurisprudence. Viewing litigation as a catalyst for responsible governance that ensures both economic and environmental futures, rather than as a threat to growth, is the way forward.

VII. CONCLUSION

There has been a notable shift in climate litigation. The focus of Climate Litigation 2.0 has shifted from holding governments responsible for insufficient policies, which was the focus of Climate Litigation 1.0, to corporations, directors, and international forums. This change reflects

a greater understanding that climate change is a governance issue that affects fiduciary responsibilities, corporate responsibility, and fundamental human rights in addition to being an environmental issue.

Courts around the world have started to examine directors' responsibilities, test the validity of corporate transition plans, and increase accountability by making calculated international filings. Cases like *Milieudefensie v. Shell*, *ClientEarth v. Shell*, and *Duarte Agostinho v. Portugal and 32 Others* show that climate litigation is changing corporate and international governance structures and is no longer limited to the periphery of environmental law. However, the International Court of Justice and other tribunals' advisory proceedings promise to firmly establish climate obligations within the framework of international law.

India's strong tradition of constitutional environmentalism under Article 21, its proactive judiciary, and new regulatory frameworks like SEBI's Business Responsibility and Sustainability Reporting (BRSR) all intersect with this global momentum. However, there are still issues that could hinder the adoption of Climate Litigation 2.0, including judicial hesitancy, poor enforcement, and developmental limitations. Integrating climate risk into directors' responsibilities, requiring verifiable transition plans, and using international jurisprudence as persuasive evidence in national courts are the ways to go forward. In addition to bringing India into line with international trends, such actions would guarantee that climate justice is a lived constitutional reality for its people.

One could even refer to this future stage as Climate Litigation 3.0, in which courts will have to deal with issues like liability for climate-tech failures, accountability in global carbon markets, and AI-driven climate decision-making. The law will change in tandem with advancements in climate science, technology, and governance. In the end, climate litigation has the potential to strengthen policy rather than replace it, ensuring that climate action is based on justice, equity, and accountability for all generations.