FROM ENVIRONMENT TO RIGHTS: THE EVOLUTION OF JUDICIAL REMEDIES IN CLIMATE CHANGE LITIGATION

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ABSTRACT

From a landscape little recognised by courts two decades ago, climate change litigation today has transformed into a significant aspect of contemporary legal discourse. Human rights have been a primary driver of this transformation. Judicial reasoning-what constitutes climate change litigation-in one fell swoop transitioned from ecological concern into considerations framed as fundamental human rights violations. The purpose of this paper is to attempt to make sense of the transformation in the character of judicial responses to climate change litigation based on human rights claims. The evolution of remedies in climate change litigation will be explored, and the human rights frameworks that underpin the justifications for judicial intervention will be examined. Secondly, it evaluates the challenges that affect enforcement, institutional competence, and the prospects of judicial overreach in rights-based climate litigation, with particular reference to the Indian experience. It is submitted that the human rights discourse has widened the possibilities of judicial intervention, but the transformative possibilities are subject to political will. The methodology used is comparative, where the litigation listed globally is used to examine whether there has been meaningful change and whether the rate of change is sufficient to reverse or stall climate change, which is a defining aspiration of this litigation.

Keywords: Climate Change Litigation, Human Rights, Interventionist, Cautious Courts.

INTRODUCTION

"Barely a decade ago, the idea of suing governments and corporations for the profound impacts of climate change on human rights was met with scepticism at best and with derision at worst. Legal scholars and practitioners were among the sceptics. Indeed, most legal observers at the

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outset of the pioneering cases of the early 2010s thought such cases were unlikely to succeed."[1] Early climate litigation invoked mainly procedural environmental law, challenging administrative decisions for failure to conduct environmental impact assessments or to comply with statutory mandates.[2] Substantive relief addressing climate mitigation was rare, and claims rooted in human rights did not find much acceptance.

As the twenty-first century dawned, claimants redefined climate change from a broad environmental concern to a case where the absence of state response impacted directly on specific and protected human interests.[3] This occurred in tandem with a general development of human rights jurisprudence, particularly in relation to positive state obligations and prevention obligations.[4] This article will explore how, to date, the use of human rights argumentation has impacted the nature of judicial remedies in climate change litigation. It will concentrate on the shift from limited and deferential remedies to more interventionist judicial responses and explore the implications of this shift in the judicial role in climate governance. It will also revisit the implications of human rights argumentation on what is argued in court and how the judiciary and scholarship respond to human suffering and judicial accountability in the context of climate change.

The paper proceeds in six parts. Part I traces the evolution of climate change litigation and examines the shift in judicial reasoning induced by the incorporation of human rights arguments. Part II addresses the emergence of the human rights framework and why it has proved particularly persuasive to courts. Part III discusses the article's core component—the nature of judicial responses—through a comparative analysis of court verdicts, categorised as Interventionist Courts, which have imposed binding obligations on the state, and Cautious Courts, which have refrained from following the former due to concerns about judicial overreach. Part IV critically evaluates the limitations of rights-based litigation, including concerns about judicial overreach, enforcement gaps, and institutional competence. Part V offers India-centric analyses of climate change questions linked to human rights, examining how Indian Courts have engaged with these issues and the nation's current position within the trajectory toward climate rights. Part VI concludes with a consideration of the role of human

[1] See César Rodríguez-Garavito, Climate Change on Trial: Mobilizing Human Rights Litigation to Accelerate Climate Action (Cambridge University Press 2025) Introduction.
[2] Rodríguez-Garavito (n 1) Introduction; see also ch 2 ('An Unlikely Convergence').
[3] Rodríguez-Garavito (n 1) Introduction; ch 2 ('Explaining the Rights Turn').
[4] Rodríguez-Garavito (n 1) Introduction; ch 4 ('The Evolving Law of Human Rights and Climate Change').

rights-led judicial interventions in bringing about effective climate governance and the circumstances in which rights-based litigation can bring about transformative change.

EVOLUTION

Early 2000s: During the developmental stage, the ambition level of climate change litigation was low, and judicial reactions were constrained. The cases were usually based on environmental legislation or administrative law rules, which contested administrative actions on procedural grounds.[5] The judiciary was rather hesitant to require substantive state obligations to cut GHG emissions.

Courts have traditionally viewed climate harm as difficult to attribute to individual defendants due to the diffuse and cumulative nature of greenhouse gas emissions.[6] In his dissent in Massachusetts v. EPA, Justice Antonin Scalia referred to the National Research Council studies that pointed out uncertainties in climate models concerning natural climate variability.[7] Certain phenomena of climate change, for instance, are not connected with the increase in greenhouse gases.

Throughout the spectrum, defendants, whether states or corporations, have consistently relied on the "drop in the bucket" doctrine, limiting it to one of two corollaries: 1) If they cut their emissions, someone else will cover the difference; 2) It is not fair to hold them liable individually, and that will not solve the problem.[8]

Another argument that has been raised is that since climate change affects everyone, individual compensation cannot be granted. This is based on the Doctrine of Standing in traditional law, which holds that one cannot sue if they are not affected differently from others.[9] In 2007, when the state of California sued six of the world's largest car manufacturers, including GM, for alleged effects of climate change, the case was dismissed in People of the State of California v. General Motors[10] as a non-justiciable "political question" left to Congress or the President.

[5] César Rodríguez-Garavito, Climate Change on Trial: Mobilizing Human Rights Litigation to Accelerate Climate Action (2025) ch 1 ('The Rise of Climate Litigation').
[6] Rodríguez-Garavito (n 1) ch 3.
[7] Massachusetts v EPA 549 US 497 (2007), Scalia J dissent
[8] Rodríguez-Garavito (n 1) ch 4.2.2
[9] Rodríguez-Garavito (n 1) ch 4.2.1
[10] People of the State of California v General Motors Corp 2007 WL 2726871 (ND Cal).

Post-2015 Shift: Since 2015, climate-change litigation has significantly developed, with the 93% of cases filed in the period beyond this benchmark.[11] Two approaches have usually been pursued by advocates of climate justice:[12]

Employing Benchmarks: International agreements such as the Paris Agreement and studies by the IPCC are used to hold governments responsible for fulfilling promises. In mid-2025, the ICJ said states have binding duties that flow from the UN Charter, human rights law, the laws of the sea, and fundamental principles in customary international law.[13] This transforms climate science into enforceable legal standards.

Enforcement of Human Rights: Invocation of human rights norms makes government action accountable to scientifically based claims. One significant demonstration was the same is presented in Future Generations v. Ministry of the Environment,[14] a landmark 2018 Colombian lawsuit, where the court ordered the government to deliver on its commitment to reduce deforestation in the Amazon, kept supervisory jurisdiction over the implementation of the case, and declared the Colombian Amazon as a subject of rights. These approaches have raised awareness in courts and governments and, more importantly, set a threshold whereby governments are now legally obliged to meet.

Courts globally are also slowly formulating principles to refute claims by states, corporations, and other defendants. One of the most famous examples is the "fair share doctrine" that arose in response to the "drop in the bucket" argument. "Collective action problems require that relevant actors do at least the minimum: to avoid free riding, each actor must 'do its part' to contribute to emissions reductions."[15] This has been widely accepted globally, with the most famous cases including Urgenda Foundation v. The State of the Netherlands and KlimaSeniorinnen v. Switzerland.

HUMAN RIGHTS FRAMEWORK

Human rights frameworks lend litigants a robust vocabulary for the translation of abstract and long-term harms from climate change into legally cognizable injuries. Several rights invoked

[11] Rodríguez-Garavito (n 1) ch 1
[12] Rodríguez-Garavito (n 1) ch 2.4.2
[13] Obligations of States in respect of Climate Change (Advisory Opinion) [2025] ICJ <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf> accessed 13 Jan, 2026
[14] <https://www.climatecasechart.com/documents/future-generations-v-ministry-of-the-environment-and-others-decision_7592> accessed 13 Jan, 2026
[15] Rodríguez-Garavito (n 1) ch 4.2.2.1

to connect state conduct and individual harm include the right to life, health, dignity, and private and family life.

The power of human rights arguments rests in their normative force and doctrinal flexibility. Unlike environmental statutes, which may be circumscribed by scope or subject to political discretion, human rights obligations tend to be continuous, universal, and, in many jurisdictions, justiciable. Courts have increasingly interpreted these rights as encompassing positive duties on states to prevent foreseeable harm, thereby extending their relevance to climate governance.

Moreover, rights provide a justiciable limit that goes beyond morality. Courts are increasingly recognising climate science, such as IPCC reports, not only as policy advice but also as a legal standard that can be enforced. When a state's emissions path falls outside the bounds of climate science, it gives rise to a legal breach that allows courts to provide structural injunctive relief, such as requiring certain percentages of emissions reductions, as in the cases of Urgenda[16] and Milieudefensie v. Shell.[17]

After the dismissal of a petition to the Inter-American Commission on Human Rights[18] for relief from the harmful effects of global warming caused by the acts and omissions of the United States in 2006, Marc Limon[19] stated that climate change could be conceptualised within a human rights framework of responsibility, accountability, and justice.

In this way, the temporal scope of judicial review has also been extended by the use of rights discourse in climate change litigation. Instead of addressing the problem ex post, the courts are now being asked to determine whether the right is protected in the future by current policy.

JUDICIAL RESPONSES

Interventionist Courts: In some cases, courts have taken an interventionist approach, integrating strong remedies into human rights claims. The Urgenda Foundation v. State of the

[16] Urgenda Foundation v. State of the Netherlands, ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands, 20 Dec. 2019).
[17] Milieudefensie et al. v. Shell PLC, ECLI:NL:GHDHA:2024:2100 (The Hague Court of Appeal, 12 Nov. 2024).
[18] Inuit Petition to the Inter-American Commission on Human Rights (filed 7 December 2005)
[19] Marc Limon, 'Human Rights and Climate Change: Constructing a Case for Political Action' (2009) 33 Harv Envtl L Rev 439, 440.

Netherlands[20] is one such case, in which the Dutch Supreme Court held that inadequate targets for emission cuts were in breach of the state's obligations under the European Convention on Human Rights. The Court required the state to achieve a certain level of emissions cuts, based on the state's positive obligation to protect the right to life and private life from an imminent threat of climate change.

In the case of Asghar Leghari v. Federation of Pakistan,[21] the Lahore High Court established a connection between climate change and the constitutional rights to life, dignity, and livelihood, forming a Climate Change Commission to oversee the implementation of policies. This structural remedy indicated a readiness to address the governance issues where the lack of action by the executive was undermining fundamental rights.

This method is further explained by the German Federal Constitutional Court in the case of Neubauer v. Germany,[22] where the Court did not demand particular targets for emissions but stated that a lack of climate action constitutes a burden for future generations. By equating climate protection with the preservation of freedom for future generations, the Court obliged the legislature to examine climate law and policy developments through constitutional review.

Interventionist courts rationalise their presence by asserting that although the executive and legislative branches have policy discretion, this discretion is not unlimited and arbitrary. Justices, such as Brazil's Chief Justice Barroso, assert that courts must intervene on behalf of those who lack a "vote or voice," such as children, future generations, and those not yet born. Furthermore, judicial intervention is necessary because of the failure of majoritarian politics, which often favours the attainment of immediate goals over the survival of humanity on a habitable planet.[23]

Taken together, these cases illustrate the ways in which human rights arguments have broadened the remedial arsenal at the disposal of courts. Framing climate duties in terms of rights protection has made it possible to invoke prospective and mandatory forms of relief that would have been unlikely in the context of traditional environmental litigation. The acknowledgement of tipping points and the cumulative effect of greenhouse gas emissions has

[20] Urgenda Foundation v. State of the Netherlands, ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands, 20 Dec. 2019).
[21] Asghar Leghari v Federation of Pakistan (2015) W.P. No. 25501/2015 (Lahore High Court).
[22] Neubauer et al. v Germany (Federal Constitutional Court, 1 BvR 2656/18, 24 March 2021).
[23] Rodríguez-Garavito (n 1) ch 2

altered the judicial perspective from one that regarded climate change as a future concern to one that regards it as a present emergency.

Cautious Courts: Conversely, other courts recognise the relevance of human rights to climate change but show restraint in crafting a remedy. In the case of Juliana v. United States,[24] the court recognised the seriousness of the climate change harm but declined to offer a remedy on the grounds of separation of powers and the lack of a manageable judicial remedy.

A comparable level of restraint is found in the case of Friends of the Irish Environment v. Ireland,[25] where the Irish Supreme Court invalidated a country's mitigation plan but did not impose specific obligations to reduce emissions. The Court highlighted the limits of judicial knowledge in highly policy-intensive domains, although it also acknowledged that climate governance involves constitutional and human rights values.

In 2017, a climate suit was filed by the cities of Oakland and San Francisco[26] against large oil companies was dismissed by Justice William Alsup on separation of powers. He said, "The Court will stay its hand in favour of solutions by the legislative and executive branches." Such tentative reactions indicate another judicial course: the recognition of rights without fully subscribing to remedial activism. Such courts are still very apprehensive about crossing institutional lines, especially when the remedy involves long-term supervision.

LIMITATIONS

Although rights-based judicial remedies in climate litigation have the potential for transformation, there are some factors that limit the process. The issue of enforcement is a challenge, particularly in courts that do not have the capacity to enforce structural orders. There is also the potential for political backlash as a result of judicial intervention, which may affect the legitimacy of the court and climate governance. In the case of KlimaSeniorinnen[27] the Swiss parliament[28] adopted non-binding resolutions criticising the European Court of Human Rights' ruling as an instance of judicial overreach and a threat to national sovereignty, while questioning its domestic implementation.

[24] Juliana v United States 947 F 3d 1159 (9th Cir 2020).
[25] Friends of the Irish Environment CLG v Ireland [2020] IESC 49, [2020] 2 IR 483.
[26] City of Oakland v BP plc 325 F Supp 3d 1017, 1024 (ND Cal 2018).
[27] Verein KlimaSeniorinnen Schweiz v Switzerland (App no 53600/20) ECHR, 9 April 2024.
[28] <https://www.icj.org/switzerland-icj-expresses-concern-over-parliaments-rejection-of-the-european-court-ruling/> accessed 14 Jan, 2026

However, critics argue that the judiciary lacks expertise and democratic legitimacy in climate policy design, and that broad remedies could potentially overstep the role of the executive and legislative branches of government. Even human rights claims are not beyond these institutional limitations. There is also the potential for issues of unequal protection, as rights-based litigation could favour certain groups of people while failing to address systemic problems. Judicial solutions must be considered in the context of a complex response to climate change.

In the case of Armando Ferrão Carvalho v. European Parliament,[29] the plaintiffs claimed that the EU regulations were not sufficient in fighting climate change and therefore violated the rights of people, including human rights. Nevertheless, the EU General Court ruled that the different effects on different individuals did not amount to individualised harm necessary for standing.

It is also important to point out regions with high emissions that are not prominently mentioned in these debates. Only seven of the top twenty emitters, namely the United States, Germany, Canada, Mexico, Brazil, Australia, and the United Kingdom, are prominently mentioned. In other countries, the scope conditions for rights-based climate change litigation, such as favourable legal opportunity structures and mobilising frames and resources, are limited by several factors. These include limits to judicial independence in authoritarian states (China, Russia, Iran, Saudi Arabia, and Vietnam) and states (India), as well as strict standing requirements and a predisposition towards nonjudicial dispute resolution procedures (Japan), as scholars have observed.[30]

INDIA-CENTRIC

In India, climate change litigation can be categorised as environmental law and public interest litigation. The right to a healthy environment as an aspect of the right to life has been recognised in Indian courts,[31] but rights-based claims on climate change have remained relatively few. However, recent cases suggest a tentative beginning to connect concerns about climate change

[29] Carvalho and Others v European Parliament and Council Case T-330/18, EU:T:2019:324 (General Court).
[30] Rodríguez-Garavito (n 1) ch 3.1.4
[31] See Subhash Kumar v State of Bihar AIR 1991 SC 420 (right to a healthy environment as part of Article 21 right to life).

with constitutional rights.[32] In the case of M. K. Ranjitsinh and Others vs. Union of India,[33] the Supreme Court, in 2024, held that the right to be free from the adverse impact of climate change is a separate fundamental right.

However, India does not have a comprehensive climate law that courts can rely on. Speaking at an event titled "Climate Liability, Justice, and Jurisprudence," Retd. Justice Hima Kohli stated that the Indian legal framework on the environment is piecemeal and inadequate to deal with climate change.[34] The Indian judiciary has thus taken a fairly cautious approach to remedy, focusing on policy interpretation and administrative accountability rather than imposing direct obligations of mitigation. This is a reflection of institutional limitations and the specific complexity of India's developmental problems.

The Indian judiciary has increasingly, though slowly, begun to integrate human rights arguments, which portends well for increased judicial engagement in the future. Cases like Ridhima Pandey v. Union of India[35] illustrate how petitioners have used arguments based on fundamental rights, the public trust doctrine, and intergenerational equity to conceptualise climate inaction as a violation of rights, despite the judiciary not yet having issued direct relief on the issue.

CONCLUSION

The nexus between human rights and climate change litigation has altered the nature of judicial remedies, allowing courts to go beyond declaratory relief and adopt more interventionist approaches. The framing of climate change in the context of a violation of human rights has expanded judicial imagination and justified remedies aimed at a future point in time. However, this development is not linear or straightforward. Courts are still struggling with issues of institutional competence, democratic legitimacy, and enforcement capacity. While human rights litigation has clearly transformed climate change litigation, its effectiveness is contingent on the surrounding political and institutional context in which judicial remedies are situated.

[32] See Ridhima Pandey v Union of India (Writ Petition (PIL) No 132/2015) (National Green Tribunal); Environment Support Group v Union of India (Public Interest Litigation on climate issues)
[33] M K Ranjitsinh and Others v Union of India (Supreme Court of India, Writ Petition (Civil) No. 838 of 2019) judgment dated March 21, 2024.
[34] <https://legal.economictimes.indiatimes.com/news/litigation/fragmented-laws-not-enough-says-ex-sc-judge-calls-for-comprehensive-climate-law-in-india/113790903> accessed 15 Jan, 2026
[35] Ridhima Pandey v Union of India (Writ Petition (PIL) No 132/2015) (National Green Tribunal).

In addition to creating a new universal right, the UNSR and other norm entrepreneurs have been actively interpreting and extending the application of existing human rights to address the ecological emergencies of the Anthropocene. Ex-UNSR Knox has referred to this process as the "greening of human rights."[36]

Since transnational climate reparations are, by definition, issues of global economic redistribution from the Global North to the Global South, and since the Global North has historically stalled or underfunded negotiations and institutional mechanisms on loss and damage, this issue should become a preoccupation of rights-based climate change litigation and the climatisation of rights more generally. The future and success of rights-oriented climate action will depend on the globalisation of doctrines and the localisation of strategies. There is a need to move towards a solution-oriented and future-focused approach in order to protect the universal right of humanity.

[36] John H Knox, 'Constructing the Human Right to a Healthy Environment' (2020) 16 Annual Review of Law and Social Science 79, 80–81 (explaining the "greening of other human rights" such as the rights to life and health through their application in environmental contexts).