CLIMATE CONSTITUTIONALISM AND DEMOCRATIC LIMITS IN INDIA

Samriti Mehta[*]

ABSTRACT

Climate change is no longer discussed only in scientific or policy terms. It has increasingly become a constitutional question. Courts in different countries are being asked whether government inaction on climate change violates fundamental rights or constitutional duties. This shift marks what can be described as climate constitutionalism: the idea that climate governance is not simply a political choice, but a matter connected to constitutional responsibility. While this development has gained attention worldwide, its implications in countries with weaker regulatory systems require closer examination and careful institutional analysis. This article studies climate constitutionalism in India within a comparative context. It argues that judicial involvement in climate matters should not be seen only as judicial expansion or activism. Instead, it often reflects gaps in governance. Where legislative action is slow and administrative institutions lack coordination or long-term planning, constitutional litigation becomes one of the few available mechanisms through which climate concerns are formally addressed. Courts, in such situations, respond to visible governance failures rather than initiating policy agendas independently. At the same time, the constitutionalisation of climate governance raises important institutional concerns. Courts are designed to interpret and apply law, not to manage complex policy frameworks over long periods. When judicial orders move toward continuous supervision of climate-related policies, questions arise about democratic legitimacy and the proper balance of power between institutions. This article suggests that climate constitutionalism remains most defensible when courts act as catalysts for accountability without permanently substituting themselves for political decision-making. Long-term climate governance ultimately depends on legislative commitment, administrative capacity, and sustained public engagement beyond judicial intervention and political responsibility.

[*]BA LLB (HONS.), THIRD YEAR, GRAPHIC ERA HILL UNIVERSITY DEHRADUN.

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INTRODUCTION

Climate change has altered the kinds of disputes that come before constitutional courts. What was once treated primarily as a matter of environmental regulation is now increasingly framed as a question of constitutional responsibility. In several jurisdictions, litigants argue that government inaction on climate mitigation and adaptation violates basic rights and undermines obligations owed to future generations.[1] Courts are therefore being asked to assess not only whether specific policies comply with statutory standards, but whether the overall approach of the state to climate governance satisfies constitutional commitments.

This shift is significant because climate change does not resemble traditional environmental disputes. Earlier environmental litigation often concerned identifiable sources of pollution, discrete administrative failures, or specific industrial activities. Climate change, by contrast, is cumulative, long-term, and structurally complex. Its causes are dispersed across sectors, and its consequences unfold over decades. The harm is not limited to present claimants but extends to future generations.[2] When such issues enter constitutional adjudication, they test established understandings of rights, remedies, and institutional roles.

The growing body of climate litigation across the world reflects this transformation. In some jurisdictions, courts have required governments to adopt more ambitious mitigation targets.[3] In others, courts have recognised that environmental protection is closely linked to constitutional guarantees of life and dignity.[4] These developments have contributed to what may be described as climate constitutionalism: the framing of climate governance as a matter that engages constitutional norms rather than remaining solely within the domain of policy discretion. Yet the implications of this development are not uniform across legal systems.

In countries where regulatory institutions are strong and legislative processes are responsive, judicial intervention may function primarily as a mechanism of review. In settings where administrative capacity is uneven and political decision-making is shaped by short-term

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[1] *Urgenda Foundation v State of the Netherlands* (Supreme Court of the Netherlands, 20 December 2019) ECLI:NL:HR:2019:2007.
[2] *Juliana v United States* 217 F Supp 3d 1224 (D Or 2016).
[3] *Neubauer and others v Germany* (Federal Constitutional Court of Germany, 24 March 2021) 1 BvR 2656/18.
[4] *Leghari v Federation of Pakistan* (2015) W.P. No 25501/2015 (Lahore High Court).

incentives, courts may encounter greater pressure to intervene more deeply. This distinction is particularly relevant in many Global South democracies, where environmental regulation has often struggled with enforcement gaps and coordination challenges. In such contexts, constitutional courts may be perceived as one of the few institutions capable of compelling state attention to long-term environmental risk.

India provides an important site for examining these dynamics. Indian constitutional jurisprudence has long recognised environmental protection as connected to fundamental rights.[5] Through the expansion of the right to life and the development of public interest litigation, courts have played a visible role in addressing environmental harm.[6] However, climate change presents challenges that differ in scale and structure from earlier environmental disputes. Unlike cases involving specific industries or localised pollution, climate governance requires coordinated policy choices across energy, transport, agriculture, and urban planning. It involves economic trade-offs, technological uncertainty, and international commitments.

Judicial engagement with climate questions in India must therefore be understood within this broader institutional landscape. On one view, constitutional adjudication in this area represents a necessary response to governance deficits. Where legislative action is delayed or fragmented, courts may articulate minimum constitutional standards to ensure that environmental risk is not ignored. On another view, sustained judicial involvement risks blurring the line between interpretation and administration. Courts are designed to resolve disputes and interpret legal norms. They are not equipped to design or manage long-term regulatory strategies. When judicial directions extend into continuous supervision, questions arise about democratic legitimacy and institutional competence.[7]

This tension lies at the centre of the present inquiry. The purpose of this article is not to celebrate or condemn judicial intervention in climate governance. Rather, it seeks to analyse the conditions under which climate constitutionalism emerges and to assess its institutional implications. It argues that judicial engagement with climate issues in India reflects structural pressures within the governance framework rather than an unqualified assertion of judicial supremacy. At the same time, it contends that the legitimacy of such engagement depends on

[5] *Subhash Kumar v State of Bihar* (1991) 1 SCC 598.
[6] *MC Mehta v Union of India* (1987) 1 SCC 395.
[7] Alexander M Bickel, *The Least Dangerous Branch* (2nd edn, Yale University Press 1986).

maintaining institutional restraint and preserving the primary role of political branches in policy formation.

The analysis proceeds by situating Indian developments within comparative climate jurisprudence, examining how courts in different jurisdictions have approached constitutional claims related to climate change. It then turns to the Indian context, exploring how existing constitutional principles intersect with emerging climate concerns. Finally, it evaluates the institutional limits of judicial involvement and considers whether a dialogic model of review offers a more sustainable framework for addressing climate governance challenges.

Climate constitutionalism, understood in this way, represents neither a simple solution nor an inherent threat to democracy. It is best viewed as a contingent response to governance gaps, shaped by institutional capacity, political context, and constitutional design. Whether it strengthens or distorts democratic accountability depends not only on judicial reasoning, but on the willingness of other branches to assume their own responsibilities in confronting the climate crisis.

THE RISE OF CLIMATE CONSTITUTIONALISM (STRENGTHENED VERSION)

The increasing presence of climate change within constitutional adjudication reflects a broader transformation in public law. Climate disputes are no longer confined to questions of regulatory compliance or administrative procedure. They are increasingly framed as challenges to the adequacy of state action under constitutional standards. Litigants argue not simply that environmental rules have been breached, but that insufficient climate policy threatens the conditions necessary for the meaningful enjoyment of constitutional rights. These reframing shifts climate governance from the sphere of policy discretion into the domain of constitutional responsibility.

Climate constitutionalism, as used here, does not denote the creation of new textual rights. Rather, it describes a pattern in which courts interpret existing constitutional guarantees— such as rights to life, liberty, dignity, or equality—in light of long-term environmental risk.

The central move is interpretive: climate inaction is treated as constitutionally relevant because it affects the structural conditions within which rights operate. In this sense, climate constitutionalism expands the temporal dimension of constitutional reasoning. Harm is no

longer understood only as immediate and individual; it is assessed in relation to cumulative and future impacts.

Comparative jurisprudence illustrates how courts have navigated this development. In the Netherlands, the Supreme Court held that the state's mitigation efforts could be reviewed against human rights standards and required more ambitious reductions in emissions.[8] In Germany, the Federal Constitutional Court reasoned that inadequate present mitigation could shift disproportionate burdens onto younger generations[9], thereby affecting constitutionally protected freedoms. These decisions did not design climate policy in detail, but they redefined the constitutional threshold for acceptable inaction.

Such interventions, however, must be understood within broader debates about judicial review. Constitutional theory has long recognised the tension between judicial authority and democratic self-government. The counter-majoritarian difficulty highlights the concern that unelected courts may override decisions of representative institutions.[10] At the same time, representation-reinforcement theory suggests that courts may legitimately intervene where political processes fail to protect diffuse or structurally disadvantaged interests.[11] Climate change presents a complex case within this debate. Future generations lack formal political representation, and the benefits of mitigation are widely distributed, while the costs are concentrated. These features create incentives for delay within ordinary political processes.

Against this background, climate constitutionalism can be viewed as a judicial response to structural democratic limitations. Courts are not substituting policy preferences for legislative judgment; rather, they are assessing whether state inaction falls below constitutionally acceptable standards. Yet this framing does not eliminate institutional concerns. Courts lack expertise in economic modelling, technological transitions, and energy planning. Their Procedural design is suited to resolving disputes, not managing policy implementation across decades.

The rise of climate constitutionalism, therefore, generates a delicate institutional balance. If courts restrict themselves to articulating minimum constitutional obligations and requiring reasoned justification from the political branches, they may enhance accountability without

[8] *Urgenda* (n 1).
[9] *Neubauer* (n 3).
[10] Bickel (n 7).
[11] John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Harvard University Press 1980).

displacing democratic choice. If, however, judicial engagement evolves into detailed supervision of mitigation pathways or sectoral targets, the distinction between review and governance becomes blurred. The legitimacy of climate constitutionalism thus depends not only on the urgency of climate change but on the manner in which judicial power is exercised.

In many Global South democracies, this balance is further complicated by governance deficits. Regulatory fragmentation, limited administrative capacity, and short electoral cycles often weaken sustained climate action. In such settings, constitutional courts may appear as relatively stable institutions capable of insisting upon coherence and continuity. Judicial intervention can expose policy gaps and compel disclosure. Yet reliance on courts as primary drivers of climate governance risks entrenching institutional substitution rather than institutional reform.

Understanding the rise of climate constitutionalism, therefore, requires attention to both necessity and restraint. It emerges from scientific urgency and political delay, but its long-term value depends on whether it strengthens democratic accountability or inadvertently re-centres policymaking within judicial forums. The next section considers how these dynamics unfold within the Indian constitutional framework.

CLIMATE CONSTITUTIONALISM IN INDIA

The development of climate constitutionalism in India cannot be understood in isolation from the broader trajectory of Indian environmental jurisprudence. For several decades, the Supreme Court has interpreted constitutional guarantees in a manner that incorporates environmental protection within the scope of fundamental rights. Through expansive readings of the right to life, the Court has recognised that environmental degradation may undermine conditions necessary for human dignity and health.[12] This jurisprudential foundation has shaped the way climate-related concerns are increasingly framed in constitutional terms.

However, climate change presents challenges that differ from earlier environmental disputes addressed by Indian courts. Traditional environmental cases often involved identifiable sources of pollution, specific industrial activities, or failures of regulatory enforcement. Climate change, by contrast, is systemic. Its causes are dispersed across sectors such as energy production, transportation, agriculture, and urban development. The harm is cumulative and

[12] *Subhash Kumar* (n 5); *MC Mehta* (n 6).

temporally extended. These characteristics complicate the translation of climate concerns into conventional rights-based adjudication.

Indian courts have not yet articulated a fully developed doctrine of climate constitutionalism comparable to certain European decisions. Nevertheless, elements of such reasoning can be discerned in judicial observations linking environmental sustainability with constitutional values. Courts have emphasised principles such as sustainable development, precaution, and intergenerational equity.[13] These principles, though originally developed in environmental contexts, provide a normative bridge through which climate arguments can enter constitutional discourse.

The significance of Article 21 in this framework is central but not unlimited. The expansion of the right to life has allowed courts to address environmental harms that affect public health and ecological balance. Yet the extension of this reasoning to climate governance raises distinct questions. Unlike cases involving discrete violations, climate policy involves complex trade-offs between developmental priorities, energy security, economic growth, and international commitments. Judicial recognition of constitutional relevance does not automatically resolve these policy tensions.

Climate constitutionalism in India, therefore, emerges not through the creation of new textual rights but through the reinterpretation of existing constitutional principles in response to evolving environmental realities.[14] This interpretive method reflects continuity with earlier environmental jurisprudence, yet the scale of climate change tests the limits of that model. The institutional question becomes whether courts should confine themselves to ensuring procedural rationality and reasoned decision-making, or whether they may evaluate the substantive adequacy of mitigation and adaptation strategies.

In a governance landscape marked by fragmented regulatory authority and uneven enforcement, courts may be perceived as stabilising institutions capable of demanding coherence. Judicial review can compel disclosure, require transparency, and insist that executive decisions be supported by intelligible reasoning.[15] However, sustained judicial

[13] *Vellore Citizens' Welfare Forum v Union of India* (1996) 5 SCC 647.
[14] Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India* (3rd edn, Oxford University Press 2018).
[15] Ely (n 11).

involvement in shaping climate targets or implementation pathways risks transforming courts from constitutional arbiters into supervisory bodies.

The Indian experience thus reflects a tension between constitutional aspiration and institutional design. Climate constitutionalism may enhance accountability where political processes are slow or inconsistent. At the same time, its long-term legitimacy depends on preserving the primary responsibility of elected branches in policy formation. Whether Indian courts will adopt a restrained dialogic approach or move toward deeper supervisory engagement remains an open constitutional question.

DEMOCRATIC LEGITIMACY AND INSTITUTIONAL LIMITS

The rise of climate constitutionalism inevitably invites questions about democratic legitimacy. Constitutional courts are unelected institutions, yet they increasingly assess the adequacy of governmental responses to climate change. When courts require the state to justify mitigation targets or reconsider policy timelines, they intervene in areas traditionally associated with legislative and executive discretion. The legitimacy of such intervention cannot be assumed; it must be justified within constitutional theory.

One longstanding concern is the counter-majoritarian difficulty: the tension that arises when courts invalidate or reshape decisions made by elected representatives. Judicial review, in this view, risks displacing democratic choice. Climate litigation intensifies this tension because it often challenges broad policy frameworks rather than discrete administrative acts. Courts are asked not merely to correct procedural defects, but to evaluate whether national climate strategies are sufficiently ambitious. Such a review may appear to substitute judicial judgment for political decision-making.

However, climate governance presents structural features that complicate this objection. The benefits of mitigation are widely dispersed and long-term, while the economic costs are often immediate and concentrated. Electoral cycles encourage short-term prioritisation, and future generations lack formal representation within present political processes. From this perspective, judicial engagement may serve a corrective function. Courts can require governments to articulate coherent reasoning, disclose the basis of policy decisions, and

demonstrate that constitutional rights are not undermined by prolonged inaction. In this sense, judicial review may reinforce rather than undermine democratic accountability.[16]

Even so, the institutional limits of courts remain significant. Constitutional adjudication is structured around dispute resolution. It is reactive rather than proactive and relies on the presentation of arguments by parties before it. Climate policy, by contrast, involves complex coordination across ministries, technical expertise, economic forecasting, and international negotiation. Courts do not possess independent regulatory machinery. When judicial orders move beyond setting constitutional boundaries and begin to prescribe detailed policy pathways, they risk exceeding their institutional competence.

A further concern relates to duration. Climate governance requires sustained implementation over decades. Judicial supervision, particularly in systems that permit continuing mandamus or structural directions, may create long-term monitoring roles for courts. While such oversight can prompt compliance in the short term, it may also blur institutional boundaries and foster reliance on judicial intervention rather than political reform.

The question, therefore, is not whether courts may engage with climate issues, but how far that engagement should extend. A restrained model of climate constitutionalism would emphasise justification, transparency, and constitutional minimum standards, while leaving policy design to elected branches. A more expansive model would permit courts to evaluate substantive adequacy and retain supervisory jurisdiction. The legitimacy of climate constitutionalism ultimately depends on maintaining a balance between constitutional accountability and democratic self-government.

INTERGENERATIONAL JUSTICE AND CONSTITUTIONAL TIME

Climate change forces constitutional law to confront a question that traditional adjudication rarely addresses directly: how should legal systems account for those who do not yet exist? Constitutional rights are ordinarily framed in present terms. They protect individuals against immediate or identifiable state action. Climate change disrupts this structure because its most severe consequences unfold gradually, often beyond the lifespan of current political decision-makers.

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[16] Ely (n 11).

The idea of intergenerational justice recognises that present policies may shape the range of freedoms available to future citizens.[17] When states delay mitigation, they do not merely postpone regulatory action; they potentially narrow the choices available to subsequent generations. Constitutional reasoning, when applied to climate governance, therefore extends beyond protecting existing rights-holders. It begins to address the distribution of environmental risk across time.

This temporal dimension complicates democratic theory. Political accountability operates within electoral cycles, while climate impacts extend across decades. Future generations cannot vote, organise, or participate in the present political debate.[18] Their interests are structurally underrepresented in ordinary legislative processes. In this context, constitutional adjudication may be seen as a mechanism for ensuring that long-term risks are not systematically ignored.

At the same time, the invocation of intergenerational justice raises institutional concerns. Courts are asked to evaluate speculative future harms, scientific projections, and uncertain timelines. Constitutional doctrine traditionally requires a degree of concreteness and immediacy. Climate claims challenge these assumptions by presenting probabilistic harm rather than direct injury. Judicial willingness to engage with such claims reflects an evolving understanding of constitutional responsibility.

In the Indian context, the language of intergenerational equity has appeared in environmental jurisprudence,[19] particularly in discussions of sustainable development. However, climate change intensifies the relevance of this principle. It transforms intergenerational equity from a guiding environmental norm into a central constitutional concern. The question is no longer whether development should be sustainable in general terms, but whether present governance choices unjustifiably constrain the environmental security of future citizens.

Intergenerational justice thus expands the temporal horizon of constitutional interpretation. It does not create new rights, but it reframes existing rights in light of long-term ecological risk. The challenge lies in maintaining doctrinal coherence while acknowledging that constitutional commitments cannot be confined to immediate harm. Climate constitutionalism, at its

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[17] Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (United Nations University 1989).
[18] Ely (n 11).
[19] *Vellore Citizens' Welfare Forum* (n 13).

strongest, recognises that the protection of present rights may require serious attention to future consequences.

JUDICIAL MANAGERIALISM AND THE RISK OF INSTITUTIONAL SUBSTITUTION

Climate constitutionalism, when it evolves beyond declaratory reasoning, may lead courts toward a managerial role. Judicial review traditionally involves interpreting legal norms and assessing the validity of executive or legislative action. In climate litigation, however, courts are sometimes asked to monitor compliance over extended periods, evaluate policy revisions, and review technical implementation strategies. This gradual shift from adjudication to supervision raises concerns about institutional substitution.

Judicial managerialism refers to situations in which courts move from setting constitutional boundaries to shaping policy execution. In environmental jurisprudence, this phenomenon is not entirely new. Courts have, in certain contexts, issued continuing directions, appointed monitoring committees, and retained jurisdiction over complex disputes.[20] Climate governance intensifies this pattern because mitigation and adaptation require sustained oversight, periodic revision, and coordination across multiple sectors.

The difficulty lies not in judicial concern for environmental protection, but in the limits of institutional design. Courts lack administrative machinery. They depend on reports, affidavits, and expert submissions. Their processes are episodic rather than continuous. When judicial orders begin to resemble regulatory frameworks, the risk is that courts assume functions for which they are neither structurally equipped nor democratically accountable.

At the same time, managerial judicial intervention often arises in response to executive inaction or fragmentation. Where policy commitments exist in principle but lack implementation, courts may attempt to catalyse compliance through structured directions. In such cases, judicial supervision appears as a corrective mechanism rather than an institutional ambition. The distinction between necessary supervision and excessive substitution, however, remains difficult to maintain in practice.

[20] *MC Mehta* (n 6).

In the Indian context, the device of continuing mandamus has historically enabled courts to remain engaged in environmental governance beyond the delivery of a single judgment.[21] While this has produced tangible outcomes in certain areas, it has also contributed to blurred institutional boundaries. The question is whether climate governance, given its scale and duration, can realistically be managed through episodic judicial oversight without distorting constitutional roles.

The long-term legitimacy of climate constitutionalism depends on resisting the transformation of courts into parallel regulatory authorities. Judicial review is most defensible when it insists upon constitutional compliance, transparency, and rational justification. It becomes more controversial when it prescribes policy design or substitutes judicial timelines for political judgment. The risk of institutional substitution, therefore, represents the outer boundary of climate constitutionalism.

If courts are to remain credible constitutional actors, their engagement with climate governance must remain principled and restrained. Judicial intervention may illuminate gaps and compel attention, but sustainable climate policy ultimately depends on legislative initiative, administrative capacity, and political accountability. The constitutional promise of environmental protection cannot rest indefinitely on judicial management.

CONCLUSION

Climate constitutionalism represents neither a sudden judicial revolution nor a complete reordering of constitutional structure. It is better understood as a response to the growing dissonance between the scale of climate risk and the pace of political action. As environmental harm increasingly affects the material conditions necessary for the exercise of rights, courts are confronted with claims that challenge the boundaries of conventional adjudication. The question is not whether climate change is constitutionally relevant, but how constitutional systems should respond to it.

The analysis in this article has shown that climate constitutionalism operates within a field of institutional tension. Courts interpret existing rights in light of evolving environmental realities, yet they do so within frameworks designed for dispute resolution rather than longterm governance. The expansion of constitutional reasoning into the climate domain reflects both

[21] *Vineet Narain v Union of India* (1998) 1 SCC 226.

normative commitment and structural necessity. Where regulatory systems are fragmented and policy responses inconsistent, judicial engagement may catalyse accountability.

At the same time, the legitimacy of such engagement depends on restraint. Judicial review is most defensible when it demands justification, transparency, and constitutional coherence. It becomes more controversial when it risks substituting judicial judgment for democratic deliberation. Climate governance requires technical expertise, political negotiation, and sustained administrative capacity. Courts can illuminate deficiencies and enforce constitutional baselines, but they cannot permanently occupy the space of policy formation.

The Indian experience illustrates this balance. Environmental jurisprudence has already expanded the interpretive reach of constitutional rights. Climate change intensifies the stakes of that expansion by introducing questions of temporal justice and intergenerational responsibility. Yet the long-term stability of climate constitutionalism depends not on judicial centrality, but on institutional renewal. Courts may prompt reflection and demand compliance, but durable climate governance must ultimately emerge from legislative initiative and executive implementation.

The future of climate constitutionalism, therefore, lies not in unchecked judicial intervention, but in calibrated constitutional dialogue. Courts can articulate constitutional commitments that shape political discourse, while elected institutions retain primary responsibility for translating those commitments into policy. In this equilibrium, constitutional adjudication does not replace democracy; it reinforces the expectation that democratic power be exercised responsibly in the face of long-term environmental risk.

Climate change challenges constitutional systems to think beyond immediacy. The enduring task is to ensure that the protection of rights today does not undermine the freedom of those who will inherit the consequences of present choices. Whether climate constitutionalism becomes a temporary corrective or a lasting feature of constitutional practice will depend less on judicial ambition and more on the capacity of political institutions to respond with seriousness and foresight.