
CONSTITUTIONAL ENVIRONMENTAL RIGHTS AND CLIMATE JUSTICE: A COMPARATIVE LEGAL STUDY

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ABSTRACT

Climate change is not merely an ecological or scientific concern; it is a profound legal and moral challenge that implicates the fundamental rights of individuals and communities, particularly the most vulnerable. Constitutional environmental rights have emerged as pivotal instruments in promoting climate justice, providing enforceable legal grounds for holding states and private actors accountable. This chapter conducts a comprehensive comparative legal study of constitutional environmental rights across four jurisdictions—India, Colombia, South Africa, and the Philippines—to explore their legal frameworks, judicial interpretations, and contributions to climate justice. It emphasizes the interplay of environmental rights with human dignity, intergenerational equity, and participatory governance, offering recommendations for enhancing constitutional accountability in the face of the global climate crisis.

Keywords: Constitutional Environmental Rights, Judicial Activism, Public Interest Litigation (PIL), Sustainable Development, Intergenerational Equity, National Green Tribunal (NGT), Climate Justice.

1. Introduction

The global environmental crisis, driven by accelerating climate change, poses significant threats to human life, biodiversity, ecosystems, and sustainable development. While international treaties and conventions such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement set the stage for multilateral cooperation, they often lack enforceability at the national level. In this context, national constitutions become critical tools for embedding environmental norms within domestic legal systems and ensuring compliance through national judicial mechanisms.

Constitutional environmental rights serve as legal mechanisms that empower citizens and communities to demand accountability from governments and polluting industries. These rights encompass both substantive entitlements—such as the right to clean air, safe water, and a healthy environment—and procedural guarantees like access to information, public participation in environmental decision-making, and access to judicial remedies.

This chapter undertakes a detailed comparative analysis of four countries—India, Colombia, South Africa, and the Philippines—each of which has developed a rich and dynamic body of environmental jurisprudence grounded in constitutional provisions. The objective is to identify common legal principles, draw lessons from successful judicial interventions, and offer insights into strengthening environmental constitutionalism globally.

2. Conceptual Framework

2.1 Environmental Rights as Human Rights

The interdependence between human rights and environmental protection has gained growing international recognition. A clean, healthy, and sustainable environment is increasingly being recognized as a prerequisite for the realization of other fundamental rights, including the rights to life, health, water, food, shelter, and dignity. Environmental degradation—whether in the form of pollution, deforestation, climate change, or loss of biodiversity—can severely impair these rights and undermine the foundations of sustainable development.

International human rights law increasingly affirms this connection. The United Nations Human Rights Council and the General Assembly have adopted resolutions recognizing the right to a healthy environment as a standalone human right. The Inter-American Court of

Human Rights has ruled that environmental damage may violate the rights to life and personal integrity. Similarly, the African Commission on Human and Peoples' Rights has integrated environmental protections within the scope of economic, social, and cultural rights under the African Charter.

Thus, the recognition of environmental rights within constitutional frameworks aligns national law with evolving international norms and strengthens the legal infrastructure for climate justice.

2.2 Climate Justice

Climate justice is a normative framework that addresses the disproportionate burden of climate change on vulnerable and marginalized populations. It recognizes that climate change is not only a scientific or technical issue but also a matter of equity, rights, and justice.

At its core, climate justice seeks to:

- Protect the rights of present and future generations.
- Address historical and structural inequalities.
- Ensure fair distribution of the benefits and burdens of environmental policies.
- Promote participatory and inclusive environmental governance.

Legal strategies to achieve climate justice often rely on constitutional environmental rights to:

- Provide standing to vulnerable and affected groups.
- Establish state obligations to mitigate climate impacts and ensure adaptation.
- Enable courts to intervene when governments fail to act.
- Foster legal recognition of the rights of nature and future generations.

By embedding climate justice into constitutional rights discourse, legal systems can respond to the climate crisis with a focus on fairness, accountability, and long-term sustainability.

Constitutions across jurisdictions have increasingly recognized environmental rights, either explicitly through textual provisions or implicitly through judicial interpretation. This section provides a comparative overview of constitutional frameworks in India, Colombia, South Africa, and the Philippines, highlighting how environmental rights are embedded and operationalized.

3. The Indian Perspective: Constitutional Environmental Rights and Climate Justice

India's constitutional approach to environmental rights and climate justice is distinctive for its dynamic interplay between a rich constitutional text, an activist judiciary, and evolving statutory and institutional mechanisms. India, with its vast socio-economic diversity, demographic pressures, and developmental challenges, provides a nuanced example of how constitutional environmental rights have been operationalized to address both ecological protection and social justice concerns. The Indian experience is especially instructive in illustrating how constitutional law can be a powerful tool in the struggle for climate justice, balancing development needs with environmental sustainability and equity.

3.1 Constitutional Provisions: Foundations and Interpretations

While the Indian Constitution, adopted in 1950, did not initially contain explicit environmental rights, it has been progressively interpreted to embed environmental protection within its fundamental rights and directive principles:

- **Article 21 (Right to Life and Personal Liberty):** The Supreme Court has expansively interpreted the right to life under Article 21 to include the right to a clean and healthy environment, recognizing environmental degradation as a direct threat to life and human dignity. This judicial innovation began with cases such as *Subhash Kumar v. State of Bihar* (1991), which firmly established that pollution of air, water, and soil violates Article 21.
- **Directive Principles of State Policy (Article 48A):** Inserted by the 42nd Amendment (1976), Article 48A mandates the state to protect and improve the environment and to safeguard forests and wildlife. Though non-justiciable, these principles guide the legislature and executive in framing environmental laws and policies.

- **Fundamental Duties (Article 51A(g)):** Citizens have a duty to protect and improve the natural environment, including forests, lakes, rivers, and wildlife, underscoring the constitutional ethos of environmental stewardship.

This combination of justiciable fundamental rights and guiding directive principles creates a framework where environmental protection is integral to constitutional governance. The judiciary's proactive interpretation has been instrumental in bridging the gap between constitutional text and environmental realities.

3.2 Judicial Activism: Public Interest Litigation and Environmental Jurisprudence

India's judiciary has been a trailblazer in environmental protection through **judicial activism**, especially using the innovative tool of **Public Interest Litigation (PIL)**. PIL enables citizens, NGOs, and activists to approach courts on behalf of affected populations and ecosystems, thus democratizing access to environmental justice.

The Supreme Court and various High Courts have delivered landmark rulings that have defined and expanded environmental rights, such as:

- The **M.C. Mehta Cases** (1980s onwards) addressed air and water pollution, hazardous industries, and vehicular emissions. The Court laid down the **Polluter Pays Principle** and the **Precautionary Principle**, embedding these globally recognized doctrines into Indian environmental law.
- **T.N. Godavarman Thirumulpad v. Union of India** (1996) established stringent protections for forests, catalyzing judicial oversight of deforestation and illegal logging.
- **Vellore Citizens Welfare Forum v. Union of India** (1996) further solidified the integration of environmental principles with fundamental rights, emphasizing sustainable development.
- In **Indian Council for Enviro-Legal Action v. Union of India** (1996), the Court addressed hazardous waste management and enforced corporate accountability.
- Cases addressing climate-related issues have begun to emerge, including matters related to glacial melting in the Himalayas, impacts of coal mining, and air pollution regulation.

These judgments have advanced a **rights-based environmental framework**, recognizing the environment not just as a resource but as essential to human dignity, health, and survival. The judiciary has also emphasized **intergenerational equity**, urging the State to act as a trustee of natural resources for future generations.

3.3 Institutional Framework and Legislative Landscape

Complementing constitutional and judicial frameworks, India has developed a complex legislative and institutional regime to address environmental protection and climate change:

- The **Environment Protection Act (1986)**, enacted after the Bhopal disaster, provides comprehensive powers for environmental regulation.
- Sector-specific laws like the **Air (Prevention and Control of Pollution) Act (1981)**, **Water (Prevention and Control of Pollution) Act (1974)**, and **Wildlife Protection Act (1972)** operationalize environmental protections.
- The creation of the **National Green Tribunal (NGT)** in 2010 marked a significant institutional innovation. The NGT is a specialized quasi-judicial body dedicated to environmental disputes, allowing expedited adjudication and focused enforcement of environmental laws. It has been active in climate-related cases, enforcing pollution standards, and protecting vulnerable communities.
- India is also a party to international climate agreements, such as the UNFCCC and the Paris Agreement, integrating global commitments with domestic constitutional and legal obligations.

3.4 Environmental Rights and Climate Justice in Practice

India's constitutional framework and jurisprudence reveal several facets relevant to climate justice:

- **Vulnerability and Equity:** India's large population includes many marginalized and climate-vulnerable communities (e.g., tribal populations, farmers, coastal communities). Courts have acknowledged these groups' rights and the State's obligation to protect them against environmental harm.

- **Balancing Development and Sustainability:** India faces immense developmental pressures—poverty alleviation, infrastructure growth, and energy security—which often conflict with environmental goals. Judicial and policy frameworks attempt to balance these competing interests, emphasizing sustainable development.
- **Access to Justice and Participation:** PIL and environmental impact assessments (EIA) processes institutionalize public participation, transparency, and accountability, crucial for democratic climate governance.
- **Recognition of Ecological Limits:** Courts have highlighted the intrinsic value of forests, wildlife, and ecosystems, reflecting an emerging **ecocentric** legal consciousness.
- **Intergenerational Justice:** Judicial pronouncements emphasize protecting natural resources and environmental quality for future generations, aligning with international climate justice principles.

3.5 Challenges and Limitations

Despite its progressive legal framework, India faces significant hurdles in achieving comprehensive environmental constitutionalism and climate justice:

- **Implementation and Enforcement:** Institutional capacity constraints, bureaucratic inertia, and political economy factors often undermine enforcement of environmental laws and judicial orders.
- **Conflict with Economic Policies:** Policies promoting industrialization, urbanization, and large infrastructure projects sometimes bypass or weaken environmental safeguards, exacerbating ecological degradation.
- **Limited Awareness and Access:** Although PIL facilitates access to courts, marginalized populations frequently face socio-economic and informational barriers to effective participation in environmental governance.
- **Fragmented Governance:** Multiple ministries, agencies, and overlapping jurisdictions cause coordination challenges and inconsistent policy application.

- **Climate Change Adaptation:** The legal framework is still evolving to address complex, systemic climate risks such as glacial retreat, monsoon variability, and sea-level rise.

3.6 Comparative Insights

Compared to Colombia, South Africa, and the Philippines, India's constitutional environmental rights landscape is distinguished by:

- Its **early and robust judicial activism**, which expanded the constitutional right to life into environmental rights decades before many other jurisdictions.
- The creation of specialized institutions like the NGT, facilitating focused adjudication of environmental matters.
- A vast body of case law integrating environmental protection with social justice and public participation.
- Ongoing tensions between developmental imperatives and ecological sustainability, characteristic of many Global South nations.

India's experience underscores the vital role of an activist judiciary and constitutional interpretation in filling legislative and executive gaps, particularly in contexts of rapid development and socio-economic inequality. However, it also illustrates that constitutional rights require complementary political will, institutional strengthening, and public empowerment to realize climate justice fully.

4. Comparative Constitutional Approaches

4.1 India

India's Constitution does not explicitly mention the right to a healthy environment in its original text. However, judicial innovation, particularly through the Supreme Court, has expanded the ambit of Article 21—the right to life—to include the right to a wholesome environment. Landmark cases such as *Subhash Kumar v. State of Bihar* and *M.C. Mehta v. Union of India* have entrenched this interpretation. Additionally, Article 48A (Directive Principles) and Article 51A(g) (Fundamental Duties) further support environmental protection.

4.2 Colombia

Colombia's 1991 Constitution explicitly recognizes environmental rights and imposes obligations on the state to protect natural resources. The Constitutional Court has reinforced these provisions through progressive judgments, such as the 2018 Amazon case where the Court declared the Amazon rainforest a subject of rights and mandated state-led action to curb deforestation. The rights of nature and future generations have been strongly integrated into Colombian constitutional jurisprudence.

4.3 South Africa

South Africa's post-apartheid Constitution is among the most progressive globally and includes a comprehensive environmental rights clause in Section 24. It guarantees everyone the right to an environment that is not harmful to their health or well-being and obliges the state to take reasonable measures to protect the environment. The Constitutional Court has upheld these rights in several key rulings, making environmental protection a matter of constitutional obligation and social justice.

4.4 Philippines

The 1987 Constitution of the Philippines recognizes the right to a balanced and healthful ecology under Article II, Section 16. The judiciary has proactively enforced this right through public interest litigation and innovative legal remedies such as the Writ of Kalikasan. In *Oposa v. Factoran*, the Supreme Court upheld the standing of minors to sue on behalf of future generations, setting a global precedent for intergenerational environmental rights.

These diverse constitutional models illustrate how environmental rights have evolved within national legal systems and provide rich ground for comparative analysis of their effectiveness in promoting climate justice.

5. Themes in Comparative Jurisprudence

5.1 Intergenerational Equity

Courts across jurisdictions recognize the duty of the present generation to safeguard the environment for posterity. This principle supports climate litigation by emphasizing long-term

consequences and moral obligations. It serves as a bridge between constitutional rights and ecological sustainability. Intergenerational equity has transformed from a philosophical principle to a legally enforceable norm, used by courts to hold states accountable for actions that compromise the environmental rights of future citizens. For example, Colombia's judiciary has granted standing to future generations, while the Philippines explicitly acknowledged the right of children to challenge government inaction on deforestation. This evolving jurisprudence shows how constitutions can be dynamic instruments for promoting climate stewardship and sustainability.

5.2 Procedural Environmental Rights

Meaningful environmental protection requires more than substantive guarantees. Procedural rights such as access to information, public participation, and access to justice ensure transparency, empower communities, and facilitate democratic governance in environmental matters. These rights are crucial for enabling citizens to monitor environmental decision-making, challenge harmful activities, and participate in shaping sustainable policies. Jurisdictions like South Africa and the Philippines have operationalized procedural rights through judicial doctrines and public interest litigation, reinforcing environmental democracy. Moreover, regional treaties like the Aarhus Convention and the Escazu Agreement have set international benchmarks that influence domestic legal frameworks, emphasizing the global trend toward procedural environmental justice.

5.3 Expansive Judicial Interpretation

Courts in the Global South have led the way in creatively interpreting constitutional provisions to address the complexities of environmental harm and climate change. This trend illustrates the role of judicial activism in filling legislative and policy gaps and adapting constitutional norms to emerging global challenges. Indian and Colombian courts, for instance, have infused environmental rights into broader human rights frameworks, thereby creating a robust, rights-based approach to environmental governance. These interpretations often integrate scientific evidence, ecological values, and moral reasoning, thus transforming constitutional texts into living instruments that respond to contemporary crises. Expansive judicial interpretation has proven essential in bridging normative aspirations with enforceable legal standards in the realm of environmental protection.

6. Challenges and Limitations

Despite promising jurisprudence, several challenges and limitations continue to hinder the full realization of constitutional environmental rights:

- **Enforcement Gaps:** Even with progressive judicial pronouncements, enforcement remains a challenge due to weak governance, corruption, and administrative inertia. Environmental rulings often lack teeth when state agencies fail to act on court orders or when implementation mechanisms are poorly designed.
- **Judicial Limitations:** Courts often depend on executive agencies for implementation, and their orders may lack follow-through mechanisms. Additionally, some judges may be reluctant to intrude on policy matters or lack the technical expertise to address complex environmental claims, limiting their capacity to deliver comprehensive climate justice.
- **Ambiguity in Constitutional Texts:** Many constitutions lack specific language on climate protection, limiting the judiciary's scope to mandate climate action. Vague or broadly worded provisions make it harder for litigants to establish clear obligations or seek redress for environmental harm directly linked to climate change.
- **Resource Constraints:** Litigants may lack access to legal and scientific expertise, and courts may struggle with complex, technical evidence in climate cases. Public interest litigation often depends on civil society support, which may be underfunded or suppressed in authoritarian contexts. Moreover, the financial and time costs of litigation can discourage affected communities from seeking justice.

These challenges underscore the need for more robust legal frameworks, institutional strengthening, and greater political will to transform judicial recognition of environmental rights into tangible environmental protection and climate action.

7. Recommendations and Way Forward

- **Incorporate Explicit Environmental Rights:** National constitutions should include clear, enforceable rights to a healthy environment and climate protection.

- **Judicial and Institutional Capacity Building:** Enhance the capacity of judges, lawyers, and environmental regulators through training, research, and technical support.
- **Strengthen Independent Environmental Bodies:** Empower regulatory agencies and green tribunals to monitor compliance and enforce judicial directives.
- **Promote Environmental Literacy:** Invest in public legal education and grassroots awareness to foster active citizen engagement.
- **Foster Global Legal Networks:** Encourage transnational collaboration among courts, lawyers, and activists to share strategies and support climate litigation.

8. Conclusion

The constitutionalization of environmental rights represents a powerful legal avenue for advancing climate justice in the 21st century. Across diverse jurisdictions, courts have shown a willingness to interpret constitutional provisions in ways that protect ecosystems, recognize the rights of nature, and uphold the dignity and well-being of vulnerable communities. These developments underscore the dynamic capacity of constitutional law to respond to the multifaceted challenges of climate change.

However, the realization of constitutional environmental rights remains uneven and fraught with practical challenges. Weak enforcement, judicial capacity limitations, and political resistance often hinder the full operationalization of these rights. Moreover, the growing frequency and intensity of climate-related disasters demand a proactive, forward-looking legal architecture that transcends reactive litigation.

Going forward, a transformative shift is necessary—one that embeds environmental values into the constitutional fabric of all nations. This involves not only the recognition of environmental rights but also the active promotion of ecological justice, intergenerational equity, and participatory governance. The law must evolve to safeguard not just human interests, but the integrity of nature itself.

Ultimately, constitutional environmental rights are not a panacea, but they are a critical foundation for building resilient, equitable, and sustainable societies. As climate change

continues to redefine the boundaries of justice, the comparative lessons drawn from India, Colombia, South Africa, and the Philippines offer valuable guidance for shaping a global jurisprudence rooted in environmental responsibility and human dignity.

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