
GREEN CONSTITUTIONALISM IN THE GLOBAL SOUTH: A COMPARATIVE STUDY OF INDIA AND THE EUROPEAN UNION

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ABSTRACT

constitutional framework, bringing about a major change in the traditional relationship between the State, individual and nature. This article presents a comparative study between India and European Union (EU). Although the EU is not a part of the 'Global South', its constitutional structure provides a strong conceptual comparison to understand the specific path of Indian environmental jurisprudence. Constitutional provisions, judicial interpretations and new legal principles have been examined during this analysis, with the particular attention to aspects such as sustainable development, intergenerational equity, the precautionary principle and the right to healthy environment. The conclusion is that while the development of green constitutionalism in India has been largely driven by the 'judicial activism', the EU has adopted a more institutional model based on the treaties. Both systems provide important lessons for making ecological values part of the constitutional order worldwide.

Keywords: Green constitutionalism, India, European Union, environmental rights, sustainable development, comparative constitutional law, Global South.

I. Introduction

The intermingling of constitutional law and the environmental protection has today emerged as a vibrant and multidimensional field, which scholars have now started calling 'Green Constitutionalism'. This idea not only emphasizes on giving constitutional status to the rights related to environment, but also puts the responsibility of protecting nature on the government of the country. Furthermore, it reinforces the thinking that any regime has legitimacy only if it incorporates ecological balance and protection of ecosystems into its basic governance principles.

Global South—, which is primarily composed of developing and emerging economies in Asia, Africa and Latin America, has not only remained a silent spectator in this trend of constitutional evolution. Rather, the opposite picture is correct; Before many industrialized countries, the countries of the Global South have included environmental protection regulations in their constitutions. This progress, on the one hand, highlights the acute environmental crisis and risks of developing countries, on the other hand, it is a strong reflection of the revolutionary constitutional transformation they have made on the path of liberation from colonialism and democratization¹. India adopted its Constitution in the year 1950, which provides a great example of judicial interpretation in today's times. It is worth noting that there was no direct mention of 'right to a healthy environment' in the original constitutional text. Over time, however, the Indian Supreme Court initiated a continuous and active interpretation process of its own, through which it extended the scope of Article 21 of the Constitution, that is, the 'right to life'. Under this visionary interpretation, environmental protection was considered a part of the fundamental right to life, which has completely changed the constitutional structure and legal landscape of India over the last few decades².

The European Union (EU) offers a quite different and influential model in this area. As a supranational, 'ultra-national' legal regime, the EU has consistently raised the level of environmental protection, making periodic changes to its various agreements and treaties. The most important example of this is found in the Treaty on Functioning of the European Union (TFEU), which has made environmental protection a *sine qua non* condition by not being a

¹ Louis J Kotzé, 'Global Environmental Constitutionalism in the Anthropocene' (Hart Publishing 2016) 1-25; James R May and Erin Daly, *Global Environmental Constitutionalism* (Cambridge University Press 2015) 3-18.

² Usha Ramanathan, 'India and the ILC's Work on Shared Natural Resources' in Salman MA Salman and Laurence Boisson de Chazournes (eds), *International Watercourses* (World Bank 1998); *MC Mehta v Union of India* AIR 1988 SC 1115 (Supreme Court of India).

mere option. It is now legally required under the provisions of this Treaty that environmental interests be taken into account and integrated in every policy and every government decision of the Union³. The European Union's constitutional environmental system is largely based on specific written regulations and institutional frameworks. It is more dependent on documentary evidence than traditional judicial decisions. However, the Court of Justice of the European Union (Court of Justice of the EU) has played a very significant role in this regard; Because their legal analyses have strengthened and integrated this system by providing proper interpretation of environmental policies and its subsequent development⁴.

The structure of this article is such that in its second part we try to understand it within the scope of the broader constitutional discourse related to rights by observing the theoretical framework of 'Green Constitutionalism'. Subsequently, the third section closely examines the constitutional and statutory foundations of environmental law in India. The fourth part of the article analyzes the landmark judicial decisions of the Honourable Supreme Court of India, which have given a constitutional form to environmental protection. In the fifth part our attention turns to the European Union (EU), where we explore its treaty framework and the institutional structures of environmental constitutionalism. In the sixth section a comparative study between these two systems is presented, through which their similarities and differences on different theoretical topics are marked. Finally, in the seventh part, the findings of the research have been presented and important suggestions and lessons learned for the countries of the 'Global South' have been outlined on a large scale.

2. Green Constitutionalism: Theoretical Foundations

Green constitutionalism is a unique confluence of different intellectual traditions, drawing its basic inspiration primarily from liberal constitutionalism. According to this ideology, rights are seen as a 'Trump card' that provides protection from the potential encroachment of majoritarianism. Its basic objective is to ensure that through constitutional protection, some fundamental values related to environment and life are kept above the reach of normal politics, so that these permanent values cannot be compromised for immediate political gains⁵.

³ Article 11 of the Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/47 (environmental integration principle); Article 191 TFEU (environmental policy objectives and principles).

⁴ Ludwig Krämer, EU Environmental Law (8th edn, Sweet & Maxwell 2016) 1-40; Jan H Jans and Hans HB Vedder, European Environmental Law after Lisbon (4th edn, Europa Law Publishing 2012) ch 1.

⁵ Ronald Dworkin, Taking Rights Seriously (Harvard University Press 1977) 184-205; John Rawls, A Theory of Justice (rev edn, Harvard University Press 1999) 238-242.

Adopting the fundamentals of ecological jurisprudence (ecological jurisprudence), the idea that the natural world has an inherent and real value of its own is presented. This means that the legal order must not secure the existence and rights of nature simply because they serve human beings, but because nature itself deserves respect and protection. Law should transcend human-centred interests and recognize the environment as an independent entity⁶.

Louis Kotze and his colleagues believe that 'Green Constitutionalism' is an essential step towards removing the limitations of general environmental laws. He argues that while ordinary laws can often be repealed, amended or ignored due to political changes, constitutional environmental provisions hold a higher legal status. It not only makes all organs of the government accountable for their policies, but also gives the judiciary the power to review the actions of the executive and legislature that are against environmental protection⁷. There is a deep structural link between the continuing damage to the environment and the violation of established civil and political rights, such as living, health and a standard of living in dignity. This is why the concept of green constitutionalism (green constitutionalism) has become even more relevant and powerful today. When we talk about securing the environment, it is precisely those basic human rights that we are defending that are the foundation of any civilized society. Thus, the inclusion of environmental protection in the constitutional framework has become imperative not only for nature, but also for keeping the fundamental rights of humanity intact⁸.

However, Green Constitutionalism also has some of its own major criticisms. Critics who look at it from the perspective of democratic theory believe that giving constitutional status to environmental rights largely limits the legislature's freedom to take decisions. He argues that by doing so, important decisions related to policy making go into the hands of judges who are not elected by the public. Furthermore, these judges may often lack the expertise needed to resolve complex technical aspects and environmental agreements that are so essential to such policy decisions⁹. From the perspective of developing countries, there is often concern that the stringent constitutional provisions related to environmental protection may come in the way of

⁶ Christopher D Stone, 'Should Trees Have Standing? Toward Legal Rights for Natural Objects' (1972) 45 Southern California Law Review 450, 453-487; Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (2nd edn, Chelsea Green Publishing 2011) ch 2.

⁷ Louis J Kotzé, 'Rethinking Global Environmental Law and Governance in the Anthropocene' (2014) 32(2) *Journal of Energy & Natural Resources Law* 121, 127-134.

⁸ John Knox, 'Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (UN Doc A/HRC/22/43, 2012) paras 13-25.

⁹ Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law* (Princeton University Press 2008) 243-260; Richard A Posner, 'Against Constitutional Theory' (1998) 73 *New York University Law Review* 1, 4-8.

the country's progress and development needs. Along with this, there is also a big fear that the court decisions may be taken over by the influential and upper sections of the society, which will hurt the interests of those poor villagers whose entire life and livelihood depends on natural resources. In such a situation, this balance between development and environment becomes quite complicated.¹⁰

Despite these criticisms, it is true on a practical plane that the scope of green constitutionalism' (green constitutionalism) has grown very quickly since the 1970's. According to David Boyd's research, environmental rights or duties had been explicitly included in the constitutions of more than 150 countries of the world by the beginning of the twenty-first century. As the crisis of climate change and bio-diversity deepens, the number of countries adopting these constitutional provisions is also continuously increasing. Especially the countries of 'Global South' have emerged as guides in this direction, where very modern and unique provisions regarding environmental protection are seen in the constitutions of countries like India, South Africa, Ecuador and Bolivia.

The concept of generational equity has emerged as a very important part of 'Green Constitutionalism' in today's era. It reveals the bitter truth that damage to the environment is not limited to the present, but it also places a heavy burden on future generations. Ironically, future generations who will pay the greatest price for these environmental repercussions are totally unable to share in today's political processes or decision-making arrangements. Therefore, this principle fixes the moral and legal responsibility of the present society not to sacrifice future rights in the name of today's development.¹¹ The requirement of policy makers to take advance precautionary measures despite scientific uncertainty regarding the potential for serious or irreparable damage to the environment is called 'warning policy' or 'precautionary principle'. In contemporary times this important concept has been very strongly incorporated and adopted in the constitutional jurisdictions of different countries of the world. This policy is currently recognized around the world as an integral part of ensuring environmental

¹⁰ Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India: Cases, Materials and Statutes* (2nd edn, Oxford University Press 2001) 43-65; Mridula Ramesh, *The Climate Solution: India's Climate-Change Crisis and What We Can Do About It* (Hachette India 2018) ch 7.

¹¹ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Transnational Publishers 1989) 17-45; *AP Pollution Control Board v Prof MV Nayudu* (1999) 2 SCC 718 (Supreme Court of India).

protection within the legal framework.¹²

3. Constitutional and Statutory Foundations of Environmental Law in India

3.1 The Original Constitutional Framework

The basic structure of the Indian Constitution of 1950 did not directly include the issue of environmental protection in any article. Basically, the framers of the constitution were more diligent in facing the urgent challenges of a newly independent state like poverty alleviation, elimination of social inequality and strengthening of democratic foundations. In that particular context, environmental crisis or nature conservation did not take place at the center of their policy-making thinking.¹³ Despite this, some specific provisions of the Constitution acquired environmental significance through their interpretations over time. In particular article 21, which ensures that no person shall be deprived of his life or personal liberty without the procedure established by law, became a main constitutional basis for identifying and enforcing environmental rights in India.¹⁴

Article 19 (1) (g) of the Indian Constitution gives every citizen the freedom to choose the trade, profession or occupation of his choice, but its interpretation has been quite interesting in legal matters involving the environment. On the one hand, many businessmen resort to this right to argue that strict environmental rules and restrictions hinder their economic freedom and livelihood rights. On the other hand, environmental supporters believe that if the destruction of nature continues like this, then the worsening situation will destroy people's working capacity and resources, due to which the real basis of this fundamental right will be in danger. Simply put, this law has now become an ideological battleground between economic benefits and the preservation of nature.

3.2 The Forty-Second Constitutional Amendment

The 42nd Amendment of the year 1976 proved to be an epoch-making turning point in the

¹² Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (4th edn, Cambridge University Press 2018) 218-244; *Vellore Citizens Welfare Forum v Union of India* (1996) 5 SCC 647 (Supreme Court of India).

¹³ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Clarendon Press 1966) 1-25; BR Ambedkar, 'Constituent Assembly Debates' Vol XI (Lok Sabha Secretariat 1999) 976-981.

¹⁴ *Constitution of India 1950*, art 21; *Francis Coralie Mullin v The Administrator, Union Territory of Delhi* (1981) 1 SCC 608 (Supreme Court of India) (expansive interpretation of art 21).

formal development of the Indian Constitution, through which Articles 48A and 51A (g) were incorporated. In particular, article 48 A, falling under the Directive Principles of State Policy, places a mandatory responsibility on the governance system to make sustained efforts not only to conserve and improve the environment, but also to give priority to the protection of the country's priceless forest wealth and wildlife. This provision constitutionally underlines the State's commitment to striking a balance between nature and development.¹⁵ According to Article 51A (G) of the Constitution of India, one of the fundamental duties of every citizen of this country is to carefully protect our natural environment including naturally formed forests, lakes, rivers and wildlife and play an active role in improving its quality. Also, it is an inalienable duty of all of us to show deep compassion and sensitivity to every small and large soul.¹⁶

Directive Principles cannot be considered strictly justified because like fundamental rights, they do not have the power to be directly implemented through judicial proceedings. However, the Supreme Court has emphasized that these principles are the fundamental pillars for the governance of the country, hence they should be seen in a harmonious manner by linking them with the rights mentioned in Part III of the Constitution. This special style of election has given important constitutional influence and power to environmental duties, despite not being a direct legal requirement.¹⁷

3.3 Principal Environmental Legislation

India's statutory environmental framework is extremely comprehensive and robust. In the same sequence, the foundation of Central Pollution Control Board and various State Pollution Control Boards was laid in the country through Water (Prevention and Control of Pollution) Act 1974. This legal regime provides a solid basis for better management of water quality and for operating the regulatory system associated with it, primarily.¹⁸

The fight against atmospheric degradation took a crucial step with the adoption of the Air Act

¹⁵ Constitution of India 1950 (as amended by the Constitution (Forty-Second Amendment) Act 1976), art 48A; MS Valiathan, 'The Legacy of the Forty-Second Amendment' (2010) 14 Indian Law Review 72, 78.

¹⁶ Constitution of India 1950, art 51A(g); Intellectuals Forum Tirupathi v State of AP (2006) 3 SCC 549, [50]-[55] (Supreme Court of India) (applying art 51A(g)).

¹⁷ State of Kerala v NM Thomas AIR 1976 SC 490; Kirloskar Brothers Ltd v ESIC (1996) 2 SCC 682 (harmonious reading of Parts III and IV of the Constitution of India).

¹⁸ Water (Prevention and Control of Pollution) Act 1974 (India), s 4 (establishing Central Pollution Control Board); Shyam Divan and Armin Rosencranz (n 10) 115-135.

1981, which broadened the scope of legislative action to include air pollution. Subsequently, the deep trauma caused by the Bhopal disaster led to the enactment of the Environmental Protection Act of 1986. This text established a much more global legal framework, while providing the central State with extensive prerogatives in order to implement concrete policies for the preservation and restoration of the quality of our ecosystem.¹⁹

Legal measures like Forest (Conservation) Act 1980, Biodiversity Act 2002 and National Environment Courts Act 2010 to protect the Indian environment have made the administrative structure of the country stronger and more modern. In particular, the 'National Green Tribunal' established in 2010 is currently playing an essential role in India's environmental governance. This specialized court, designed to resolve complex and important legal issues related to the environment, on the one hand takes deep technical knowledge and expert advice, on the other hand ensures speedy justice by exercising legal authority. As a result, it has become a powerful force in the institutional fight for environmental protection.

4. Judicial Constitutionalisation of Environmental Protection in India

4.1 The Foundational Cases

The influence of judicial activism in the field of Indian constitutional law fully emerged during the eighties, which ushered in a new revolution towards environmental protection. During this period, the Supreme Court relaxed and expanded the traditional rules of 'locus standi' i.e. the right to file a petition through Public Interest Litigation (PIL). Due to this procedural change, the way was cleared for the problems related to the general public and the environment to reach directly to the country's highest court, due to which justice started getting priority instead of legal complications.²⁰ In *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, decided in 1985, the Supreme Court imposed the closure of limestone quarries in the Doon Valley. This historic ruling constitutes one of the first examples where the judicial institution deliberately prioritized ecological protection over extractive economic exploitation, firmly

¹⁹ Environment (Protection) Act 1986 (India), s 3 (powers of central government); *Bhopal Gas Peedith Mahila Udyog Sangathan v Union of India* (2012) 8 SCC 326 (Supreme Court of India).

²⁰ *SP Gupta v President of India* AIR 1982 SC 149 (relaxation of locus standi in public interest litigation); Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation before the Supreme Court of India' (1985) 4 Third World Legal Studies 107.

relying on fundamental constitutional principles.²¹

The historic *Subhash Kumar v. State of Bihar* case of 1991 ushered in a new horizon in the Indian judiciary. In this judgment, the Supreme Court clearly declared that the 'right to live' provided by the Constitution is not only to sustain existence, but also includes the right to enjoy clean air and clean water. The Court also ensures that if for any reason this quality of public life or environment is disturbed or damaged by any act contrary to the law, the common citizen can directly approach the court and seek redressal as per Article 32 of the Constitution. The ruling that maintaining environmental balance is one of the state's obligations for the full development of life gains legal recognition.²² This historic decision of the Court has given a new height to the importance of environmental protection. Through this, it was made clear that the right to live in a safe and clean environment is not a simple legal provision, but it is an integral part of the 'fundamental right to life' found under Article 21 of the Constitution. Simply put, the guarantee of living a dignified life is incomplete unless we have the right to a healthy environment.

4.2 The Vellore Citizens Forum and Sustainable Development

The Supreme Court's judgment in the 1996 '*Vellore Citizens Welfare Forum v. Union of India*' case is considered a landmark chapter in the judicial history of India. It is through this judgment that various important principles and ideals of international environmental law are strongly adopted and established within the Indian constitutional framework. The decision served as a turning point in integrating international environmental protection standards with domestic legal systems.²³ The case was directed at the horrific pollution caused by the tannery or leather processing industry in Tamil Nadu. The Court clearly stated in this judgment that the 'precautionary principle' (recruitment profile) and 'pollutant shall bear responsibility' (polluter pays profile) arising from international environmental law and the Rio Declaration are now integral parts of India's own laws. Articles 21, 47, 48-A and 51-A(G) of the Constitution of

²¹ *Rural Litigation and Entitlement Kendra v State of Uttar Pradesh* AIR 1985 SC 652 (Supreme Court of India); Armin Rosencranz, Shyam Divan and Martha L Noble (eds), *Environmental Law and Policy in India* (Tripathi 1991) 172-181.

²² *Subhash Kumar v State of Bihar* (1991) 1 SCC 598, [7] (Supreme Court of India) (right to pollution-free water and air as part of right to life under art 21 of the Constitution of India).

²³ *Vellore Citizens Welfare Forum v Union of India* (1996) 5 SCC 647 (Supreme Court of India) (constitutionalising the precautionary principle and polluter pays principle).

India as well as the Environment Protection Act, 1986 have given these principles the status of laws of the land and are directed to be properly implemented.²⁴

In the Vellore case the court accepted the concept of sustainable development (Sustainable Development) as a constitutional standard. Justice Kuldeep Singh made it clear that development should be one that is sustainable, and stressed that economic progress and protection of the environment are not opposed to each other, but complement and support each other. Introducing the institutional creativity of Indian environmental constitutionality, the Court directed to set up a 'Green Bench' in the Madras High Court and a 'Green Authority' for Tamil Nadu to take concrete steps towards environmental protection.

4.3 The Public Trust Doctrine and Intergenerational Equity

1997. The Mehta v. Kamal Nath case is known as a landmark chapter in Indian environmental jurisprudence. In this historic judgment, the Supreme Court followed the principles of US common law (American common law) and included the 'Public Trust Doctrine' or public interest depository for the first time in the Indian judiciary. The main objective of this decision was to ensure the responsibility of the state in protecting natural resources and to create a strong legal basis for environmental conservation.²⁵ The Court has made it clear that the State acts as a custodian or trustee of natural resources, whose main responsibility is to safeguard these resources for public use. According to this principle, the government cannot hand over or sell these properties to anyone for personal gain, as their conservation is essential in the public interest. This important principle of the Public Trust has been strictly applied especially to important natural elements like rivers, forests, clean air and beaches so that the integrity of the environment is maintained.²⁶

1999 'AP Pollution Control Board vs. Prof. M. V. In the Naidu' case, the issue of 'intergenerational equality' or responsibility from one generation to another clearly emerges. In this historic judgment, the court strongly declared that the present generation has a moral and legal responsibility to carefully preserve the natural resources and environmental heritage

²⁴ Rio Declaration on Environment and Development (adopted 14 June 1992) UN Doc A/CONF.151/26/Rev.1, Principles 15 and 16 (precautionary and polluter pays principles).

²⁵ MC Mehta v Kamal Nath (1997) 1 SCC 388 (Supreme Court of India) (introducing the public trust doctrine into Indian law); Joseph L Sax, 'The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention' (1970) 68 Michigan Law Review 471.

²⁶ Intellectuals Forum Tirupathi (n 16) [57]-[65]; TN Godavarman Thirumulpad v Union of India (1997) 2 SCC 267 (Supreme Court of India) (public trust doctrine applied to forests).

keeping in mind the good living of future generations. Basically, that message is dominated by this observation of the court so that the luxury of the present does not destroy the potential of the future.²⁷ These developments clearly reflect the depth to which the Indian Supreme Court has resorted to international environmental laws to further strengthen and enrich the roots of its constitutional jurisprudence. The Court has not only adopted global standards but has also woven them into the Indian context in such a way that they have become an integral part of our fundamental rights. It illustrates how international principles have played a guiding role in modernizing the country's legal framework and making it more environmentally sensitive.

4.4 Climate Change and the Contemporary Court

The Supreme Court of India has been considering climate change as a very important constitutional issue in recent times. In 2024 'M. Who. In the judgment of *Ranjitsinh v. Government of India*' case, — which was mainly related to the protection of the extinct 'Great Indian Bastard' or large Indian stork, the court recognized the issue of freedom from the negative effects of climate change as a constitutional right. According to the court's observation, the right to equality as enshrined in Article 14 of the Indian Constitution and the right to life as enshrined in Article 21 derive this right to protection against the adverse effects of climate change.²⁸ This is not only a revolutionary advance towards strengthening the constitutional nature of climate rights in any jurisdiction in the global South, but it also positions India at the forefront of judicial activism and ideological leadership to address the climate crisis.

5. Environmental Constitutionalism in the European Union

5.1 The Treaty Framework

The EU has no written constitution in the traditional sense, especially as this has remained the case since the Constitutional Treaty failed in 2005. However, the treaties laying its foundation— such as the 'Treaty on European Union' (TEU) and the 'Treaty on the Functioning of the European Union' (TFEU) play a quasi-constitutional role within the legal regime of the EU—. These treaties are considered to be above the national laws of the member countries and

²⁷ *AP Pollution Control Board v Prof MV Nayudu* (1999) 2 SCC 718, [27]-[34] (Supreme Court of India); Edith Brown Weiss (n 11) 97-103.

²⁸ *MK Ranjitsinh v Union of India* WP (C) 838 of 2019 (Supreme Court of India, decided 21 March 2024) [50]-[75] (constitutional right against adverse effects of climate change).

provide a solid basis for the protection of fundamental rights through the EU Charter of Fundamental Rights'. In the main, it is these treaties that give legal power to the operation of the Union and to the system of rights.²⁹

A historic shift towards environmental protection came when it was made part of the Community Treaties (Community treaties) through the Single European Act of 1986. This important act incorporated Article 130r-130t within the EEC (EEC) Treaty, thereby achieving for the first time a clear and sound Treaty basis (treaty bases) for environmental activities and policies at Community level. It not only strengthened policymaking, but also provided legal recognition to environmental protection.³⁰ The Maastricht Treaty of 1992 brought the importance of environmental protection within the European Community to a new level, where it was recognized as a major Community objective and for the first time the principle of sustainable development was included among the goals of the Treaty. Subsequently, the 1997 Amsterdam Treaty further strengthened this foundation by introducing the principle of 'environmental integration, currently codified under Article 11 of the TFEU. This provision makes it imperative that the requirements of environmental protection are given priority when outlining or implementing all EU policies and activities, so that the goal of sustainable development can be effectively achieved in the future.³¹

Title XX of the TFEU, encompassing Articles 191 to 193, provides the fundamental legislative overview governing the environmental action of the European Union. More precisely, Article 191, paragraph 1, defines the strategic pillars of this policy by aiming to safeguard and improve the quality of our ecosystem, the protection of public health, as well as thoughtful and sober management of resources natural. This framework also requires active mobilization in the face of global ecological issues, with particular emphasis on the fight against climate change.³² Article 191(2) enshrines fundamental pillars of European environmental law, establishing in particular the precautionary principle and that of preventive action. This legal provision also imposes the polluter pays principle, while requiring that environmental damage be corrected

²⁹ Craig and de Búrca, *EU Law: Text, Cases and Materials* (7th edn, Oxford University Press 2020) 1-30; Koen Lenaerts and Piet Van Nuffel, *European Union Law* (3rd edn, Sweet & Maxwell 2011) ch 1.

³⁰ Single European Act [1987] OJ L169/1, arts 130r-130t; Eckard Reh binder and Richard Stewart, *Environmental Protection Policy* (De Gruyter 1985) 1-25.

³¹ Treaty of Amsterdam Amending the Treaty on European Union [1997] OJ C340/1; art 11 TFEU (environmental integration principle); Jan H Jans and Hans HB Vedder (n 4) 21-28.

³² Article 191(1) TFEU; Ludwig Krämer, 'The Origins and Development of EU Environmental Law' in Joanne Scott (ed), *Environmental Protection: European Law and Governance* (Oxford University Press 2009) 1-17.

as a priority at source.³³

5.2 The EU Charter of Fundamental Rights

The Charter of Fundamental Rights of the European Union, which received legal recognition in 2009 with the Lisbon Treaty, does mention environmental protection in its Article 37, but it is introduced as a broad principle rather than an individual right. Put simply, this Article merely dictates that the betterment of the environment and a high level of protection be included in all the Union's policies. This whole process revolves around the principles of sustainable development, the main objective of which is to ensure an improvement in the quality of the environment, and not to grant any direct legal rights to citizens.³⁴ The distinction between rights and principles under the Charter is constitutionally considered to be of vital importance, as these two have different legal effects. While on one hand rights can be directly challenged and enforced in court, on the other hand the position of principles varies slightly. Principles become the consideration of the judiciary only when they are implemented through a legislative act or law; That is, they cannot be implemented directly without legislative support.³⁵

The soft line taken with environmental protection in Article 37 of the Charter has been a great subject of debate among legal experts. Many scholars believe that the absence of any clear individual right to a healthy environment in the Charter is a major shortcoming or 'structural lacuna' in the framework of the fundamental rights of the European Union. This deficiency is further worsened when we see that in today's era the importance of environment for personal health and well-being is continuously increasing. On the contrary, some experts argue that this lack of a charter has been effectively met by the extensive mechanism of secondary laws (secondary legislation). He says that it is institutionally more practical and right to adopt an approach based on principles rather than rights in a complex and multilevel legal order such as the European Union.

5.3 The European Green Deal and Constitutional Dimensions

Launched in 2019, the European Green Deal orchestrated by the European Commission stands

³³ Article 191(2) TFEU (precautionary principle, prevention principle, polluter pays principle, rectification at source); Philippe Sands and Jacqueline Peel (n 12) 219-224.

³⁴ Charter of Fundamental Rights of the European Union [2012] OJ C326/391, art 37; Explanations Relating to the Charter of Fundamental Rights [2007] OJ C303/17, Explanation on art 37.

³⁵ Articles 51-54 of the EU Charter of Fundamental Rights; Case C-176/12 Association de médiation sociale [2014] ECR I-0000, EU:C:2014:2, [42]-[50] (CJEU) (distinction between rights and principles in the Charter).

out as the boldest environmental initiative in the history of community integration. This major project notably integrates the European Climate Law, a text which sets in stone the Union's legislation the objective of carbon neutrality by 2050, while imposing a radical reduction of at least 55% net greenhouse gas emissions by 2030.³⁶ The Climate Law now constitutes a real legislative anchor for the European Union's environmental commitments, marking what some experts describe as a "constitutional moment" for European law. By establishing binding obligations over the long term, this text locks the ecological trajectory of the Union, thus limiting the room for manoeuvre and the discretionary power of future decision-makers, whether they are legislators or members of the executive.³⁷

5.4 The Court of Justice and Environmental Principles

Although the Court of Justice of the European Union has had a decisive influence on the development and implementation of the continent's environmental legal pillars, its method of interpretation remains, overall, much more anchored in rigor textual treatment than that of the Supreme Court of India, known for its more marked judicial activism. By navigating between respect for legislative frameworks and the protection of the ecosystem, the Luxembourg institution favours a measured approach which is clearly distinguished from the interpretative flexibility often observed within Indian jurisprudence.³⁸ In the case of *Commission v. France* (C-121/07), the Court of Justice stressed that the precautionary principle authorizes the adoption of protective measures when scientific uncertainty remains as to the risk incurred. This legal interpretation is in striking resonance with the jurisprudence of the Supreme Court of India, which formulated an almost identical vision of this principle during the founding *Vellore* judgment, thus anchoring this need for anticipation in the face of unknown in a global framework.³⁹

³⁶ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality [2021] OJ L243/1 (European Climate Law), arts 2, 4.

³⁷ Joanne Scott and Lavanya Rajamani, 'EU Climate Change Unilateralism' (2012) 23(2) *European Journal of International Law* 469, 477-490; Harro van Asselt, 'The Fragmentation of Global Climate Governance' (Edward Elgar 2014) ch 5.

³⁸ Joined Cases C-418/97 and C-419/97 *ARCO Chemie Nederland Ltd v Minister van Volkshuisvesting* [2000] ECR I-4475, [36]-[40] (CJEU); Case C-379/92 *Peralta* [1994] ECR I-3453 (CJEU) (precautionary principle in EU environmental law).

³⁹ Case C-121/07 *Commission v France* [2008] ECR I-9159 (CJEU) (precautionary principle and GMO authorisation).

6. Comparative Analysis: Convergences and Divergences

6.1 Constitutional Textuality and Judicial Creativity

At the heart of the structural divergences between Indian and European environmental constitutionalism is the subtle balance, even tension, between the letter of the text and the audacity of jurisprudence. Where Europe often relies on codified frameworks, India is distinguished by an original textual silence that the judge chose to break with unprecedented doctrinal creativity. Faced with a Constitution initially stingy with explicit ecological provisions, the Indian Supreme Court carried out a real legal metamorphosis: by linking the right to the environment to the fundamental right to life via Article 21, it transcended the written framework. This approach allowed the direct integration of international principles and the invention of bold remedies, such as the doctrine of "public trust" (public trust) or the rule of absolute responsibility, propelling the judiciary well beyond the simple boundaries of the strict constitutional text.⁴⁰

Conversely, within the European Union, successive revisions of the treaties have established an increasingly exhaustive and explicit environmental constitutional framework. The ecological principles set out in Article 191 TFEU benefit from direct conventional authority, which exempts the judge from having to deduce them from more general provisions. Consequently, the mission of the Court of Justice turns out to be essentially interpretative rather than creative; it seeks to clarify the scope of principles already anchored in primary law instead of bringing out new rights from abstract concepts.⁴¹ This contradiction actually reflects the deep differences in constitutional culture and judicial philosophy that exist between the two systems over time.

6.2 Sustainable Development

Both India and the European Union have accepted sustainable development as a fundamental pillar of their constitutional and policy framework. In the context of India, this concept became part of constitutional law through important Supreme Court decisions like *Vellore*, which was later consistently applied in various cases to strike a balance between development and

⁴⁰ MC Mehta v Union of India AIR 1987 SC 965 (absolute liability rule for ultra-hazardous industries); Shyam Divan and Armin Rosencranz (n 10) 186-210.

⁴¹ Case C-284/95 *Safety Hi-Tech* [1998] ECR I-4301, [48]-[53] (CJEU) (interpretive role of the Court of Justice in EU environmental law); Krämer (n 4) 55-72.

environmental protection. It is characteristic of the Indian approach that sustainable development is considered a judicially enforceable standard here rather than a mere guiding principle, which courts use to test the validity of government decisions and their legal effect.⁴²

Within the European Union, the concept of sustainable development is at the heart of the legal architecture, in particular through Article 3, paragraph 3, of the TEU, which establishes it as a fundamental objective, as well as the Article 11 of the TFEU, requiring its transversal integration into all community policies. Rather than favouring a purely contentious approach, the European system adopts an essentially programmatic logic: sustainable development serves as a compass for legislative and executive action instead of constituting a direct basis for the judicial annulment of isolated acts. However, it should be noted that the Court of Justice does not remain completely closed to this notion, sometimes using it as an essential interpretative lever to clarify the scope of Union environmental law.

6.3 The Precautionary Principle

The precautionary principle has been adopted with particular favour within both legal frameworks. In India, the Supreme Court has given this notion, since the Vellore case, a truly constitutional dimension by anchoring it in articles 21, 47, 48A and 51A(g), thus establishing it as a fundamental pillar of numerous environmental disputes. However, this approach is not unanimous: Indian jurisprudence regularly faces criticism for its application, sometimes considered too automatic or rigid. It is criticized in particular for a lack of real confrontation with conclusive scientific data, a fault which threatens to distort this rational risk management tool to make it a simple obstacle to socio-economic development.⁴³

A streamlined framework is currently followed in the application of 'warning principles' or precautionary principles in the European Union. Especially since the publication of a special notification (Communication) of the Commission on this policy in 2000, a specific framework has been added to its implementation. This framework mainly emphasizes on maintaining proportional rates, not discriminating and maintaining continuity of decisions in taking any action. At the same time, it is an integral part of this process to thoroughly analyse the

⁴² Narmada Bachao Andolan v Union of India (2000) 10 SCC 664, [260]-[275] (Supreme Court of India) (sustainable development as a judicially enforceable norm); Virendra Gaur v State of Haryana (1995) 2 SCC 577.

⁴³ Shibani Ghosh, 'Regulation of Hazardous Substances in India' in Philippe Cullet et al (eds), Water Law for the Twenty-First Century (Routledge 2010) 188-205.

comparative profit and loss between these two, what the consequences of taking action on a particular issue can be and what kind of potential risks or costs can be incurred if no action is taken.⁴⁴ The Court has fully upheld precautionary measures in important areas such as genetically modified organisms (GMO) and food safety, but at the same time has taken a clear position that these steps must be essentially 'proportional'. The court argues that measures taken in the name of safety are neither unduly harsh nor permanent; rather, as soon as any new scientific evidence emerges, these rules should be urgently reviewed so that they can maintain a precise balance between contemporary technological developments and safety standards.

6.4 Access to Environmental Justice

Access to environmental justice reflects a major gap between the two systems. The mechanism of Public Interest Litigation (PIL) in India has significantly reduced the barriers to environmental litigation, making it possible for civil society organizations, conscious individuals and even suo motu courts to file environmental claims before the Supreme Court. It has become possible to present. While this activism has set an impressive precedent in the field of environmental law, critics argue that PIL has also led to challenges such as judicial overreach and uncertainty in decisions. At the same time, it has at times influenced the institutional framework by giving room directly to court surveillance rather than specialist regulatory procedures.⁴⁵

European Union environmental law did not sprout out of nowhere, but was forged deep down by the dictates of the 1998 Aarhus Convention. This international agreement, formally ratified by the EU, introduces stringent parameters regarding information transparency, active citizen involvement in decision-making, and effective access to justice for ecological disputes. Through the assimilation of these cornerstones, the Community system today guarantees clearer land management, transforming members of civil society into authentic vigilant sentinels to protect the natural heritage.⁴⁶ The European Union's Aarhus Regulation was created with the aim of concretely transposing the requirements for access to justice provided for by the Convention to the Community level; however, the restrictive interpretation adopted

⁴⁴ Commission of the European Communities, 'Communication on the Precautionary Principle' COM(2000) 1 final, sections 4-6 (proportionality, consistency, non-discrimination).

⁴⁵ Armin Rosencranz and Michael Jackson, 'The Delhi Pollution Case: The Supreme Court of India and the Limits of Judicial Power' (2003) 28 Columbia Journal of Environmental Law 223, 228-260.

⁴⁶ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447; Council Decision 2005/370/EC [2005] OJ L124/1 (EU approval of the Aarhus Convention).

by the Court of Justice regarding the criteria for standing to bring proceedings for the judicial review of EU acts has come under scrutiny by the Aarhus Compliance Committee, who has harshly criticized this approach, judging it to be lax and not in line with the spirit of openness required by the international treaty.

6.5 Climate Rights

The legal battle over climate rights has now become a very active and hot topic in both India and the European Union—region. In the context of India, the Supreme Court in 2024 'M. Who. Ranjitsingh' case recognized protection from the effects of adverse climate change as a constitutional right, placing India on the line of countries that directly prosecute climate rights under the Constitution. On the other hand, the situation in the European Union is somewhat different; There the 'Cravalho and others v. European Parliament and Council' case has made clear the limitations of access to the High Court on climate issues. That case essentially dismissed the European Court of Justice for legal validity or 'standing', a major example of judicial limitation in climate justice.⁴⁷

A look at the evolution of climate rights in both jurisdictions shows that there is a perpetual conflict between judicial constitutionality and democratic discourse in setting the right targets for climate change. Both measures recognize that current measures to address the climate crisis are insufficient. However, significant differences are observed between the institutional mechanisms used to convert constitutional climate commitments into effective legal obligations.

7. Lessons for the Global South

A comparative analysis of the environmental constitutional frameworks of India and the European Union provides several important lessons for countries in the Global South or Southern Hemisphere in terms of 'green constitutionality' (green constitutionalism). India's experience shows in particular that a creative and active judiciary can develop strong environmental jurisprudence through its own judicial interpretation, even if the constitution does not directly mention environmental rights. This may be a standard model for those

⁴⁷ Case T-330/18 *Carvalho and Others v European Parliament and Council* [2019] ECR II-0000, EU:T:2019:324, [50]-[75] (General Court) (dismissal of climate action on standing grounds); Case C-565/19 P *Carvalho v Parliament and Council* (CJEU, 25 March 2021).

countries in the Southern Hemisphere, where the constitution is difficult to amend due to political complications. If the courts of those countries are sufficiently independent and have the judicial wisdom to find environmental rights within the existing constitutional text, they are able to play a leading role in protecting the environment without any legal changes.⁴⁸

At the same time, India's experience also clearly illustrates the limitations of a judge-driven constitutional system. Lack of consistency in the application of environmental policies, risk of judicial hyperactivity and fear of public interest litigation or PIL (PIL) being used in the interests of influential groups in society. On the other hand, the institutional and contractual framework of the European Union presents an alternative and complementary paradigm. The environmental governance system developed through specific principles; legal expansion and the presence of specialized regulatory bodies largely reiterate the importance of strong legislatures and executive structures in protecting the environment.

The establishment of the National Green Tribunal or National Environment Court of India is essentially a unique institutional step in overcoming the limitations of the general justice system. It has an excellent combination of technical and environmental expert knowledge with judicial supervision, which is helpful in removing the complexity of the conventional legal framework. If such specialized and innovative institutions can be established in the Global South or other countries of the Southern Hemisphere, it may be possible to overcome only the various flaws and inconsistencies of public interest litigation or PIL-based environmentalist justice systems. Basically, it introduces a modern and more effective approach to environmental protection.

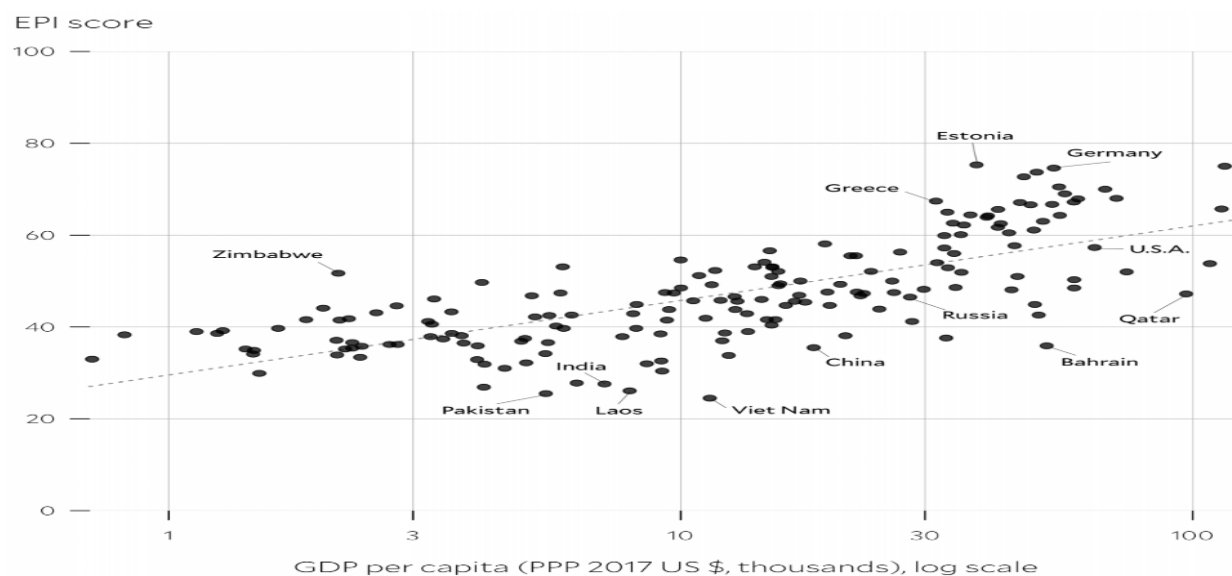
Finally, both these systems clearly highlight the importance of international environmental law as a source of constitutional norms. Both systems have been enriched by the inclusion of fundamental principles such as sustainable development, vigilance and intergenerational equality from international law into constitutional jurisdictions and treaty structures. This has resulted in some areas of ideological unity that make interstate environmental governance more accessible. International environmental law is a promising path, especially for developing countries in the Global South or South, who want to create a strong environmental

⁴⁸ James R May and Erin Daly (n 1) 245-270; Boyd DR, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press 2012) ch 8.

constitutional framework. As it acts as a source of key principles for environmental protection, it also plays an important role as an effective means of creating accountability obligations.⁴⁹

Figure EPI scores vs GDP per capita

Countries' wealth is a strong predictor of their overall environmental performance, but some countries vastly outperform their economic peers, while others lag.

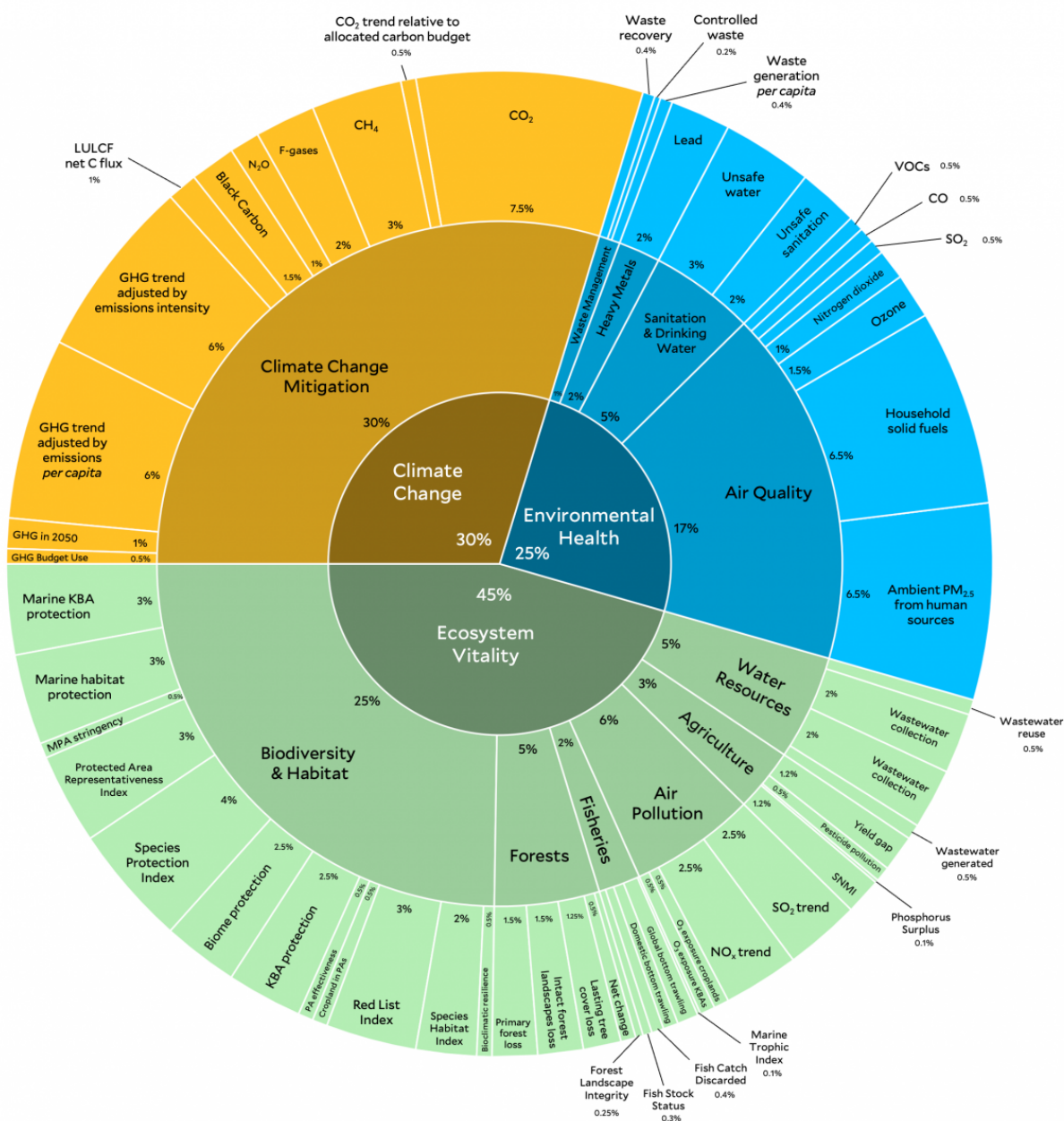


Source- 2024 Environmental Performance Index

2024 EPI Framework

The framework organizes 58 indicators into 11 issue categories and three policy objectives, with weights shown at each level as a percentage of the total score.

⁴⁹ Philippe Sands, 'International Law in the Field of Sustainable Development: Emerging Legal Principles' in Winfried Lang (ed), *Sustainable Development and International Law* (Graham & Trotman 1995) 53-66; Lavanya Rajamani, *Differential Treatment in International Environmental Law* (Oxford University Press 2006) ch 2.



Source: 2024 Environmental Performance Index

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8. Conclusion

Environmental constitutionality or 'green constitutionalism' has emerged as a very important and dynamic field of comparative constitutional law today. This idea essentially accelerates the realization that not only common law or government policy is sufficient to deal with the current global environmental crisis, but it requires a strong constitutional basis. The article in question closely monitors and compares the trends in environmental constitutional evolution of India and the European Union. Through this, as the rich legal heritage of these two regions has been revealed, it has also been possible to clearly identify their own and unique characteristics.

India's environmental constitutional framework is based on a far-reaching interpretation of judicial creativity and the right to life, while the principles of international environmental law are well-coordinated in constitutional doctrine. Originally the Supreme Court acted as the main architect of this evolution, which is tackling the acute environmental challenges of this rapidly developing nation by applying factors such as public interest litigation and various important policy— such as full liability (absolute liability), precautionary principle (precautionary Principle), polluter payment principle (polluter pays principle), public trust doctrine and intergenerational equality. Especially 'Mewhort. The recent right recognized in the context of climate change in the Ranjit sin' case has opened up a modern and pioneering horizon of this legal evolution.

The environmental constitutional framework of the European Union is much more coherent and structurally sound than conventional judicial doctrine. Environmental protection here is not only dependent on court rulings, but is consistently protected by treaties and detailed environmental policies are provided in the primary law itself. Although there is some criticism of the inclusion of environmental protection in the EU Charter not as 'rights but as 'policy', its strong secondary legal framework provides a sound and institutional basis in the management of environmental governance. Basically, this approach has set a unique and progressive precedent in protecting the environment by ensuring legal assurance.

In the coming years, both systems will face very complex challenges such as the severity of the climate crisis, the extinction of biodiversity, and the conflict between environmental conservation and development. A comparative review of these two systems provides valuable guidance not only to students of comparative constitutional law, but also to policymakers and activists engaged in strengthening the global South's environmental governance system. The

main lesson learned from this is that green constitutionalism, whether through judicial activism or through the inclusion of treaties, has established itself as an essential and integral part of the legal framework necessary to address the environmental crisis of the 21st century.⁵⁰

⁵⁰ Patricia Birnie, Alan Boyle and Catherine Redgwell, *International Law and the Environment* (3rd edn, Oxford University Press 2009) 1-35; Sumudu Atapattu, *Human Rights Approaches to Climate Change: Challenges and Opportunities* (Routledge 2016) 267-290.

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