



Climate Change Litigation and the Evolution of Environmental Jurisprudence in the Global South: A Comparative Study

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Abstract. The wars against climate change are being waged globally, domestically on the streets, and in the courts. One of the major legal means of fighting climate change is climate change litigation. The development of climate litigation around the globe has given content to the notion of a global climate change justice movement, which regards the judiciary as a key factor in developing multi-level climate governance. Climate change litigation around the Globe has shown that litigants, lawyers, and the judges are seeking inspiration from their counterparts in another jurisdiction. Yet, while there is an emerging global trend climate change litigation, it is only the contribution of the countries in Global North that have received more prominence and scholarly interest. The countries in the global south have often been depicted as a silent and passive observers in the development of climate litigation. Yet, this is not an accurate reflection of the actual scenario. The aim of this current study is to break this misconceived notion. In doing so, the authors underscore the significance and dynamic role of courts in global South bolstering climate jurisprudence, fostering environmental accountability, and advancing the overall debate on climate justice through creative judicial innovations.

Keywords: Climate Change Litigation - Environmental Jurisprudence - Global North - Global South -Climate Justice

1 Introduction

One of the most serious issues in the 21st century is climate change, and is affecting ecological system, economic development, and human well-being worldwide. In response to the increasing climate crisis, efforts to achieve climate justice are being implemented in many areas, such as international negotiations, domestic governance structures, public activism, and judicial systems. Among these mechanisms, climate change litigation is being recognized as an important legal strategy by which individuals, communities, and organizations are seeking to hold governments and corporations liable for causing damage to the environment and greenhouse gas

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R. Dave et al. (eds.), *Proceedings of the International Conference on Conceptualizing Legal Framework and Policies for Domestic Animal and Wildlife Conservation: Issues and Challenges in Hybrid Mode (ICAR 2026)*, Atlantis Highlights in Social Sciences, Education and Humanities 52,
https://doi.org/10.2991/978-94-6239-725-5_10

emission. Through this litigation, courts are playing a crucial role in ensuring that the rule of law and democratic accountability are upheld in addressing environmental issues [1]. The fight against climate change is not just being fought in diplomatic negotiations or in policy instruments; it is also being fought in the streets and in the courts. Litigation is being recognized as an important strategy in fighting against government inaction, corporate environmental misconduct, and regulatory failures. Thus, Courts are gradually being recognized as playing an important role in multilevel climate governance in the development of environmental jurisprudence and in establishing mechanisms for accountability [2].

Another remarkable aspect of climate change litigation is the variety of plaintiffs who are seeking climate justice in courts. These plaintiffs comprise different groups such as minor plaintiffs, climate activist, farmers, indigenous peoples, women, climate refugees, investors, environmental groups, and sub-national governments. For example, climate actions taken by *Ridhima Pandey v. Union of India* [3] and *Rabab Ali vs. Federation of Pakistan* [4] show how minor plaintiffs are seeking climate justice in Courts of law. Likewise, climate actions taken by *Saul Luciano Lliuya v. RWE* [5] show how plaintiff who are affected by environmental damage caused by climate change are trying to hold corporate entities liable for their greenhouse gas emissions. Another key player in the fight for climate justice through litigation is indigenous communities and environmental groups. The *Centre for social justice Studies vs Presidency of the Republic (Atrato River case)* by the constitutional court in Colombia was a landmark case in climate litigation, where the Atrato River was recognised as a legal entity in a decision focusing on the protection of environmental rights. In *Maria Khan vs Federation of Pakistan* [6], women activist efforts in seeking judicial intervention for poor climate policies can be seen. Even animals have been party to cases in climate litigation, as seen in *resident marine mammals of the Protected Seascape Tanon Strait v. Secretary Angelo Reyes* [7] by the Supreme Court in the Philippines, where marine animals were represented in the litigation for environmental protection.

Another key feature of a climate litigation is its transitional character. In climate litigation litigants, legal expert, and judges are increasingly looking to other countries for inspiration in their climate change cases. These cross-countries borrowings of legal arguments are leading to the emergence of a global dialogue on climate justice, in which courts are borrowing from each other in resolving intricate environmental disputes. Through these mechanism courts are increasingly trying to establish causality between environmental degradation and actions of governments or companies, explore disputes resolution options, allocate environmental responsibility, and create effective judicial remedies for climate change cases. However, despite the increased significance of climate litigation in addressing climate change, existing literature on climate litigation has primarily been concerned with developments in Global North countries, particularly in countries such as the United States and Europe. Hence, the contribution of courts in Global South countries has remained relatively neglected in literature [8]. This has led to a common perception that climate litigation is primarily a feature of developed countries, whereas developing countries are relatively passive in addressing climate change disputes. However, these assumptions fail to take into account the significant role that the courts have to play in the global South. In many developing

countries, the effects of climate change, such as extreme weather patterns, sea-level rise, and environmental degradation, have been particularly acute. In these jurisdictions, the courts have begun to take innovative approaches to the law by interpreting constitutional rights, environmental legislation, and international environmental law to tackle the effects of climate change [9]. In addition, there has also been the emergence of cases brought by the global south against the global north in the courts, seeking to hold multinational corporations accountable for environmental damage, as seen in the cases of *Vedanta Resources Plc v. Lungowe* [10] and *Okpabi v. Royal Dutch Shell* [11].

Three distinct waves of climate change litigation have been identified by researchers. The first wave climate change litigation, which took place before 2007, was mainly concerned with efforts to oblige states to regulate greenhouse gas emission. The second wave of climate change litigation, which took place between 2007 and 2015, was marked by the diversification of climate change litigation tactics to address regulatory failures and inaction by the state. The third wave of climate change litigation, which took place after 2015 was marked by an increase in climate change litigation globally [12]. Moreover, scientific studies by the intergovernmental panel on climate change and the influential carbon majors report provided evidence of the connection between major fossil fuel industries and global greenhouse gas emission, thus enhancing climate change litigation [13]. All these developments have impacted judicial and quasi-judicial bodies in the Global South as well. For instance, in the case of *In re Greenpeace Southeast Asia* [14], which was initiated by the commission on human rights in the Philippines, evidence from the carbon major report was presented to establish the responsibility of major fossil fuel industries for human right violations caused by climate change. Such cases demonstrate the increasing willingness of legal system in developing countries to grapple with complex issues in corporate accountability and climate justice.

Climate change litigation in global South also draws upon constitutional and human rights instruments, with claims regarding the right to life, the right to water, and the right to a healthy environment being common in this regard. The case involving *Ioane Teitiota v. Chief executive of the Ministry of business* [15], innovation and employment is yet another example that demonstrates the ways in which the issue of climate change has begun to touch on international human rights law. Recent international reports have highlighted the need for the strengthening of the rule of law in the area of governance and the environment in order to address the issue of the climate change crisis. The United Nations environment programme published a report titled 'Making peace with nature' and highlighted the need for a transformative approach in the area of governance in order to achieve the concept of sustainable development and address the issue of climate change [16]. It is within this context that the need arises to examine the role of the Courts in the global south in the area of climate change law.

In this regard, this article attempts to emphasize the substantial role played by the courts in developing countries and advancement of climate change litigation jurisprudence globally. In this regard, this study attempts to challenge the widely held belief that climate litigation is a phenomenon in the global North only by highlighting the role played by courts in developing countries in advancing climate change litigation jurisprudence globally. In this regard, the study attempts to de-bunk the widely held

belief that nothing is happening in global south in respect to climate change litigation by highlighting its going importance in this regard globally.

2 Methodology

This study adopts a qualitative doctrinal and comparative research approach to examine climate change litigation in Global South jurisdictions. The research is primarily based on analysis of judicial decisions, constitutional provisions, environmental statutes, and policy frameworks related to climate governance. Selected jurisdictions including Brazil, India, Pakistan, the Philippines, and South Africa are examined to understand judicial responses to climate related disputes. A comparative analysis of landmark cases is conducted to identify emerging legal principles such as rights-based approach, public trust doctrine, and transformative adjudication. The study relies on secondary sources including case law, reports, and scholarly literature to evaluate contribution of Global South courts to development of climate jurisprudence.

3 Discussion

3.1 What is Global South and why has there been this invisibility?

The global south is a term used to refer to a group of nations that are divergent in terms of their governance systems, levels of development, and sensitivity to impacts of climate change [17]. Five jurisdictions are chosen for comparison in this study, namely Brazil, India Pakistan, the Philippines, and South Africa. Although there are divergent characteristics in terms of population, governance, and development levels among these jurisdictions, there is a common commitment to addressing climate change mitigation and adaptation in their NDCs in line with the Paris agreement [18]. These jurisdictions have also seen a rising number of climate change cases in their domestic legal proceedings. According to Sabin Centre for climate change Law data there are a number of cases of climate change litigation that have been seen in these jurisdictions.

Despite all these advancements in climate change litigation in various parts of the world, it is observed that climate change litigation in the global South is not well represented in literature. Most of the literature focuses on advancements in the global North, ignoring various advancements in the legal arena of developing countries [19]. One of the major reasons for not recognizing climate change litigation in the global South is that various cases in the region rely on constitutional and human rights provisions like the right to life, health, and a clean environment, but not specifically on climate change litigation provisions.

Developing countries in the global South often focus more on adaptation and socio-economic development in the context of climate change, which influences various types of environmental litigation [20]. It is therefore crucial to recognize various advancements in the global south for better comprehension of global climate change litigation.

3.2 Countries in Focus – Brazil and India

Brazil

Brazil is considered to be one of the biggest emitters of greenhouse gases in the world, and a significant percentage of this is due to deforestation in the Amazon rainforest [21]. Over the past few years, there have been a number of lawsuits filed against the government regarding inadequate implementation of environmental laws and failure to control illegal deforestation in the Amazon rainforest. These lawsuits seek to hold the government accountable for environmental damage and bring climate change into the judicial arena. One of the key lawsuits filed against the government is that of Institute of Amazon Studies (IEA) v. Brazil [22], wherein it was claimed that the right to a stable climate should be considered a fundamental constitutional right of all present and future generation of Brazilians. The government of Brazil had failed to implement action plans to prevent illegal deforestation in the Amazon rainforest and mitigate climate change, thus violating national laws and fundamental human rights. Moreover, it was also claimed that the government should be directed to restore deforested areas and provide adequate funding to implement environmental protection schemes.

Another important case to be considered is the case of Partido Socialista Brasileiro (PSB) v. Brazil [23], in which several political parties filed a petition against the government for failing to adopt policies aimed at controlling deforestation. The petitioners claimed that the government's inaction on the issue directly contributes to climate change and violates the provisions of the constitution [24]. Although the case has yet to be decided, the role of political actors and civil society in promoting the development of climate change litigation in Brazil cannot be ignored. Generally, the cases discussed above indicate the growing trend of climate change litigation in Brazil, with specific reference to the protection of forests and the reduction of greenhouse gases.

India

Currently, India is ranked as the third-highest emitter of greenhouse gases in the world; however, it is also one of the countries that is most vulnerable to the impacts of climate change [25]. Although India does not have comprehensive legislation on climate change, it addresses issues of environmental protection through constitutional provisions, environmental legislation, and judicial activism. The Indian judiciary, including the Supreme Court, High Courts and National Green Tribunal, has made considerable efforts in addressing issues of climate change through public interest litigation [26]. For example, in *Association for Protection of Democratic Right v. State of West Bengal* [27], the Supreme Court of India considered the impact of massive tree felling for development activities. In its judgement, it was stated that “the right to clean and healthy environment is a part of the fundamental right to life under article 21 of the Constitution of India.” Another significant case is that of *In re Court on its own motion v. State of Himachal Pradesh* [28], wherein the tribunal dealt with environmental degradation in the area around the Rohtang pass in the Himalayas. It noted that emissions from vehicles were causing the melting of glaciers and environmental

degradation. It therefore, imposed restrictions on vehicle movement and suggested even stronger measures to control pollution.

Another significant case is that of *Hanuman Laxman Aroskar v. Union of India* [29], wherein the Supreme Court of India temporarily suspended the construction of an airport in Goa and ordered a review of environmental clearance granted to the construction of the airport. Such cases demonstrate that the judiciary is willing to consider environmental and climate change concerns in the context of developmental activities. Despite the challenges in enforcement and policy Indian courts have assumed a significant responsibility in mainstreaming climate change and into environmental law.

South Africa

Compare to many developing countries, the judiciary South Africa has made significant contributions to climate change issues despite the lack of legislative and financial resources. One of the Landmark climate change cases is *Earthlife Africa johannesburg v. Minister of Environmental Affairs* [30]. In this case, an environmental organisation petitioned the court against the government's approval of Thabametsi coal-fired power plant, alleging that the environmental approval had not considered climate change impacts as required under NEMA [31].

The court found that the environmental approval for unlawful since it had not considered climate change impacts arising from greenhouse emissions as required under NEMA. The court emphasised that environmental approval should consider climate change impacts as part of environmental impact assessment prior to approval of large-scale development projects The Court's ruling is considered a major landmark in climate change in South Africa.

Another key case is *Philippe Horticultural Area Food and farming campaign v. MEC for local government*. In this case, environmental organisations were fighting against urban development in Philippi horticultural area. They were concerned that water scarcity would be impacted if the Development was allowed to proceed. The court ordered that the decision be revisited in light of water scarcity and environmental issues. In *Trustee for the time being of Groundwork v. Minister of Environmental Affairs*, environmental organisations were fighting against the construction of a coal plant known as Khanyisa. They were of the view that the government did not adequately consider climate change and mitigation. From all these cases, it is evident that South African courts are increasingly being used to ensure that climate change is taken into account in environmental decision-making.

Pakistan

Pakistani is among the countries in the world that is highly vulnerable to the impacts of climate change and is often hit by frequent floods, droughts, and extreme weather conditions, as noted by German watch's Global Climate Risk Index, 2019. These environmental conditions have contributed to the development of climate change litigation in Pakistan through constitutional and public interest litigation. The most prominent climate change litigation in the global south is the decision in *Leghari v.*

Federation of Pakistan [32]. In this case, a Pakistani farmer petitioned the Lahore High Court in Pakistan for public interest litigation in his petition the former leashed that his constitutional rights were violated by the government's failure to implement the National Climate Change Policy. He noted that unpredictable climatic conditions such as flood and droughts were significantly impacting his agricultural business. The court recognised the impact of climate change and found that inaction by the government in adopting climate change policies was a violation of basic human rights. In order to fill in this gap, the court mandated various government departments to ensure effective implementation of the climate policy framework. In addition, the court established climate change commission with government officials, legal experts, scholars, and civil society representatives to ensure monitoring and promote climate-resilient development [33]. The commission was able to identify considerable progress in implementing key aspects of the national climate framework. This decision is another considered a landmark in climate change jurisprudence because it is linked climate change with constitutional rights and governmental accountability.

Another notable case is that *Maria Khan v. Federation of Pakistan* [34], in which a coalition of women lodged a constitutional petition against the government to strengthen renewable energy policies and ensure that it is implemented in line with the Paris agreement. This case also highlighted responsibility of the state to safeguard future generations from the consequences of climate change. These are examples of how Pakistan courts are playing a vital role in advancing climate accountability and environmental protection.

3.3 Principles Evolved from these jurisdiction

The global north and the global South differ socio-economically and institutionally. The global south faces problems such as poverty, unemployment, and governance issues, which may distract the government and its citizens from environmental issues. Nevertheless, the evolution of climate change cases in the global south has resulted in the development of important principles in the fight against climate change.

1. Right based approach

One of the trends in climate change cases in the global south has been the development of the right-based approach, which connects human rights and climate change. This has been referred to as the “rights-based turn” in climate change litigation. Most cases in the global South have connected human rights, such as the right to life, right to health, and the right to a clean environment, with the degradation of the environment and climate change. For instance, in the case of *Leghari v. Federation of Pakistan* [35], the court recognised the duty of the state to protect its citizens from the impacts of climate change through the formulation and implementation of effective climate policies.

2. Transformative adjudication

Courts in the global South are increasingly using transformative adjudication. In transformative adjudication, courts are interpreting constitutional provisions to achieve greater social and environmental justice. In India and South Africa, for example courts are using the framework of constitutional rights to address the governance gap in the environmental protection and are holding their governments accountable for climate inaction.

3. Enforcement of existing laws

Unlike the global North, climate change litigation in the global South is more about the enforcement of existing environmental laws. In most cases, there is a less emphasis on the formulation of entirely new environmental laws. Rather, there is a more emphasis on using existing environmental laws and human rights provisions to ensure that government is able to implement climate action.

4. Public trust doctrine

Another important principle is based on the use of the public trust doctrine, which holds that natural resources are held in trust by the state and therefore should be preserved for public use. The court has relied on this principle to hold states accountable for preserving environmental resources and preventing ecological damage. The principle has been frequently applied in environmental cases in India and Pakistan to enhance environmental governance.

5. Climate issues at Periphery

Some of the climate change cases in the global South have dealt with the climate change issues peripherally. Instead of climate change, they have considered broader issues related to environmental protection, land use, and disaster management. Although these cases are peripheral in nature, they are important in climate jurisprudence as they have integrated climate change issues into broader legal frameworks. Thus, it is evident from these principles that despite institutional and structural constraints, courts in the global South are significantly contributing to climate change jurisprudence.

3.4 Why there is a need to chronicle and de-bunk the Global North Myth

The current narrative on the occurrence of significant climate change litigation in the global North must be re-examined. Climate change litigation has been growing in the jurisdictions of the global south, yet these cases are not sufficiently recognised in the global legal literature. Failure to recognise these cases will result in an incomplete understanding of the global response to the issue of climate change. As shown in preceding sections, the countries in the global South have developed their own approaches to the issue of climate change litigation. For one, courts in these countries have been inclined to deal with the issue of climate change on the basis of human rights, particularly the right to life, health, and a clean environment. Moreover, the approaches to the issue of climate change litigation in the global South have been bottom-up

approaches, with the community and civil society actors taking the lead in the enforcement of environmental laws.

These approaches are also in line with the broader socio-economic and political circumstances of developing countries, where climate issues are often linked to broader issues of poverty, development, and social justice. Judicial activism has therefore also had an important role to play in interpreting constitutional provisions to deal with environmental issues. For example, in India and South Africa, there has been significant expansion of socio-economic rights, which have implications for environmental right as well. There are also new and innovative legal remedies being developed in developing countries. For example, in Philippines, there is a constitutional remedy known as the “Writ of KaliKasan,” which is available to citizens to claim judicial protection of their right to a balanced and healthy environment. These are examples of new and innovative legal remedies being developed in developing countries to deal with environmental and climate issues. Another example is a landmark case of *Laghari v. Federation of Pakistan*, where it was held right “governmental failure to implement climate change policy amounts to infringement of fundamental rights.” This is another example of developing countries courts framing climate change as a constitutional and human rights issue. Acknowledging these contributions is crucial to building an all-encompassing understanding of global climate jurisprudence. Documenting climate litigation from the global South not only fills an academic discourse imbalance but also showcases creative legal approaches to be applied globally.

4 Findings

The analysis of climate change litigation across Brazil, India, Pakistan, the Philippines, and South Africa reveals a dynamic and rapidly expanding legal frontier. While historical narratives have disproportionately highlighted judicial developments in the Global North, recent empirical data unequivocally debunks the myth that developing countries are passive observers in climate governance.

4.1 Quantitative Surge in Global Litigation

Recent global statistics underscore a significant upward trajectory in climate litigation worldwide. The total volume of climate cases has more than doubled over a five-year period, reflecting a growing reliance on the judiciary to enforce climate commitments. Crucially, approximately 17% of these cases are now reported in developing countries, shifting the epicentre of legal accountability globally as shown in table 1.

Table 1. Global Climate Litigation Growth (2017–2022)

Metric	2017 Data	2022 Data	Trend / Note
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Table 1. Global Climate Litigation Growth (2017–2022)

Metric	2017 Data	2022 Data	Trend / Note
Total Global Cases	884	2,180	>140% Increase (UNEP, 2023)
Global South Share	N/A	~17% (approx. 370 cases)	Rising strategic litigation globally (UNEP, 2023)
Youth-Led Cases	N/A	34 active cases	Includes minor plaintiffs in India and Pakistan (UNEP, 2023)

4.2 Thematic and Doctrinal Innovations in the Global South

Beyond the sheer volume of cases, the nature of the litigation in these developing jurisdictions provides critical findings for global environmental law. The structural constraints and socio-economic challenges inherent to the Global South such as poverty, unemployment, and development pressures have catalyzed unique judicial innovations as shown in table 2.

Table 2. Key Jurisprudential Mechanisms and Landmark Cases in the Global South

Country	Landmark Case	Primary Legal Mechanism & Focus
Brazil	IEA v. Brazil	Constitutional right to a stable climate; forcing government action against Amazon deforestation.
India	Hanuman Laxman Aroskar v. Union of India	Suspending infrastructure development without proper environmental clearance.
Pakistan	Leghari v. Federation of Pakistan	Transformative adjudication; enforcing the National Climate Change Policy due to right to life violations.
South Africa	Earthlife Africa Johannesburg v. Minister of Environmental Affairs	Enforcing existing laws (NEMA) to require climate impact assessments for coal power plants.

Philip- pines	Resident Marine Mam- mals of the Protected Sea- scape Tañon Strait v. Sec- retary Angelo Reyes	Innovative standing for animals; representing marine life in litigation for environmental protection.
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4.3 Integrating Climate with Broader Environmental Concerns

A vital finding is that many cases in the Global South address climate change peripherally, creatively weaving climate issues into broader disputes over land use, deforestation, and water scarcity. Unlike the Global North, where litigation often seeks the creation of entirely new regulatory frameworks, climate actions in the Global South predominantly focus on the enforcement of existing environmental laws.

In summary, empirical data and doctrinal trends confirm that the Global South is a crucible for creative climate jurisprudence. Documenting these advancements is essential for developing a truly comprehensive understanding of global climate governance and fostering international cooperation.

5 Conclusion

As the American writer and philosopher Henry David Thoreau noted in one of his most famous quotes “What is the use of house if you have not got a tolerable planet to put it on?” This quote underlines the need to address climate change from global perspective, beyond national and geographical boundaries. Indeed, climate change is not a problem of either the global south or the global North; rather, it is a problem for all of humanity. This paper has sought to explore the changing face of climate change litigation in a number of jurisdictions in the global South, namely Brazil, India, Pakistan, the Philippines and South Africa. The analysis reveals that in all these jurisdictions, the judiciary has made a significant contribution to the development of climate change law in spite of socio-economic challenges. For instance, landmark cases such as Leghari v. Federation of Pakistan case, as well as cases against major fossil fuel companies demonstrate the growing trend of holding government and corporate actors liable for their inaction on the climate crisis. Similarly, transnational cases such as Lliuya v. RWE highlight the growing role of global South actors in the development of international climate accountability. However, the role of the global South has been ignored in the literature and the global conversation on the development of global climate change cases. Thus, the need to identify and document these cases is crucial in the development of an informed understanding of the role of the global South in the development of global climate change cases. Ultimately, the success of the global community in the development of effective climate governance will be dependent on the success of the global north and the global South working together to hold those actors most responsible for the crisis liable and working towards the development of effective and sustainable development solutions.

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