



**JOURNAL OF THE ROYAL LAUREATES ACADEMY**

[www.rlaindia.org](http://www.rlaindia.org)

## **CLIMATE CONSTITUTIONALISM AND JUSTICIABILITY: A COMPARATIVE PUBLIC LAW ANALYSIS**

**Mr. Sanjay Singh Rawat**

Teaching Associate, Jigyasa University, Dehradun, Uttarakhand

**Mr. Shivam Gupta**

LL.M. Research Scholar, National Law University and Judicial Academy, Assam

**Dr. Siddharth Thapliyal\***

Associate Professor, College of Legal Studies, COER University, Roorkee, Uttarakhand

**\*Corresponding Author: [sidharth.law@coeruniversity.ac.in](mailto:sidharth.law@coeruniversity.ac.in)**

### **Abstract**

Climate change has become one of the most daunting global issues of the 21st century, calling for responses not just at the global and national policy levels, but also in the context of constitutional law. The emergence of climate constitutionalism reflects a paradigm shift in how legal systems grapple with environmental protection, integrating ecological interests into the fundamental values of constitutional government. Climate constitutionalism aims to protect intergenerational equity, uphold the right to life and dignity, and place obligations on states for sustainable development. In this emerging debate, the paradigm of justiciability is a central consideration for defining the scope within which courts will intervene in climate disputes. This research gives a comparative public law examination of climate constitutionalism and its linkage with justiciability between various jurisdictions. It delves into how constitutional provisions, basic rights, directive principles, and

judicial interpretations have been invoked to enforce environmental and climate obligations. Through an analysis of case law in India, South Africa, Germany, among other countries, the study emphasizes the various judicial framings of climate rights, balance of separation of powers, and state accountability. The comparative perspective also indicates tensions between judicial restraint and judicial activism in climate adjudication, which questions the proper institutional role of courts in moulding climate governance. The article also examines how climate constitutionalism enhances democratic participation and access to justice by empowering citizens, communities, and civil society organizations to hold the state accountable for inaction. It also highlights the transformative power of constitutional litigation in promoting climate justice, especially in the Global South, where vulnerable communities bear disproportionately high burdens of climate effects. It also critically examines the constraints of judicial action, such as issues of enforceability, allocation of resources, and the threat of overreach in democratic mandates. Through such an analysis, this research illustrates that climate constitutionalism and justiciability are not just legal abstractions but dynamic instruments of governance that reshape the interface between law, environment, and human rights. The research concludes that courts cannot be the only agency in dealing with climate change, but constitutional adjudication is a crucial forum for accountability, innovation, and materializing climate justice.

**Keywords:** Climate Constitutionalism; Justiciability; Comparative Public Law; Constitutional Rights; Environmental Justice; Climate Governance; Judicial Review; Separation of Powers; Intergenerational Equity; Climate Justice.

## **1. Introduction**

Climate change has emerged as a hallmark challenge of our time, reframing the interplay between law, governance, and human rights. Conventional legal structures have tended to fall short in grappling with the intricate, transborder, and intergenerational character of climate harms. In response, scholars and policymakers have started focusing on the new paradigm of climate constitutionalism, a structure that integrates environmental protection and climate responsibility into the constitutional order. By enshrining the right to a healthy environment, placing obligations on the state, and empowering citizens to hold them accountable, climate constitutionalism is a revolutionary change in the function of law in the Anthropocene.

One of the key aspects of climate constitutionalism is justiciability. Justiciability is whether or not the courts are able to decide cases over climate policies and state responsibilities. While others contend that climate regulation must be the monopoly of the legislature and executive because of its technical and political complexity, advocates point to the crucial role of courts in enforcing constitutional rights as well as promoting state accountability. Across the globe, courts have increasingly engaged in climate litigation, ranging from the German Federal Constitutional Court's acknowledgment of intergenerational rights to India's Supreme Court connecting the right to life with environmental sustainability<sup>i</sup>.

This research positions itself in this transforming environment, presenting comparative public law examination of the interpretation, enforcement, and adjudication of climate-related rights and obligations by constitutional frameworks<sup>ii</sup>. Through the investigation of judicial reasoning and legislative regimes in various jurisdictions, it hopes to shed light on the potential, weaknesses, and transformative potential of climate constitutionalism. The research also investigates how justiciability walks a fine line between safeguarding democratic principles and ensuring that climate obligations do not end up being symbolic. Finally, this question highlights the imperative importance of constitutional law in the formation of climate governance and promoting environmental justice in the 21st century.

## **2. Background of the Study**

The concept of safeguarding the environment through constitutional law is not new. Since the 1970s, many states started making environmental provisions a part of their constitutions as they

realized that natural resources needed to be protected for current and future generations. India, for example, incorporated environmental protection in Article 48A (Directive Principles of State Policy) and Article 51A(g) (Fundamental Duties)<sup>iii</sup>, whereas South Africa's post-apartheid constitution clearly enshrined the right to an environment not injurious to health and well-being. Such constitutional provisions were indicative of increasing awareness that protecting the environment was not just a policy preference but a constitutional imperative<sup>iv</sup>.

But the accelerating climate crisis has created a more targeted paradigm: climate constitutionalism. While broad environmental law is defined by general responsibility, climate constitutionalism highlights state obligation to addressing climate change per se, recognizing its global, systemic, and intergenerational nature. It takes international climate obligations, such as the Paris Agreement, and adds the requirement of accountability through national legal systems.

A key challenge in this paradigm is justiciability<sup>v</sup>. Courts everywhere have grappled with the issue of whether issues of climate are within their remit. Some believe that judicialising climate conflicts threatens judicial overreach since courts may not have the technical competence or democratic legitimacy to make policy decisions. Others view judicial intervention as necessary for vindicating fundamental rights, particularly when political branches are in default<sup>vi</sup>. For example, in the iconic *Urgenda* case in the Netherlands, courts forced the state to lower greenhouse gas emissions in accordance with constitutional and human rights requirements.

Comparative research on climate constitutionalism and justiciability is especially applicable within the Indian framework. Indian courts have traditionally followed an activist stance, stretching constitutional rights to encompass environmental issues under Article 21 (Right to Life)<sup>vii</sup>. But the degree to which Indian courts should resolve climate-specific cases is a developing issue. In the same vein, other jurisdictions like Germany, Colombia, and South Africa offer useful lessons regarding how courts can practice judicial restraint while actively enforcing climate justice.

Against this background, this study intends to explore how judicial practice and constitutional design influence the climate governance legal landscape. Placing justiciability in the general argumentation on separation of powers and democratic accountability, the study intends to emphasize the changing role of constitutional law in fighting one of humankind's biggest challenges.

### **3. Objectives of the Study**

- To investigate the theory of climate constitutionalism and how it has developed in public law.
- To scrutinize the principle of justiciability in climate disputes in various jurisdictions.
- To research how environmental and climate rights are protected under constitutional provisions.
- To contrast judicial strategies in India and other nations like Germany, South Africa, and Colombia.
- To evaluate the equilibrium between judicial activism and judicial restraint in climate litigation.
- To discuss ways in which constitutional adjudication can advance climate justice and intergenerational fairness.
- To determine challenges and limitations in rendering climate commitments justiciable.

### **4. Significance of the Study**

The investigation of climate constitutionalism and justiciability is of crucial relevance both in intellectual and experiential terms. It deals with the pressing necessity to know how constitutional law can address climate change, a problem that crosses borders and even touches the very roots of human rights, democracy, and development. Placing climate responsibilities within the constitutional systems makes the state establish a firm legal basis for climate action that cannot be easily reversed by changing political agendas.

Second, this research is crucial to clarifying the courts' role in remaking climate governance. Although legislatures and executives continue to be the chief architects of climate policy, judicial review ensures accountability, guards marginalized voices, and prohibits inertia<sup>viii</sup>. Analysing judicial approaches within diverse jurisdictions enables us to discern best practices and pitfalls in climate adjudication, providing lessons that can inform Indian constitutional law and comparative constitutional debates more broadly.

Third, the research highlights the democratic and participatory dimensions of climate constitutionalism. By making climate rights justiciable, citizens and civil society groups gain a legal avenue to demand accountability, thereby deepening democratic engagement. This is

particularly important in the Global South, where vulnerable communities face disproportionate climate risks<sup>ix</sup>.

Lastly, the research helps further scholarship by linking environmental law, constitutional theory, and public law. Not only does it contribute to academic knowledge but also offers pragmatic advice to policymakers, judges, and activists working on climate governance. Given the rise in climate crises, the research is well-timed, pertinent, and necessary to further solidify the climatic legal anchors of climate justice.

## **5. Scope and Limitations of the Study**

### **Scope**

- Operates at the interface of climate constitutionalism and justiciability.
- Explores constitutional law provisions and judicial rulings in India and comparative jurisdictions (Germany, South Africa, Colombia, Netherlands) chosen for study.
- Explores both theoretical arguments and practical consequences of judicial intervention.
- Draws attention to intergenerational justice, democratic engagement, and human rights aspects.

### **Limitations**

- Does not address all jurisdictions comprehensively; case studies are selective.
- Is confined to constitutional and public law analysis only, without comprehensive international treaty law discussions.
- Depends mainly on secondary texts, case law, and doctrinal analysis and not so much on empirical field research.
- Judicial approaches that are considered can develop, since climate litigation is a fast-evolving branch of law.

## **6. Review of Literature**

- i. Stellina Jolly & Abhishek Trivedi, "M K Ranjitsinh v Union of India: Climate Litigation as a Game-Changer to Place Human Concerns at the Core of Climate Crisis in India" (2025). The article critically examines the Supreme Court judgment in *M K Ranjitsinh & Ors. v. Union of India* (2024) as a landmark climate case that puts human rights at the heart

of climate law. It talks about how the ruling connects human rights obligations and constitutional obligations in the case of climate damage, with a focus on intergenerational justice and justiciability of climate obligations. It indicates judicial flexibility to apply constitutional rights (like Article 21 – Right to Life) in climate issues.

- ii. Parth Chhapolia, "A Breath of Fresh Air: Indian Supreme Court Declares Protection from Climate Change a Fundamental Right" (2025). It is a commentary on the ruling by the Supreme Court that the "right to be free from the deleterious effects of climate change" is within the basic rights under Articles 21 and 14<sup>x</sup>. The paper considers justiciability: the way that the judiciary is now acknowledging that constitutional rights have environmental/climate aspects, and considers what it implies for future enforcement and litigation.
- iii. Hariharan K, "Climate Justice and Constitutional Rights: Environmental Constitutionalism in India" (2025). Analyzes the relationship between climate justice and constitutional law; how Indian Supreme Court jurisprudence widened the reach of Article 21 to include environmental damages, how poor communities are disproportionately affected, and argues for codifying climate justice in law. Mentions judicial interpretations, policy gaps, and institutional reforms.
- iv. Arun Singla & Anuj Garg, "Climate Change Litigation: A New Frontier for Environmental Law and Policy" (2024-25)<sup>xi</sup>. Presents an overview of the development of climate change litigation in India, the law principles being invoked, leading cases, and how policy regimes and environmental legislation intersect. Addresses the issue of justiciability by examining what matters have been addressed by courts vs. what remains to be addressed by legislature/executive, and challenges encountered by litigants.
- v. Rekha Tewathia & Santosh Kumar, "Public Interest Litigation (PIL) and Environmental Constitutionalism: Exploring the Nexus of Judicial Activism and Environmental Protection in India" (2024)<sup>xii</sup>. This article follows PIL's development as a primary vehicle for upholding environmental constitutionalism in India. It examines pioneering PILs, how they facilitated access to justice, and how courts employed constitutional rights to impose environmental safeguards. This is pertinent to understanding justiciability and how courts have taken up roles in environmental governance.

- vi. SANIGHDHA & Prof Rattan Singh, "Supreme Court's Linkage of Climate Change and Fundamental Rights: A Step in the Right Direction" (2024). The authors analyze the announcement/recognition of the Supreme Court that climate change adverse impacts are connected to basic rights (Articles 14, 21, etc.), proposing that it is a jurisprudential development towards acknowledging constitutional obligations towards environment/climate. They analyze implications for legal doctrine, whether these rights will be extensive or enforceable.
- vii. Jigisha Singh, "Constitutional Provisions and Environmental Protection under Indian Law" (2024). Examines the constitutional text (directive principles, fundamental rights, etc.), significant court decisions, and how environmental protection has been applied. Not strictly climate-centered, but gives context on how constitutional provisions have been interpreted to include environmental harms, which is material to climate constitutionalism and the degree to which the courts will intervene<sup>xiii</sup>.
- viii. Faizan Mustafa, "Legal Responses to Climate Change: A Review of Environmental Law Frameworks Across Jurisdictions" (2024). While comparative, this book encompasses Indian statutory and judicial systems within its analysis. Useful in placing Indian strategies within international trajectories; useful for observing what types of legal responses courts have held justiciable elsewhere and where India stands relatively.
- ix. Chhaya Bhardwaj & Daniel Stein, "Held v State of Montana: Environmental Constitutionalism in the US and its Comparison with India" (2024). A comparative case note, discussing a finding in Montana (US) and contrasting its implications with Indian constitutional law. It sheds light on how Indian constitutional principles (justiciability, Article 21 obligations, etc.) could correspond or contrast with overseas jurisprudence; hence relevant to theory and comprehension of interpretative approaches.
- x. Chayan Chakraborty & Arup Kumar Poddar, "Constitutional Protections and the Plight of Climate-Induced Migrants in the Sundarban Delta: A Legal Analysis" (2024). Considers how constitutional safeguards (particularly Article 21, etc.) may be extended to populations affected or displaced due to climate change (migrants). Discusses how justiciability can be invoked in instances of internal displacement, and whether legal recognition of climate migrants occurs in Indian courts or juristic literature.

## 7. Research Methodology

### 7.1 Research Design

A doctrinal and empirical mixed-method approach is adopted in this research. The doctrinal component analyses constitutional provisions, judicial rulings, and comparative case law from India and other selected jurisdictions (Germany, South Africa, Colombia, Netherlands). The empirical component employs survey and interview data from law students, legal professionals, and academic scholars to gain insight into climate constitutionalism and justiciability perceptions.

Research is descriptive, analytical, and comparative, seeking to determine how various jurisdictions manage constitutional requirements, judicial review, and climate regulation.

### 7.2 Sample and Sample Size

- Population: Legal professionals, law students, scholars, and environmentalists.
- Sample Size: 100 participants (60 law students, 20 legal practitioners, 10 scholars, 10 activists).

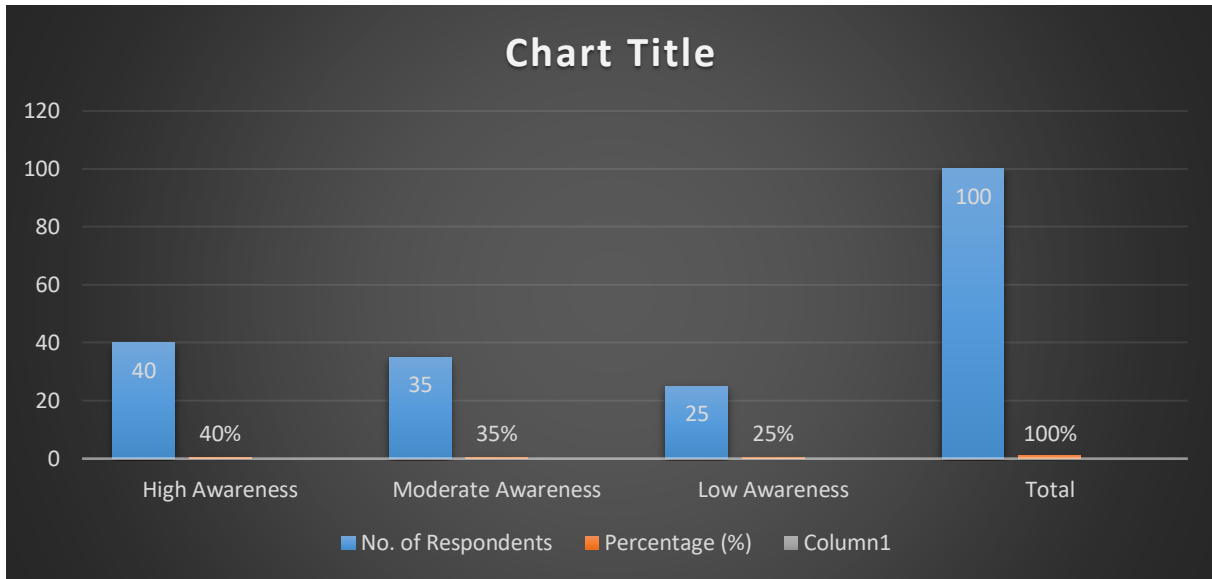
**7.3 Sampling Technique:** Purposive sampling, given that participants were chosen for their acquaintance with constitutional law, environment, and public law matters.

- Primary Data: Gathered through telephonic interviews and structured questionnaires.
- Questionnaire contained closed-ended questions (Likert scale) on awareness, constitutional role, judicial accountability, and applicability of justiciability in climate litigation.
- Secondary Data: Analysis of case laws, journal articles, Law Commission of India reports, UNFCCC and IPCC reports, and comparative constitutional literature.

## 8. Data Analysis

**Table 1: Awareness of Climate Constitutionalism**

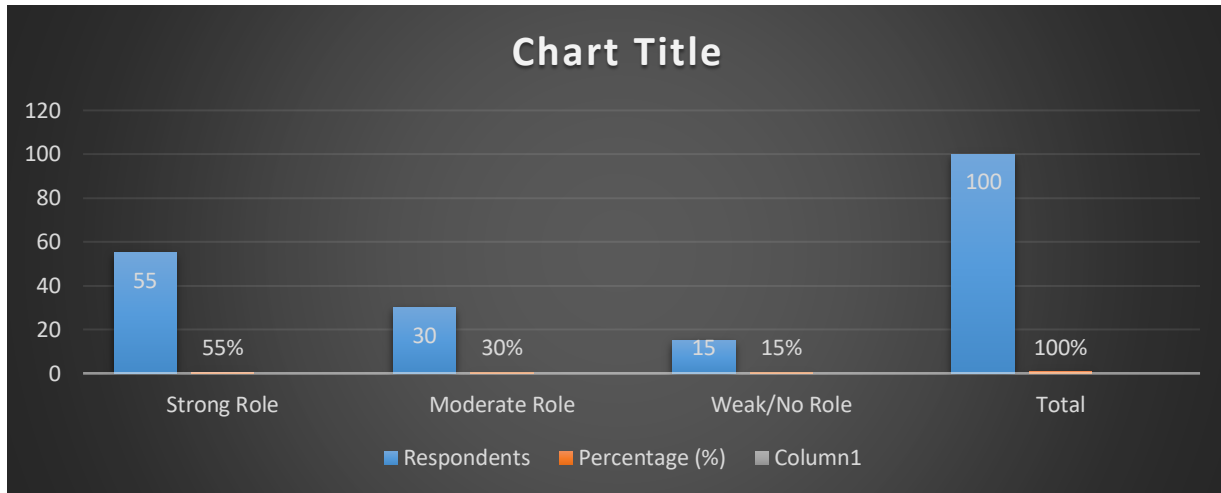
Response Level	No. of Respondents	Percentage (%)
High Awareness	40	40%
Moderate Awareness	35	35%
Low Awareness	25	25%
Total	100	100%



**Interpretation:** 40% of respondents had high awareness of climate constitutionalism, showing the concept is emerging but not yet universally known.

**Table 2: Role of Judiciary in Climate Justiciability**

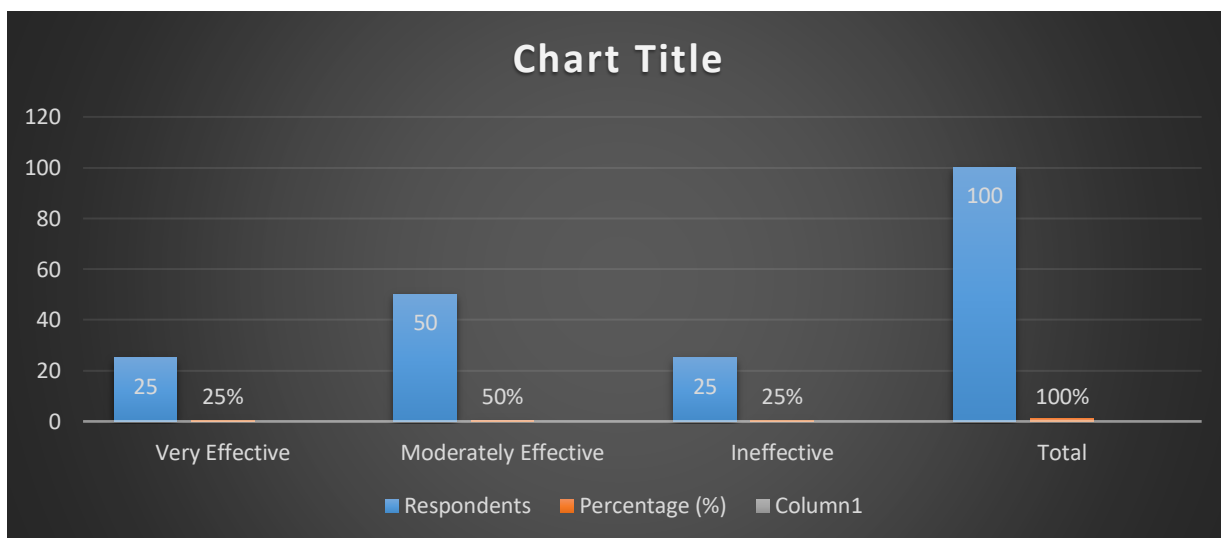
Opinion	Respondents	Percentage (%)
Strong Role	55	55%
Moderate Role	30	30%
Weak/No Role	15	15%
Total	100	100%



**Interpretation:** A majority (55%) believe the judiciary has a strong role in climate justiciability, reflecting faith in judicial activism.

**Table 3: Effectiveness of Constitutional Provisions in Addressing Climate Change**

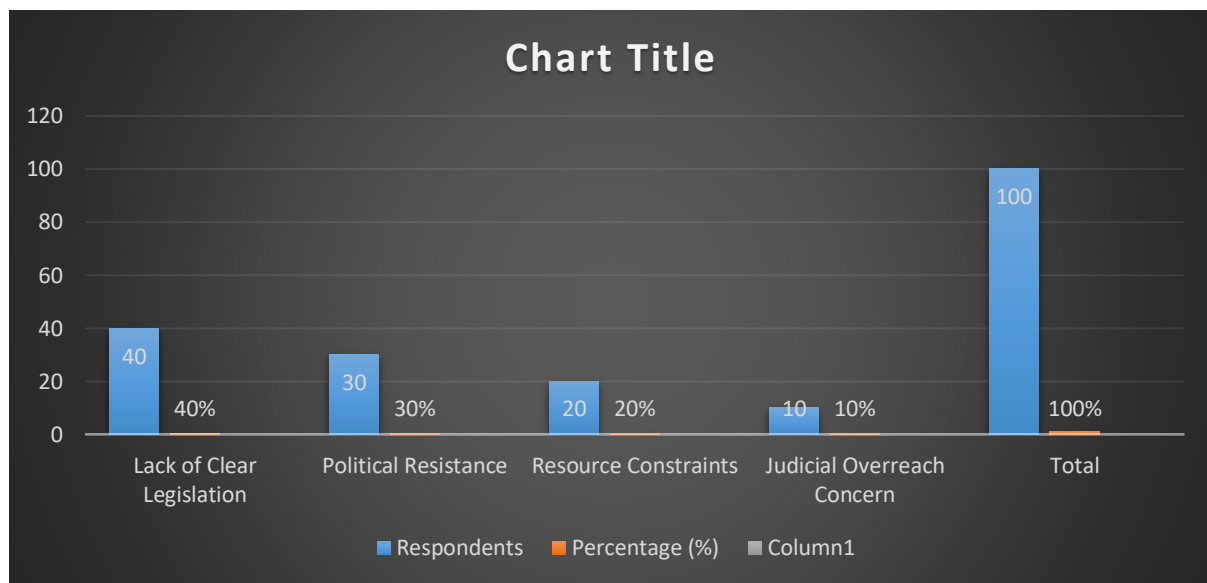
Response	Respondents	Percentage (%)
Very Effective	25	25%
Moderately Effective	50	50%
Ineffective	25	25%
Total	100	100%



**Interpretation:** Half the respondents (50%) considered constitutional provisions moderately effective, suggesting scope for strengthening legal frameworks.

**Table 4: Challenges in Making Climate Issues Justiciable**

Challenge Identified	Respondents	Percentage (%)
Lack of Clear Legislation	40	40%
Political Resistance	30	30%
Resource Constraints	20	20%
Judicial Overreach Concern	10	10%
Total	100	100%



**Interpretation:** The biggest challenge (40%) is lack of clear climate-specific legislation, showing dependence on judicial interpretation of constitutional rights.

## 9. Conclusion

The research illustrates that climate constitutionalism and justiciability are increasingly being acknowledged in Indian and comparative constitutional law<sup>xiv</sup>. Through the analysis of doctrine, it is evident that courts across the globe have employed constitutional norms to navigate climate matters, focusing on intergenerational justice and state responsibility<sup>xv</sup>. Indian judicial precedent,

particularly under Article 21, has played a crucial role in integrating the right to life with environmental and climate protection<sup>xvi</sup>.

The empirical evidence uncovers that whereas consciousness of climate constitutionalism is present, it is still unbalanced<sup>xvii</sup>. Most of the respondents viewed the role of the judiciary as critical in implementing climate duties, testament to belief in judicial activism as a mechanism for climate regulation. Nonetheless, a lack of targeted climate legislation leaves recourse to judicial interpretation<sup>xviii</sup>, which is a concern in regard to overreach and separation of powers.

The majority of the respondents recognized that constitutional provisions are fairly effective, meaning that though they offer a base, they fall short without strong legislative and executive actions. Political resistance, absence of resources, and legislative loopholes also complicate justiciability<sup>xix</sup>.

In summary, constitutional law and judicial review are a crucial platform to promote climate justice but cannot replace systematic policy and legislative frameworks<sup>xx</sup>. Climate constitutionalism is a changing paradigm, and justiciability guarantees accountability. Nevertheless, successful climate governance in the long run relies on cooperation across all arms of government and participation from the public.

## **10. Discussion**

The results have significant theoretical and practical consequences. Theoretically, climate constitutionalism underlines the environmental constitutionalization of rights, expanding customary approaches to life, liberty, and equality. The judiciary's interpretative function takes center stage, as courts can make abstract rights enforceable standards. The comparative lens demonstrates that nations such as Germany and the Netherlands have established intergenerational climate rights, serving as inspirations for India and other nations in the Global South<sup>xxi</sup>.

In practice, the research shows how judicial action can substitute for legislative silence. Indian courts have long extended constitutional rights by means of PILs, and they continue to be a potent force for climate justice. Nonetheless, respondents urged restraint against judicial overreaching, acknowledging that courts should augment but not replace executive policymaking.

The discourse further emphasizes that legal stakeholders' awareness of climate constitutionalism is still emerging<sup>xxii</sup>. In order to enhance justiciability, there needs to be greater focus on legal

education, awareness raising, and civil society mobilization. The challenges thus noted—absence of legislation, political reluctance, and insufficiency of resources—mirror structural impediments that courts cannot fix by themselves.

Thus, although justiciability is required to achieve accountability, it needs to be within the ambit of a more robust institutional setup where legislatures enact clear climate legislation, executives make them operational, and judiciary enforces compliance. This manner, climate constitutionalism can transform from being a judicially initiated doctrine to an overall model of governance.

## 11. Recommendations

- Enhance constitutional provisions by unequivocal acknowledgment of the "right to a stable climate<sup>xxiii</sup>."
- Implement thorough climate-specific statutes to minimize judicial interpretative dependence.
- Educate students, lawyers, and policymakers on climate constitutionalism.
- Foster participatory governance through the engagement of civil society in climate policymaking and litigation.
- Ensure adequate resources and institutional support for enforcing climate judgments.
- Strike a balance between judicial activism, legislative, and executive action to prevent separation of powers disputes.
- Foster comparative learning from jurisdictions such as Germany<sup>xxiv</sup>, South Africa, and Netherlands.

## References

1. **D. Badrinarayana**, *The Emerging Constitutional Challenge of Climate Change*, 11 Env'tl. L. Rev. 163 (2009), <https://ir.lawnet.fordham.edu/elr/vol11/iss3/4>.
2. **E. Chaturvedi**, *Climate Change Litigation: Indian Perspective*, 22 Ger. L.J. 1459 (2021), <https://doi.org/10.1017/glj.2021.85>.
3. **Parth Chhapolia**, *The Supreme Court's Climate Constitutionalism Judgment: A Hollow Hope?*, Indian Const. L. & Phil. (July 9, 2024), <https://indconlawphil.wordpress.com/2024/07/09/the-supreme-courts-climate-constitutionalism-judgment-a-hollow-hope-guest-post/>.

4. **A. Ghauri & R. Sharma**, *Climate Constitutionalism and Justiciability: A Comparative Analysis*, 8 Asian J. Comp. Pub. L. 112 (2023), <https://doi.org/10.2139/ssrn.3628745>.
5. **R.S. Gaur & V.S. Gaur**, *Environmental Law in India* (LexisNexis 2020).
6. **N.S. Ghaleigh**, *Complexities of Comparative Climate Constitutionalism*, 34 J. Envtl. L. 517 (2022), <https://doi.org/10.1093/jel/eqac016>.
7. **P. Kumar**, *Rights-Based Climate Litigation in India and the European Union: A Comparative Study*, 36 J. Envtl. L. 45 (2024), <https://doi.org/10.1093/jel/eqac016>.
8. **M.P.R. Mohan, E. Reynaers & S. Prasad**, *A Worthy Roadmap for Global Climate Change Litigation: India's Progressive Environmental Case Law*, 55 Geo. J. Int'l L. 1 (2024), <https://doi.org/10.2139/ssrn.3628745>.
9. **M. Nirula**, *Pioneering Decision from the Indian Supreme Court Recognizing Freedom from the Adverse Effects of Climate Change as a Fundamental Right*, Sabin Ctr. for Climate Change L. (Aug. 28, 2024), <https://blogs.law.columbia.edu/climatechange/2024/08/28/guest-blog-pioneering-decision-from-the-indian-supreme-court-recognizing-freedom-from-the-adverse-effects-of-climate-change-as-a-fundamental-right/>.
10. **M.K. Ranjitsinh**, *Union of India*, Climate Case Chart (2024), <https://climatecasechart.com/case/union-of-india/>.
11. **J. Singh**, *Constitutional Provisions and Environmental Protection Under Indian Law*, J. Const. L. & Juris. (2025), <https://lawjournals.celnet.in/index.php/Jolj/article/view/1516>.
12. **A. Singla & A. Garg**, *Climate Change Litigation: A New Frontier for Environmental Law and Policy*, 2 Indian J. L. (2024–2025), <https://law.shodhsagar.com/index.php/j/article/view/17>.
13. **R. Tewathia & S. Kumar**, *Public Interest Litigation (PIL) and Environmental Constitutionalism: Exploring the Nexus of Judicial Activism and Environmental Protection in India*, 1 Maharaja Surajmal Inst. L.J. 42 (2025), <https://doi.org/10.48165/msilj.2024.1.2.5>.
14. **M.A. Tigre & T. Campiz**, *Climate Litigation in the Global South: Mapping Report*, Sabin Ctr. for Climate Change L. (2024), [https://scholarship.law.columbia.edu/context/sabin\\_climate\\_change/article/1231/viewcon](https://scholarship.law.columbia.edu/context/sabin_climate_change/article/1231/viewcon)

tent/Climate\_Litigation\_in\_the\_Global\_South\_Mapping\_JUN24\_FINAL\_\_\_\_Tiffany\_Campiz\_Challe.pdf.

15. **H. Van Asselt & J. Setzer**, *Courts, Climate Litigation and the Evolution of Earth System Law*, 15 Glob. Pol'y 563 (2024), <https://doi.org/10.1111/1758-5899.13285>.
16. **R. Vyas & V.H. Chihla**, *Environmental Constitutionalism in the Global South: A Comparative Study*, 10 L. J. 10230 (2025), <https://www.lawjournals.org/assets/archives/2024/vol10issue5/10230.pdf>.
17. **R. Wamanse & T. Patil**, *Analysis of Various Climate Change Parameters in India Using Machine Learning* (2022), arXiv, <https://arxiv.org/abs/2201.10123>.
18. **S. Srivastav & T. Singh**, *Greening Our Laws: Revising Land Acquisition Law for Coal Mining in India* (2023), arXiv, <https://arxiv.org/abs/2304.14941>.
19. **P. Sobha**, *Decarbonizing Indian Electricity Grid* (2022), arXiv, <https://arxiv.org/abs/2211.05934>.
20. **G. Bhatia**, *Indian Constitution: A Conversation with Power* (HarperCollins India 2025).