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# CLIMATE LITIGATION IN INDIA: LESSONS FROM GLOBAL CASES

AUTHORED BY - AMAN KUMAR

Advocate

Punjab and Haryana High Court, Chandigarh.

## ABSTRACT

Climate litigation is a new form of transformative legal practice to overcome the shortcomings of political and regulatory responses to climate change. While countries such as the Netherlands, Germany, and regional human rights courts have developed robust climate law jurisprudence based on rights-based approaches and enforceable obligations, Indian climate litigation is largely contained within traditional approaches to environmental law principles. This paper critically examines the development of climate litigation in India and draws lessons from global jurisprudence to develop a new framework of climate litigation in India. The paper argues that India needs to move from indirect approaches to environmental litigation to direct approaches to climate governance.

**Keywords:** climate, litigation, governance, development, India.

## INTRODUCTION

One of the greatest challenges that humanity faces in the twenty-first century is climate change, whose effects move beyond environmental degradation to include issues of human rights, economic security, and sustainable development. The rise in temperature, extreme weather conditions, and environmental imbalances have increased sensitivities, particularly in developing nations such as India. In such a scenario, the failure of executive and legislative branches has led courts to take a more active stance on climate change.

Climate litigation, in its most comprehensive form, includes legal approaches for implementing climate obligations, enabling mitigation and adaptation strategies, and holding state and non-state actors accountable for their role in causing climate change. Climate litigation is a product of a changing legal landscape in which judicial bodies are not limited to the traditional role of interpreting laws but are also involved in shaping climate policy, implementing global

obligations, and ensuring the protection of basic human rights. This is a revolutionary transformation of the principles of checks and balances in which the judiciary plays a significant role in global climate governance.<sup>1</sup>

In India's case, in spite of having become more vulnerable to climate-related effects, climate litigation is in an embryonic state and is included in a broader framework of environmental law. Indian courts have traditionally employed constitutional provisions like Article 21 and settled environmental principles like the precautionary principle and polluter pays principle, rather than developing a distinct body of climate law. As a result, climate litigation is addressed indirectly.

Within this context, the present paper aims to explore the evolution of climate litigation in India in light of significant global developments. It is expected that by drawing comparative lessons from landmark international cases, some gaps in climate law in India can be identified along with possible avenues of improvement in climate litigation in India, thus contributing to the discussion on climate justice in India.

## CONCEPTUAL FRAMEWORK OF CLIMATE LITIGATION

Climate litigation encompasses a wide and constantly changing set of legal actions that endeavour to confront the complex issues brought about by climate change. It can be said to fall under the intersection of environmental law, constitutional law, human rights, and international law.<sup>2</sup> Generally, there are the following categories of climate litigation:

### (i) Mitigation Litigation

Litigation in mitigation law revolves around the mitigation of greenhouse gas emissions, which forces governments and corporations to adopt more stringent regulations and regulations, and to utilize alternative sources of energy. It can be noted that there has been an increasing willingness by courts across the globe to impose binding obligations on governments to reduce greenhouse emissions. This, in essence, has transformed these regulations into legally binding obligations.<sup>3</sup>

<sup>1</sup> Jacqueline Peel & Hari M. Osofsky, *Climate Change Litigation*, 16 Annual Review of Law and Social Science 21 (2020).

<sup>2</sup> *Urgenda Foundation v. State of the Netherlands*, ECLI:NL:HR:2019:2007.

<sup>3</sup> United Nations Environment Programme, *Global Climate Litigation Report: 2023 Status Review* (UNEP, 2023).

### **(ii) Adaptation Litigation**

Adaptation litigation deals with the issue of building resilience against the adverse effects of climate change. The litigation involves issues such as displacement, disaster preparedness, water scarcity, and food security. The litigation seeks judicial intervention to ensure that the state is taking adequate measures to protect people from the adverse effects of climate change.<sup>4</sup>

### **(iii) Corporate Climate Liability**

This category of litigation targets private actors, particularly multinational corporations, for their contribution to climate change through excessive emissions or environmentally harmful practices. It includes claims based on negligence, nuisance, misrepresentation, and failure to disclose climate risks. Increasingly, corporations are being held accountable not only for their environmental footprint but also for “greenwashing” and misleading sustainability claims.<sup>5</sup>

### **(iv) Rights-Based Litigation**

Rights-based climate litigation frames climate change as a violation of fundamental human rights, including the rights to life, health, dignity, and a clean environment. Courts in several jurisdictions have recognized that the failure of states to take adequate climate action infringes upon these rights, thereby elevating climate change from a policy issue to a justiciable constitutional concern.<sup>6</sup> This approach has significantly expanded the scope of judicial review and has enabled vulnerable groups, including children and indigenous communities, to seek legal remedies.

At the global level, there has been a discernible shift toward rights-based climate litigation, reflecting the growing recognition that climate change is not merely an environmental issue but a profound human rights challenge. Courts have increasingly relied on constitutional provisions and international human rights instruments to impose obligations on states, thereby strengthening accountability mechanisms and enhancing the enforceability of climate commitments.<sup>7</sup>

In contrast, the Indian legal framework continues to rely predominantly on established principles of environmental jurisprudence, such as sustainable development, the precautionary

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<sup>4</sup> Joana Setzer & Catherine Higham, *Global Trends in Climate Change Litigation: 2022 Snapshot* (Grantham Research Institute, LSE, 2022).

<sup>5</sup> *Neubauer v. Germany*, BVerfG, Order of 24 March 2021.

<sup>6</sup> *Verein KlimaSeniorinnen Schweiz v. Switzerland*, ECtHR, Application No. 53600/20 (2024).

<sup>7</sup> *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647; *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212.

principle, and the polluter pays doctrine.<sup>7</sup> While these principles have enabled significant judicial intervention in environmental matters, their application to climate change remains indirect and often lacks the specificity required to address complex climate issues. Consequently, climate litigation in India tends to be fragmented and reactive, underscoring the need for a more coherent and rights-oriented conceptual framework.

## EVOLUTION OF CLIMATE LITIGATION IN INDIA

### Constitutional Foundations

The evolution of climate litigation in India can be traced to the extensive interpretation of the provisions of the Constitution of India, specifically Article 21, which enshrines the right to life and liberty. The Supreme Court of India has over time transformed Article 21 into a repository of environmental rights by extending the interpretation of the right to life to include the right to a clean, healthy, and pollution-free environment. This judicial innovation has empowered the courts to confront issues of environmental protection even in the absence of specific legislative measures to govern the issue of climate change.<sup>8</sup>

The Indian judiciary has additionally relied on the provisions of the Directive Principles of State Policy, specifically Articles 48A and 51A (g), to incorporate the protection of the environment as a constitutional mandate.<sup>9</sup> Through a long line of landmark judgments, the courts have established important environmental principles that have become the normative foundation of the law of climate change in India.

### Some of the most significant doctrines include:

- **Public Trust Doctrine** – which holds that natural resources are vested in the State in its capacity as a trustee, and these resources cannot be exploited for private gain.<sup>10</sup>
- **Polluter Pays Principle** – which holds that those who are responsible for damaging the environment must pay for its restoration.<sup>11</sup>
- **Precautionary Principle** – which holds that preventive action must be taken in the face of uncertainty, and the burden of proof is on those who are undertaking activities which are harmful.<sup>12</sup>

It is evident that these principles, taken together, have played a significant role in shaping

<sup>8</sup> *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598; *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.

<sup>9</sup> Constitution of India, arts. 48A & 51A(g).

<sup>10</sup> *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

<sup>11</sup> *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212.

<sup>12</sup> *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647.

India's environmental governance framework, which has further been judicially expanded to include climate change issues. However, in the absence of any specific legislation on climate change, its indirect relationship with these principles has resulted in a jurisprudence which, although adaptive, is conceptually fragmented.

## Key Judicial Developments

### (a) **M.K. Ranjitsinh v. Union of India (2024)**

In a landmark and progressive judgment, the Supreme Court has recognized a constitutional right to "the adverse effects of climate change," which has been derived from Articles 14 and 21 of the Constitution.<sup>13</sup> The Court recognized the serious threat posed by climate change to the basic human rights enshrined in the Constitution, which include the right to life, equality, and dignity.

The judgment has given importance to the international agreements related to climate change, like the Paris Agreement, which reinforces the role of international law in domestic law. The Court has also highlighted the need to strike a balance between competing priorities, like the development of renewable energy infrastructure and the protection of biodiversity, in the context of the protection of endangered species like the Great Indian Bustard.

This judgment reflects a doctrinal shift in the law towards the constitutionalizing of climate rights in India.

### **Ridhima Pandey v. Union of India (2017)**

This case, involving a minor petitioner, is one of the first attempts to use judicial intervention in the Indian climate policy framework. The petitioner sought the implementation of India's international commitments on climate change, such as the Paris Agreement, on the ground that the state's inaction violated the petitioner's fundamental rights.<sup>14</sup>

Although the National Green Tribunal has dismissed the application, the case is significant for raising some of the most important principles, such as:

- **Intergenerational equity:** The rights of future generations
- **State responsibility:** The responsibility of the state to fulfill international commitments
- **Climate policy implementation:** The gap between commitments and implementation

The case is also significant in the context of the rising trend of youth-led climate litigation, which is becoming more prominent in international case law.

<sup>13</sup> *M.K. Ranjitsinh v. Union of India*, W.P. (C) No. 838 of 2019 (Supreme Court of India, 2024).

<sup>14</sup> *Ridhima Pandey v. Union of India*, Original Application No. 187 of 2017 (NGT).

### **Indian Council for Enviro-Legal Action v. Union of India**

Although this is not a climate change case per se, it is one of the landmark judgments which played an important role in the development of the law relating to industrial pollution. It related to hazardous industrial activities and the imposition of the liability principle.<sup>15</sup>

In the context of climate change cases, this judgment is relevant because it related to the liability of corporations and the financial liability imposed on them. It is relevant to the imposition of liability in cases relating to global warming caused by the emission of greenhouse gases.

### **Characteristics of Indian Climate Litigation**

- Some characteristics of climate litigation in India can be identified, which set it apart from the evolution of climate change litigation in other jurisdictions:
- Public Interest Litigation (PIL) is the dominant feature of climate change litigation in India.
- Environmental law is not directly applied, although its principles are followed.
- Limited judicial engagement with quantified reduction targets is seen, which is in contrast to the climate change obligations set by courts in other jurisdictions.
- Corporate liability is not well developed, with little judicial attention to the role of private actors in climate change.
- Judicial interventions in climate change cases can be seen as ad hoc and issue-specific.

Therefore, the climate change litigation regime in India is said to be fragmented, reactive, and incremental, as opposed to cohesive, preventive, and policy-driven.<sup>16</sup> Although the judiciary has been instrumental in the development of environmental law, the shift towards well-developed climate change law remains in its evolutionary stages.

### **Global Climate Litigation: Landmark Cases**

#### ***Urgenda Foundation v. State of the Netherlands (2019)***

The Dutch Supreme Court's decision in the *Urgenda Foundation v. State of the Netherlands* case is one such landmark moment in the history of global climate change law. It upheld the rulings of the lower courts to direct the Dutch government to reduce its greenhouse gas emissions by at least 25 percent (from the 1990 level) by the year 2020.<sup>17</sup>

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<sup>15</sup> *Indian Council for Enviro-Legal Action v. Union of India*, supra note 4.

<sup>16</sup> Lavanya Rajamani, *Climate Change and Indian Courts*, 5 *Indian Journal of Environmental Law* 1 (2019).

<sup>17</sup> *Urgenda Foundation v. State of the Netherlands*, ECLI:NL:HR:2019:2007.

What is noteworthy is the Dutch Supreme Court's reliance on the Dutch government's obligation to protect its citizens under the European Convention on Human Rights (ECHR), which comprises Articles 2 (right to life) and 8 (right to private and family life). It is the State's positive obligation to ensure the protection of its people from the impacts of climate change.

This case is important because it established the following:

- That the judiciary can direct the government to reduce emissions by setting quantified targets;
- That climate change is a legitimate human rights issue;
- That global climate change agreements can be enforced domestically.

### ***Neubauer v. Germany (2021)***

In the case of *Neubauer v. Germany*, the German Federal Constitutional Court delivered a landmark judgment on the constitutional significance of climate protection. It held that the German Climate Protection Act is partially unconstitutional because it does not sufficiently protect the rights of future generations.<sup>18</sup>

In this judgment, the German Federal Constitutional Court introduced the novel concept of the interpretation of fundamental rights by stating:

“The current lack of sufficient action in the present would place disproportionate burdens on future generations. Such action would be contrary to the requirement of intergenerational equity.” This judgment required the legislature to:

- “Establish clearer paths for the reduction of greenhouse gas emissions after 2030;
- Ensure the equitable distribution of the burdens imposed by climate change.”

This judgment is important because it advances the concept of “intertemporal freedom.”

### ***Verein KlimaSeniorinnen Schweiz v. Switzerland (2024)***

In a landmark judgment, the European Court of Human Rights (ECtHR) in the case of *Verein KlimaSeniorinnen Schweiz v. Switzerland* has accepted that inadequate state actions on climate change can constitute a violation of human rights.<sup>19</sup>

The case involved a group of elderly women who claimed that the impact of climate change on health and well-being disproportionately affected them. The court accepted this claim by the petitioners and has held that States have a responsibility to take effective actions on climate change. The significant contribution of this case is:

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<sup>18</sup> *Neubauer v. Germany*, BVerfG, Order of 24 March 2021.

<sup>19</sup> *Verein KlimaSeniorinnen Schweiz v. Switzerland*, ECtHR, Application No. 53600/20 (2024).

- The recognition of the vulnerability of specific groups to the impacts of climate change;
- The expansion of human rights case law to encompass the impact of climate change;
- The strengthening of state responsibility in international human rights law.

## LESSONS FOR INDIA FROM GLOBAL CLIMATE LITIGATION

### Explicit Recognition of Climate Rights

The global climate jurisprudence has focused on the importance of recognizing climate change as a justiciable human right, which is directly linked to other human rights, such as the right to life, health, dignity, and a safe environment. In jurisdictions such as the Netherlands and Germany, climate change has been directly linked to human rights, which has provided a significant boost to climate change litigation by recognizing climate change as a right in itself, as opposed to a policy issue.<sup>20</sup>

In India, although there is a recognition of the relationship between climate change and human rights, such as under Article 21, this is still in its nascent stage and remains implicit in nature. There is a significant need to provide a clear doctrinal framework through explicit recognition of climate change rights, such as the right to climate stability and the right to a sustainable future, in order to provide a strong foundation for climate change litigation in India.

### Judicial Enforcement of Climate Commitments

A defining feature of global climate litigation is the willingness of courts to move beyond declaratory relief and impose binding and enforceable obligations on states. The *Urgenda* decision, for instance, demonstrates that courts can:

- Mandate quantified emission reduction targets;
- Ensure continuous monitoring and compliance mechanisms;
- Translate international climate commitments into enforceable domestic obligations.<sup>21</sup>

In contrast, Indian courts have traditionally adopted a more directive and advisory approach, often issuing guidelines without ensuring strict compliance. To enhance the effectiveness of climate adjudication, Indian courts must embrace structural remedies, including continuing mandamus, periodic review, and measurable compliance standards. This would significantly strengthen the implementation of climate policies and bridge the gap between judicial pronouncements and executive action.

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<sup>20</sup> Id at 17

<sup>21</sup> Ibid.

### **Strengthening Corporate Accountability**

In the global climate litigation arena, there is a discernible shift towards the enforcement of corporate liability with respect to their role in the causation of climate change. Climate change issues such as greenhouse gas emissions, non-disclosure of climate-related risks, and greenwashing activities are being addressed.<sup>22</sup>

In the context of India, the concept of corporate liability is still in its nascent stages with respect to climate change cases. It is important to establish a strong regulatory and liability framework with respect to climate change, which includes:

- Mandatory financial disclosure requirements related to climate change, in compliance with global best practices on ESG;
- Civil and regulatory liability regimes related to climate change;
- Stricter adherence to environmental compliance regulations;

Inculcating the concept of corporate liability with respect to climate change is important to ensure the contribution of private players towards the achievement of global climate change goals.

### **CHALLENGES IN INDIA**

In spite of the significant judicial innovation that has been observed, as well as the progressive expansion of the scope of environmental law, the growth of an effective climate litigation regime in India is still beset by a host of structural/institutional challenges.

#### **(i) Absence of a Comprehensive Climate Change Legislative Framework**

One of the biggest hurdles in the growth of an effective climate change litigation regime is the absence of an effective legislative regime on climate change. While many jurisdictions worldwide have enacted climate-specific legislation that includes emission targets, as well as the imposition of accountability measures, India is still governed by an uncoordinated legal regime that is derived from the various legislative enactments on environmental law, including the Environment Protection Act, 1986.

#### **(ii) Institutional Limitations and Capacity Constraints**

The effectiveness of climate litigation is directly related to the institutional capacity of adjudicatory institutions. The Indian judicial system and adjudicatory institutions, including

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<sup>22</sup> Joana Setzer & Catherine Higham, *Global Trends in Climate Change Litigation: 2022 Snapshot* (Grantham Research Institute, LSE, 2022).

the National Green Tribunal (NGT), may face capacity constraints in terms of resource availability and a high backlog of cases. Furthermore, the lack of specialized climate litigation benches and judicial institutions results in inconsistent decision-making and a delay in resolving climate cases in India. This institutional limitation is a major factor in limiting the effectiveness of the Indian judicial system as a potential climate governance institution.

### **(iii) Lack of Scientific and Technical Expertise in Adjudication**

Climate litigation cases are fundamentally based on scientific, technological, and economic issues related to climate modelling, emission assessment, and impact analysis. The Indian judicial system is based on legal reasoning and lacks access to scientific expertise in adjudicating climate cases. Although expert committees may be appointed in certain cases, their role is limited and inconsistent in nature. This is a major factor in limiting the effectiveness of the Indian judicial system in resolving climate cases due to a lack of expertise in climate science.

### **(iv) Weak Enforcement Mechanisms for Judicial Directives**

One of the biggest problems with climate change and environmental law in India is the lack of implementation of the directives that are issued by the courts. While the courts issue progressive orders on climate change, the implementation of those orders is not effective because the government agencies do not comply with the orders due to the lack of effective monitoring and accountability.

### **(v) Over-Reliance on Public Interest Litigation (PIL)**

While Public Interest Litigation has been effective in the democratization of environmental law, the overuse of Public Interest Litigation in climate change litigation has resulted in the lack of comprehensive climate change law in India. The focus of Public Interest Litigation is on the local aspects of environmental degradation rather than the broader climate change issue. The lack of procedural and substantive rules in Public Interest Litigation often results in conflicting judgments on climate change.

All these challenges, taken together, point to the structural limitations of the existing approach to climate litigation in India. The lack of legislative guidance, institutional support, scientific inputs, and enforcement measures in the existing approach to climate litigation in India is such that the existing approach is largely reactive, fragmented, and not aligned with the scale and

complexity of the climate crisis.<sup>23</sup>The above challenges are important to overcome in order to move towards a more coherent, consistent, and forward-looking approach to climate litigation in India.

## WAY FORWARD

### Enactment of a Comprehensive Climate Change Law

An important step towards building an effective climate governance system in India is the enactment of a specialized climate change legislation. The existing climate change regime is largely piecemeal and is governed by existing environmental laws. The existing regime is not sufficiently specialized to deal with the complexities of climate change. An effective climate change legislation must:

- Establish binding emission reduction targets aligned with India's NDCs;
- Integrate climate change adaptation strategies with vulnerable sectors such as agriculture, water resources, and coastal areas;
- Establish institutional accountability mechanisms;
- Establish climate risk assessment and planning to ensure the integration of climate considerations in all areas of governance.

An effective climate change legislation not only increases the degree of legal certainty but also helps build an effective system of climate litigation.

### Institutional Strengthening

The efficacy of climate litigation is also directly related to the adjudicatory institutions. In this context, the following is urgently required:

- Establishing climate benches in constitutional courts and tribunals to adjudicate complex climate cases;
- Strengthening the National Green Tribunal (NGT), including the development of its expertise, jurisdiction, and enforcement powers;
- Fostering interdisciplinary adjudications by infusing scientific, economic, and environmental expertise into the adjudicatory processes.
- Institutional strengthening will ensure the adjudication of climate cases with the requisite depth, consistency, and technical precision.

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<sup>23</sup> Lavanya Rajamani, *Climate Change and Indian Courts*, 5 Indian Journal of Environmental Law 1 (2019).

### **Expansion of Rights Jurisprudence**

Indian constitutional jurisprudence needs to develop to include an explicit recognition of climate rights. Though Article 21 of the Constitution of India has been interpreted broadly, what is required is an explicit articulation of:

- A right to climate stability and protection against any significant disruption of the climate;
- A right to a sustainable and ecologically balanced future based on the principle of intergenerational equity;

Enhanced recognition of climate justice, especially for vulnerable sections of society who are most impacted by climate change.

### **Strengthening Corporate Regulation and Accountability**

Given the role of private actors in contributing to greenhouse gas emissions, climate governance must include mechanisms for corporate accountability, which are as follows:

- Mandating climate change-related financial disclosures and Environmental, Social, and Governance (ESG) reporting standards;
- Establishing a clear framework of liabilities for environmental and climate change damage associated with corporate activities;
- Addressing greenwashing through enhanced regulatory oversight and penalties;
- Promoting corporate transitions toward sustainable and green business models.

Strengthened regulatory oversight will help align corporate activities with national and international climate change goals.

### **Judicial Innovation and Remedies**

The judiciary will have to continue playing an active role by taking an innovative approach to climate adjudication. This will include:

- Providing structural and continuous mandamus for the supervision of climate compliance;
- Imposing time-bound obligations on state authorities to act on climate policy;
- Taking an informed decision based on scientific evidence and expert committees;
- Expanding the scope of remedies to include preventive and corrective remedies, not just compensatory ones.

Judicial innovations of this kind will turn the judiciary into an important tool of climate

governance, so that not only is the law relevant but also its consequences are realized.

## CONCLUSION

Climate litigation has been recognized as an important mechanism in the current regime of climate governance worldwide, marking the global shift towards judicial intervention in the climate crisis. The role of courts worldwide is seen as transformative, not just as enforcers but as interpreters of the law, filling the gaps in legislative and executive actions that are found wanting. This is an important shift in the legal landscape as climate change is not just an issue related to the environment but also an issue related to human rights, constitutional values, and sustainable development.

In the case of India, the judiciary has developed an extensive and progressive body of law on the environment, but the issue of climate litigation is still in its infancy. The reliance on traditional environmental principles such as the precautionary principle, polluter pays principle, sustainable development, etc., is important but still not enough to develop climate litigation as an important part of the legal regime. The lack of statutory recognition and enforcement is an important gap in the climate litigation regime in India. The absence of such a legal regime is also related to the lack of policy intervention on the issue of climate change. Lessons drawn from global jurisprudence emphasize the significance of a rights-based approach in which climate change is recognized as a litigable issue affecting fundamental rights such as the right to life, health, dignity, and a future. Landmark judgments in countries like the Netherlands and Germany reveal how courts can bind governments with obligations, hold governments accountable in enforcing emission cuts, and integrate international climate obligations into domestic law. These trends reveal the potential of judicial institutions as catalysts in systemic climate governance.

What is required in India is a shift from a reactive and environmental approach towards a structured, rights-based, and litigable approach in climate change litigation. This is possible not only by judicial innovation in climate adjudication in India but also by legislative intervention and greater engagement with international climate norms. A substantive right to climate stability, greater corporate liability, and forward-looking remedies like structural injunctions and continuous monitoring can play a significant role in strengthening climate adjudication in India.

Ultimately, the development of climate litigation in India must be informed by the dictates of constitutional morality, environmental sustainability, and intergenerational equity. Indeed, the development of climate law must be accompanied by the development of climate jurisprudence that is not only important for the maintenance of the environment but also for the maintenance of the fundamental tenets of justice, equity, and dignity in an age characterized by climate uncertainty.

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