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CLIMATE CHANGE LITIGATION: CHRONICLES FROM THE GLOBAL SOUTH. A COMPARATIVE STUDY

Abstract

The battles against climate change are being fought at the international level; on the domestic front; on the streets and in the courts. Climate change litigation is one such effort. The global expansion in climate litigation gives substance to claims of a transnational climate justice movement that casts courts as important players in shaping multilevel climate governance. Climate change litigants, lawyers, and judges of one country are taking their cue from their counterparts in other countries. However, only the efforts of the Global North have received prominence. The rest of the world is slated to be sleeping silently. The authors aim to de-bunk this myth. In doing so, the authors endeavour to highlight important contributions by the Courts in the Global South in furthering the jurisprudence of climate change litigation.

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INTRODUCTION

There is much happening throughout the world in the name of climate change litigation. To attain climate justice, it is important to decode the algorithm of power of the regulators and the corporates and to ensure that rule of law and democracy prevail and make people in power feel far more accountable. The battles against climate change are being fought at the international level; on the domestic front; on the streets and in the courts. Climate change litigation is one such effort. The global efforts towards furthering this cause have cast courts as important actors in aiding governance at multiple levels.¹

Minors,² young adults,³ farmers,⁴ indigenous people,⁵ women,⁶ climate change refugees,⁷ climate change activists,⁸ investors,⁹ provincial

¹ J. Peel, J. Lin, “Transnational Climate Litigation: The Contribution of The Global South”, *The American Journal of International Law*, 2009, p. 681.

² *Rabab Ali v. Federation of Pakistan*, Constitutional Petition No. I of 2016, Islamabad; *Ridhima Pandey v. Union of India*, Application No. 187/2017, 15.01.2019, National Green Tribunal, New Delhi.

³ *Duarte Agostinho and Others v. Portugal and 32 Other States*, Communication No, 39371/20, Communication of December 2020.

⁴ *Saul Luciano Lliuya v. RWE*, Case No I-5 U 15/17, 30.11.2017, *Oberlandesgericht Hamm*, Germany.

⁵ *Center for Social Justice Studies et al. v. Presidency of the Republic et al.*, Case No. T-622/16, 10.11.2016, Constitutional Court of Colombia, Bogotá; Also known as the Atrato Water Case.

⁶ *Maria Khan et al. v. Federation of Pakistan et al.*, Writ Petition No. 8960/2019, 15.02.2019, Lahore High Court, Lahore.

⁷ *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*, Case No. SC 7/2015, 20.07.2015, Supreme Court of New Zealand, Wellington.

⁸ *State of the Netherlands v. Urgenda Foundation*, Case No. ECLI:NL:HR:2019:2007, 20.12.2019, Supreme Court of the Netherlands, The Hague.

⁹ *The PV Investors v. Spain*, PCA Case No. 2012-14, 28.02.2020, Permanent Court of Arbitration, The Hague.

governments,¹⁰ and, interestingly, marine mammals¹¹ too are moving the domestic courts and seeking relief from State Parties, State regulatory agencies, and greenhouse gas emitters. Climate justice litigants, lawyers, and judges of one country are taking their cue from their counterparts in other countries.¹² They are all cumulatively trying to establish the causal links between the environmental damage caused by various respondents; exploring dispute resolution mechanisms; making efforts to award and apportion environmental damages and also proposing efficacious judicial remedies.

While climate change litigation in the Global North is well chronicled, far less literature is available on the Global South,¹³ the reason being that more scholarly work has been centred around the former than the latter.¹⁴ For a holistic appreciation of trans-national climate change litigation, there is an emphatic need for recognition of the bold steps taken by the Courts in the Global South.¹⁵ For example, the role of innovative litigants belonging to the Global South cannot be missed as they are moving courts in the Global North to claim justice.¹⁶

¹⁰ *West Virginia v. Environmental Protection Agency*, USCA Case #15-1363, 19.01.2022, The Supreme Court of the United States, Washington.

¹¹ *Resident Marine Mammals of the Protected Seascape Tanon Strait v. Secretary Angelo Reyes*, Case No. G.R. No. 180771, 21.04.2015, Supreme Court of Philippines, Manila.

¹² S. Burt, Indonesian Center of Environmental Law, *Fighting to Keep a Dirty Power Plant Out of a Tropical Paradise*, available at: <https://icel.or.id/en/news/fighting-to-keep-a-dirty-power-plant-out-of-a-tropical-paradise/> [last accessed 10.1.2022].

¹³ The Global South includes nations in Africa, Central and Latin America, and most of Asia, comprising more than 150 of the world's 184 recognized countries; See also C. Ochoa, S. Green, "Introduction: Human Rights and Legal Systems Across the Global South Symposium", *Indiana Journal of Global Legal Studies*, 2011, Volume 18, Issue (1), p. 210, available at: <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1433&context=ijgls> [last accessed 13.2.2022].

¹⁴ J. Setzer, L. Benjamin, "Climate Change Litigation In The Global South: Filling In Gaps", *The American Journal of International Law*, 2020, p. 219, available at: <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/climate-change-litigation-in-the-global-south-filling-in-gaps/3A50045D80FCA2B898CDF89D4B391494#> [last accessed 13.1.2022].

¹⁵ Peel, Lin, *supra* note 1, p. 682.

¹⁶ *Saul Luciano Lliuya*, *supra* note 4; *Okpabi and others v. Royal Dutch Shell Plc and Another*, Case No. UKSC 2018/0068, 12.02.2021, The Supreme Court of United Kingdom, London; *Vedanta Resources Plc and Another v. Lungowe and others*, Case No. UKSC 20, 10.04.2019, The Supreme Court of United Kingdom, London.

This genius of climate change litigation can be characterized in three waves broadly.¹⁷ Firstly, the pre-2007 litigation is considered as the first wave; 2007 to 2015 is considered as the second wave, and the post 2015 as the third wave. Notably, the world has witnessed an exponential increase in the number of cases during the third wave. The consolidation of Intergovernmental Panel on Climate Change (IPCC) research and the 2014 Report on Carbon Majors¹⁸ has led to an increase in the number of cases in the Global South as elsewhere. Within one year of the publication of the Carbon Major Report, the Human Rights Commission in the Philippines, relying upon this data, promptly entertained a petition filed against 50 carbon majors and announced that the major fossil fuel companies can be held liable for climate change impacts.¹⁹

Often, arguments are made that the cases arising out of the Global South do not focus on the core of climate change issues, but they fail to appreciate that despite the peripheral focus, these cases are making quite a reverberation in the field of climate change litigation.²⁰ There is a larger gamut of rights being drawn upon just from the aspect of climate change litigation i.e., right to life, right to clean drinking water; right to a pollution free environment, among many others. In fact, it was Ioane Teitiota, a determined citizen of a small island developing state, who explained the predicament of climate refugees to the UN Human Rights Committee which gave a finding that his deportation to a sinking island nation Kirabati violated his rights under Article 6(1) of Inter-

¹⁷ There are divergent views on number of climate change waves; M. Golnaraghi, *Climate Change Litigation: Insights into the Evolving Global Landscape*, Geneva Association Publications, 2021, available at: https://www.genevaassociation.org/sites/default/files/research-topics-document-type/pdf_public/climate_litigation_04-07-2021.pdf [last accessed 20.1.2022].

¹⁸ R. Heede, *Carbon Majors: Accounting For Carbon An Methane Emissions 1854-2010 Methods And Results Report*, Climate Mitigation Services, 2014, available at: <https://climateaccountability.org/pdf/MRR%209.1%20Apr14R.pdf> [last accessed 15.1.2022]; The Report for the first time quantified and traced the lion's share of cumulative global CO₂ and methane emissions since the industrial revolution began, to the largest multinational and state-owned producers of crude oil, natural gas, coal, and cement. These producers are collectively known as the "Carbon Majors".

¹⁹ *In re Green Peace Southeast Asia and others*, Case No. CHR-NI-2016-0001, 09.12.2019, Commission on Human Rights (Philippines), Quezon City.

²⁰ Peel, Lin, *supra* note 1, p. 691.

national Covenant on Civil and Political Rights (ICCPR).²¹ It is the reading together of all these rights that form the climate change litigation jurisprudence.²²

Even the 2021 United Nations Environment Programme (UNEP) Report advocates for a world-wide transformation of governance and attributes it as the key to a sustainable future.²³ In the process of transformation, a change of world-view is definitely a key contributor. Scholars across the world should endeavour to envision a jurisprudence that chronicles both the Global North and the Global South in combatting the issue of climate change and also keeping in view the goal of the 2030 Sustainable Development Goals.²⁴

The literature also shows that there has been a trend of the Global South being ignorant in addressing key issues of climate change litigation namely: governance related constraints, scarcity of policies in place and, most of all, the lack of political will.²⁵ In recent years, there definitely has been a shift in certain rights, namely, constitutional rights, human rights, and rights under disaster management are being utilised to seek redress from various fora in these jurisdictions.²⁶

Through this article, the authors endeavour to address the fact that climate change litigation in the Global South has significantly contributed to the jurisprudence of climate justice. In doing so, the paper will analyse the reasons behind the ignorance of the Global South's work. It aims to study major case-law and principles evolved from the five juris-

²¹ *Historic UN Human Rights Case Opens Door to Climate Change Asylum Claims*, 20.01.2020 available at: <https://www.ohchr.org/en/press-releases/2020/01/historic-un-human-rights-case-opens-door-climate-change-asylum-claims?LangID=E&NewsID=25482> [last accessed 29.4.2022].

²² K. Bouwer, "The Unsexy Future of Climate Change Litigation", *Journal of Environmental Law*, 2018, Volume 30 (3), available at: 10.1093/jel/eqy017 [last accessed 10.2.2022].

²³ United Nations Environment Programme, *Making Peace with Nature: A Scientific Blueprint to Tackle Climate, Biodiversity and Pollution Emergencies*, 2021, available at: <https://www.unep.org/resources/making-peace-nature> [last accessed 14.2.2022].

²⁴ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1, available at: <https://www.refworld.org/docid/57b6e3e44.html> [last accessed 25.4.2022].

²⁵ Setzer, Benjamin, *supra* note 14, p. 54.

²⁶ G. N. Gill, G. Ramachandran, "Sustainability Transformations, Environmental Rule of Law and the Indian Judiciary: Connecting the Dots through Climate Change Litigation", *Environmental Law Review*, 2021, Vol. 23(3), p. 281.

dictions in the Global South. This inquiry will lay the ground for future scholars not to misconstrue that there is very little happening in the Global South, precisely de-bunking the myth.

I. WHAT IS THE GLOBAL SOUTH AND WHY HAS THERE BEEN THIS INVISIBILITY?

The Global South is not a homogenous group. It comprises countries that exhibit varying levels and types of governance arrangements, administrative capacity, economic development, societal cohesion, inequality, and climate vulnerabilities.²⁷ For the purpose of this paper, the authors have chosen these countries namely: Brazil, India, Pakistan, the Philippines, and South Africa. They are extremely diverse in nature in terms of their demography, density of population, and economic status in the world. However, what brings them together is their sustained efforts in climate mitigation and adaptation in line with their national determined contributions under the Paris Agreement. Additionally, they aim to strike a balance in progressively realising their economic, social, and cultural rights.²⁸

They are also similar in the numbers of litigations that have evolved from these jurisdictions. They are classified as middle-income countries in terms of their economic locus of being in between the extremely poor countries in the Global South and the Global North.²⁹ This helps us build an analytical framework in comparing the climate change litigation and the trends that have advanced.³⁰ Another factor that brings them together is the fact that their institutional set-ups are an amalgam of both com-

²⁷ Setzer, Benjamin, *supra* note 14, p. 56.

²⁸ We have made use of the databases formulated by the Sabin Centre and the Grantham Institute and have chosen countries according to the number of Cases: Brazil (17); India (4); Pakistan (5); Philippines (3) and South Africa (9); See Sabin Centre for Climate Change Law, *Climate Change Litigation Database – Jurisdiction Wise*, available at: <http://blogs2.law.columbia.edu/climate-change-litigation/non-us-jurisdiction/> [last accessed 03.3.2022].

²⁹ C. R. Garavito, “Human Rights: The Global South’s Route to Climate Litigation”, *American Journal of International Law Unbound*, 2020, Vol 114, p. 45.

³⁰ *Ibid.*, p. 45.

petence and authoritarianism, for example, even though there is a strong inter-play of executive dominion and capital interest. The judiciary is equally active and is seen to be exercising its independent character in furthering the cause of climate change by reading it within the context of socio-economic rights and constitutional protections.³¹

Weak enforcement of environmental mechanisms in the presence of a strong corporate lobby is also another characteristic that binds these countries. For example, in Brazil, India, and Pakistan, environmental policies exist, but the stealth of corporate polluters and their monetary power overshadow the smooth working of these policies. Meanwhile, there is also a high percentage of non-governmental organizations being at the fore-front and leading the cause of climate justice in these countries. This is true of Brazil and India. In the Philippines and Brazil, even public agencies such as the human rights overseer take up this cause and approach the Courts. These efforts must also be appreciated because these countries also rank highest in the threat against the defenders of the environment.³² All in all, they are mixed bag of pieces aiming to fix the climate justice puzzle.

Despite these efforts, far less recognition has been accorded to the climate change jurisprudence emulated from the Global South. Even otherwise, one should not be alarmed at all because most academics from the Global South have raised objection to the lack of scholarly attention accorded to these countries.³³ In addition, researchers who focus on climate change litigation tend to miss out contributions from the Global South as their centrality does not fit within the radar of climate change.³⁴ This has remained one of the most fundamental reasons for the cause of ignorance.³⁵

³¹ V. Gauri, D. M. Brinks (eds.), *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, Cambridge University Press, 2008, p. 124.

³² UN Environment, *Environmental Rule of Law: First Global Report (UN Environment Programme (UNEP))*, 2019, available at: <https://www.unenvironment.org/resources/assessment/environmental-rulelaw-first-global-report> [last accessed 22.01.2022].

³³ B. S. Chimni, "A Just World Under Law: A View from the South", *Cambridge University Press on behalf of the American Society of International Law*, 2006, Vol 100, p. 17.

³⁴ J. Peel, H. M. Osovsky, "Climate Change Litigation", *Annual Review of Law and Social Science*, 2020, Vol 16, p. 21, available at: <https://www.annualreviews.org/doi/10.1146/annurev-lawsocsci-022420-122936> [last accessed 01.4.2022].

³⁵ *Ibid.*, p. 26.

The other reasons are that cases from these regions tend to focus on a rights based-approach rather than a climate change approach while filing lawsuits.³⁶ This is also why, despite accounting for almost 1/3rd of the World's population, there have been only 68 climate change cases recorded as of December 2021 by the Sabin Center for Climate Change Law.³⁷ These on-lookers however tend to forget the fact that the core of trans-national climate change litigation lies in the centrality of viewing the world as a whole. Merely focussing on one region's contribution on the basis of a very skewed matrix furthers a stunted understanding of this cause.³⁸

The other major cause for the ignorance is the issue of mitigation which is in line with the previous two causes highlighted in the paragraphs above.³⁹ Their focus is more about catering to the issue of adaptation rather than mitigation measures. This coupled along with insignificant execution of climate laws is the cause of the ignorance.⁴⁰ Stemming out of this concern, these jurisdictions largely focus on applying country-specific climate policies and frameworks rather than a regional or international framework.⁴¹

Finally, the major reason for ignorance is that these jurisdictions tend to have issues of implementation despite the existence of climate change policies and related legislations.⁴² This is coupled with their focus being on poverty alleviation and economic development rather than on climate change, or on public policy matters.⁴³ These two also lead to

³⁶ Peel, Osovsky, *supra* note 34.

³⁷ Sabin Centre for Climate Change Litigation, *Climate Change Litigation Database*, available at: <http://blogs2.law.columbia.edu/climate-change-litigation/non-us-jurisdiction/> [last accessed 04.4. 2022].

³⁸ *Ibid.*

³⁹ M. Nachmany, S. Frankhauser, J. Setzer, A. Averchenkova, *Global Trends in Climate Change Legislation and Litigation*, 2017, p. 18, available at: <http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2017/04/Global-trends-in-climate-change-legislation-and-litigation-WEB.pdf> [last accessed 22.3.2022].

⁴⁰ *Ibid.*, p. 21.

⁴¹ Nachmany, Frankhauser, Setzer, Averchenkova, *supra* note 39, p. 23.

⁴² Peel, Osovsky, *supra* note 34, p. 694.

⁴³ T. M. Lee, E. M. Markowitz, p. D. Howe, C. Y. Ko, A. A. Leiserowitz, "Predictors of public climate change awareness and risk perception around the World", *Natural Climate Change*, 2015, p. 1018, available at: <https://doi.org/10.1038/nclimate2728> [last accessed 21.3.2022].

the worsening of already existing climate problems which show these jurisdictions in a poor light.⁴⁴

The authors acknowledge the existence of these concerns. However, our aim is to highlight the fact that a complete understanding of climate change litigation as a global phenomenon cannot be realised by discarding the efforts of the Global-South in the name of framing, adjudication, or lack of implementation of policies. Scholars on the other hand should take into consideration the lack of resources, the inter-play of corporate power against climate justice, and the reluctance of major governments to enforce existing climate laws in the Global South.

Further on in this paper, the authors will highlight the role of domestic courts in promoting the climate cause and how this aspect should be considered in broadening the lenses while examining the issue of climate change as a universal burden.

II. THE COUNTRIES IN FOCUS – (THE PHILIPPINES, PAKISTAN, SOUTH AFRICA, BRAZIL AND INDIA)

In this section, the authors focus on climate-change litigation that has arisen from these countries namely: Brazil, India, Pakistan, the Philippines and South Africa. Despite being ignored for the reasons identified in the previous chapter, there have been number of landmark decisions and constitutional amendments in the Global South which have not received international prominence as they should have. The same will be highlighted through this chapter.

1. BRAZIL

Brazil is the world's sixth largest emitter of greenhouse gases in the world and most of these emissions arise from the illegal deforestation

⁴⁴ Ibid., p. 1020.

of the Amazon forests.⁴⁵ In the years 2019 and 2020, there have been at least seven lawsuits⁴⁶ filed in Brazil challenging the inaction of the government against the poor implementation of domestic policy that lay emphasis on a causal link between deforestation and climate change.⁴⁷ While most of these lawsuits are pending in the courts, the principal motivation behind these suits is to protect the Amazon forests and their nation from the harmful effects of climate change. All these cases have a mutual goal of combating Brazil's illegal deforestation, reducing Brazil's green-house gas emissions, and bringing the topic of climate change within the purview of the Brazilian courts.⁴⁸

Another case contributing to the climate change jurisprudence is *Institute of Amazon Studies (IEA) v. Brazil*,⁴⁹ where the plaintiffs sought recognition of the right to a "stable climate" for the present and future generations as a fundamental right protected by the constitution. It was contended that the right to a stable climate was a right that was implicitly mentioned in the constitution. In this case, the plaintiffs alleged that the Federal Government of Brazil had failed to comply with its own action plans to prevent illegal deforestation and mitigate climate change, violating national law and fundamental rights.⁵⁰

The Government had also failed to reach the standards which were mentioned in the National Climate Change Policy⁵¹ aiming to reduce the human footprint on climate change.⁵² Thus, the plaintiffs contended that the Brazilian government was not only violating fundamental

⁴⁵ Carbon Brief Clear on Climate, *The Carbon Brief Profile: Brazil – Carbon Brief*, 2018, available at: www.carbonbrief.org/the-carbon-brief-profile-brazil [last accessed 03.4.2022].

⁴⁶ These cases can be found on the databases supported by the Sabin Centre for climate Research, available at: <http://climatecasechart.com> and the Grantham Research Institute, available at: <https://climate-laws.org>. They are both dedicated in compiling litigation that involves climate change throughout the world.

⁴⁷ J. Setzer, D. W. D. Carvalho, "Climate Litigation to protect the Brazilian Amazon: Establishing a constitutional right to a stable climate", *Review of European, Comparative & International Environmental Law*, 2021, Vol 30(2), p. 197, available at: <http://dx.doi.org/10.1111/reel.12409> [last accessed 17.3.2022].

⁴⁸ *Ibid.*, p. 199.

⁴⁹ *IEA v. Brazil*, Decision Pending, Federal District Court of Curitiba, Curitiba.

⁵⁰ *Ibid.*

⁵¹ Law No 12,187 of December 29 2009 (BR).

⁵² Setzer, Carvalho, *supra* note 47, p. 198.

rights, but was also not complying with national laws. The IEA pleaded before the court to compel the government to comply with the existing policies and to reforest an area which was deforested, in view of the violation of the statutory limits, and to allocate sufficient funds to carry out these initiatives.⁵³ This lawsuit also provided several scientific references to prove the causes and the ill-effects of climate change. While the principles evolved in this case cannot be directly applied to ongoing litigation in other countries, the case could however be employed to “inspire strategies for the improvement of the legitimacy of an international global order”.⁵⁴

Subsequently, in the case of *Partido Socialista Brasileiro (PSB) et al. v. Brazil*,⁵⁵ a coalition of several political parties⁵⁶ brought an action against the government of Brazil for violating fundamental rights by failing to fulfil the domestic deforestation policy which in turn contributes to climate change.⁵⁷ The decision is pending in this case. However, it shows that climate change litigation in Brazil is evolving and is setting a trend of political parties taking-up the cause of climate change: surely a welcome change.

2. INDIA

While India is the world’s third largest emitter of green-house gasses,⁵⁸ it is the seventh most vulnerable country with respect to climate change extremes and thus serious action is required both at state and nation-

⁵³ Ibid.

⁵⁴ Setzer, Carvalho, *supra* note 47, p. 198.

⁵⁵ *Partido Socialista Brasileiro (PSB) et al. v. Brazil*, Case No. ADO 59/DF, 18.02.2022, Supremo Tribunal Federal, Brazil.

⁵⁶ Along with *Partido Socialismo e Liberdade (PSOL)*, *Partido dos Trabalhadores (PT) e Rede Sustentabilidade*.

⁵⁷ *PSB et al. v. Brazil (on deforestation and human rights) – Climate Change Litigation*, Climate Change Litigation, available at: <http://climatecasechart.com/climate-change-litigation/non-us-case/brazilian-socialist-party-and-others-v-brazil/> [last accessed 20.3.2022].

⁵⁸ P. C. Pandey, *India Has Seen Greenhouse Gas Emissions Increase by a Staggering 335% Since 1990*, available at: <https://www.climatecorecard.org/2020/12/india-has-seen-greenhouse-gas-emissions-increase-by-a-staggering-335-since-1990/> [last accessed 20.3.2022].

al level to mitigate the effects of climate change.⁵⁹ There is no dearth of environmental laws and disaster management laws in India. What is lacking is a comprehensive law on climate change.⁶⁰ Despite this the Supreme Court of India and the High Courts, which are the constitutional courts of India, and the National Green Tribunal (NGT), a tribunal constituted to adjudicate environmental disputes, frequently refer to climate change in their orders.⁶¹ This country has a long list of public interest litigations which include some landmark climate change litigation cases.⁶²

One of such cases is *Association for Protection of Democratic Rights v. The State of West Bengal and Others*,⁶³ where a petition challenging the felling of hundreds of trees in the State of West Bengal for development purposes and road widening was challenged before the Supreme Court of India.⁶⁴ While deciding upon this case, the Supreme Court emphasized the need to consider the impact of such development projects on the environment and the effects of climate change. The judgment stated that the right to a clean and healthy environment is a fundamental right under Article 21 of the Indian Constitution (Right to Life and Personal Liberty). Article 48-A of the Constitution also imposes a duty upon the Government to protect and improve the environment and safeguard the forests and wildlife of the country.

Additionally, India is also a party to several international treaties, conferences, and agreements where it has committed itself to sustainable growth, development, environmental protection, and mitigation of

⁵⁹ A. Mohanty, S. Wadhawan, *Mapping India's climate vulnerability: A district-level assessment*, Hindustan Times, available at: www.hindustantimes.com/ht-insight/climate-change/mapping-india-s-climate-vulnerability-a-district-level-assessment-101636642145178.html [last accessed 01.3.2022].

⁶⁰ S. Ghosh, "Litigating Climate Claims in India", *AJIL Unbound*; 2020, Vol 114, p. 50. available at : <https://www.proquest.com/openview/d1ef1177d2192021429dbf91a186ccff/1.pdf?pq-origsite=gscholar&cbl=2046278> [last accessed 29.4.2022].

⁶¹ *Ibid.*

⁶² E. Chaturvedi, "Climate Change Litigation: Indian Perspective", *German Law Journal*, 2022, p. 56, available at: <www.cambridge.org/core/journals/german-law-journal/article/climate-change-litigation-indian-perspective/8776773582C54FE6715472733A8516D4> [last accessed 26.3.2022].

⁶³ *Association for Protection of Democratic Rights v. The State of West Bengal and Others*, Case No. CHN 842, 25.03.2021, The Supreme Court of India, New Delhi.

⁶⁴ *Ibid.*, para (f).

the impacts of climate change.⁶⁵ The judges stated that when aiming at sustainable development, there is an emphatic need to strike a strong balance between development and preserving the environment. The judges ordered a specialist committee to be constituted to frame scientific and policy guidelines with respect to the clearing of trees for developmental projects. This judgment sets a precedent in reminding India to keep abreast with its commitment to increase tree cover from 23% to 33%⁶⁶ and cautioning it to think about the impact of large-scale felling and the contributions it makes in carbon sequestration and climate change.

Another important case in the history of climate change litigation in India is the case of *In re Court on its Own Motion v. State of Himachal Pradesh and Others*.⁶⁷ In the year 2014, the National Green Tribunal *suo moto* initiated a case to impose restrictions on the activity taking place near the Rohtang Pass, which is an environmentally sensitive place near the Himalayan Ranges.⁶⁸ The Court found out that vehicular carbon emitted by the burning of fossil fuel is one of the main reasons for the melting of the Himalayan glaciers near the Rohtang Pass. In its judgment, the Court cited a study conducted by a team of IIT Kanpur professors which suggested that 40% of the melting in the glaciers could be attributed to the Black carbon emissions by the vehicles operating near Rohtang.⁶⁹ It concluded that the citizens of India have a right to a wholesome, clean, and a decent environment' as per Article 48-A of the consti-

⁶⁵ Some significant conventions and conferences that India is party to are: The UN Framework Convention on Climate Change (UNFCCC), 1992; The Convention on Biological Diversity, 1992; The Paris Agreement of 2015.

⁶⁶ By virtue of the commitments made at the United Nations Climate Change Conference in 2015 (COP21), India aims to increase its tree cover to 33% in its goal to create carbon sinks by increasing more forest and tree coverage. This is also one of its missions under the National Action Plan on Climate Change (NAPCC).

⁶⁷ *In re Court on its Own Motion v. State of Himachal Pradesh and Others*, Case No. CWPIIL No. 15 of 2010, 12.05.2016, National Green Tribunal, New Delhi.

⁶⁸ *In re Court on its own motion v. State of Himachal Pradesh and others – Climate Change Litigation*, (Climate Change Litigation), available:<http://climatecasechart.com/climate-change-litigation/non-us-case/sher-singh-v-state-of-himachal-pradesh/>, [last accessed 12.3.2022].

⁶⁹ S. Santra, S. Verma, K. Fujjita, I. Chakraborty, O. Boucher, T. Takemura, J. F. Burkhart, F. Matt, M. Sharma, "Simulations of black carbon (BC) aerosol impact over Hindu-Kush Himalayan sites: Validation, Sources, and Implications on Glacier runoff", *Jour-*

tution.⁷⁰ The court ordered the government of Himachal Pradesh to take strong measures to reduce environmental pollution, including random pollution checks and restricting transport in certain areas and encouraging the use of electric vehicles. This case is a classic example of how judicial bodies themselves take up the responsibility of protecting their environmentally vulnerable areas from the ill effects of climate change.

*Hanuman Laxman Aroskar v. Union of India*⁷¹ is another case where the Supreme Court of India suspended the construction of an airport in the State of Goa and ordered the Government to revisit clearance given for the construction.⁷² After the Government had provided enough evidence to prove that they were not in violation of the Paris Agreement⁷³ and India's environmental rule of law, the Supreme Court lifted its suspension of the construction. The Supreme Court was also given an assurance by the proponents of the construction that the airport would be made a "zero carbon airport". This is yet another instance where the Supreme Court has played a role in preventing additional damage to the environment. Although the Indian Courts are making quite an effort to move from environmental justice to climate justice, the volume of cases is quite intimidating and the chances of enforcement of court orders are at times unpredictable.⁷⁴

3. PAKISTAN

The Global Climate Risk Index notes that the disastrous effects of climate change in recent years have put Pakistan in a position of high

nal of Atmospheric Chemistry and Physics Discussions, 2018, Vol 1, available at: <https://acp.copernicus.org/preprints/acp-2018-869/acp-2018-869.pdf>, [last accessed 3.3.2022].

⁷⁰ *In re Court on its Own Motion*, *supra* note 67.

⁷¹ *Hanuman Laxman Aroskar v. Union of India*, Case No. C. A. No. 12251 of 2018, 16.01.2020, The Supreme Court of India, New Delhi.

⁷² "*Hanuman Laxman Aroskar v. Union of India – Climate Change Litigation*" (Climate Change Litigation), available at: <http://climatecasechart.com/climate-change-litigation/non-us-case/hanuman-laxman-aroskar-v-union-of-india/> [last accessed 20.3.2022].

⁷³ UNFCCC, Decision 1/CP.21, Adoption of the Paris Agreement, UN Doc FCCC/CP/2015/10/Add.1 [29.1.2016].

⁷⁴ Ghosh, *supra* note 60, p. 51.

risk.⁷⁵ This means that the nation will have to take strong measures in reducing its Anthropocene factors contributing to climate change. It has also seen a huge rise in climate change litigation which is furthering this cause.

One of the most seminal pieces of climate change litigation in the Global South is the case of *Ashgar Lehghari v. Federation of Pakistan*.⁷⁶ In this case, an aggrieved Pakistani farmer filed a Public Interest Litigation before the High Court of Pakistan claiming that his fundamental rights had been violated by the Government of Pakistan. Mr. Lehghari alleged that his constitutional rights of life and dignity had been violated by the Government by failing to address “the challenges and vulnerabilities associated with climate change”.⁷⁷ Leghari wanted to hold the Government of Pakistan liable for its inability to protect people from the devastating effects of climate change.⁷⁸

The background to this case is in several small-scale farmers being driven to poverty because of the unpredictable changes in the climate patterns which were frequently causing heavy rains and droughts.⁷⁹ In 2013, the Government of Pakistan passed the National Framework for Implementation of Climate Change (2014–30)⁸⁰ which was a framework designed to provide ways and means of adapting and mitigating the effects of climate change. However, Lehghari argued that there was a lack of implementation of this framework which in turn had violated his

⁷⁵ D. Eckstein, V. Künzel, L. Schäfer, M. Wings, “Who Suffers Most from Extreme Weather Events? Weather-Related Loss Events in 2018 and 1999 to 2018”, *Germanwatch eV*, 2019, Vol 1, p. 12, available at: <https://www.germanwatch.org/en/17307> [last accessed 13.3.2022].

⁷⁶ *Ashgar Lehghari v. Federation of Pakistan*, Case No. WP 22501, 25.01.2018, Lahore High Court, Lahore.

⁷⁷ Ibid.

⁷⁸ A. Gill, *Farmer sues Pakistan’s government to demand action on climate change*, 2015, available at: www.reuters.com/article/pakistan-climatechange-lawsuit-idUSL8N1383YJ20151113 [last accessed 21.3.2022].

⁷⁹ N. Gronewold, *Is the Flooding in Pakistan a Climate Change Disaster?*, 2010, available at: <https://www.scientificamerican.com/article/is-the-flooding-in-pakistan/> [last accessed 13.3.2022].

⁸⁰ Climate Change Division Government of Pakistan, *Framework for Implementation of Climate Change Policy (2014–2030)*, 2013, p. 61, available at: <http://www2.ecolex.org/server2neu.php/libcat/docs/LI/MON-094651.pdf> [last accessed 15.3.2022].

constitutional rights under Article 9 (Right to Life) and Article 14 (the right to a healthy and clean environment and to human dignity).

The Lahore High Court ruled that there have been dramatic changes because of climate change and this applies to the entire world. It acknowledged that the effects of climate change are evident from the severe inundation and droughts which have taken place in Pakistan. The Court cited some of the principles of the Constitution of Pakistan, international principles including the intergenerational equity and the precautionary principle to call for a move to “Climate Change Justice”.⁸¹ On discovering that there had been abysmal progress on the implementation of the recommendations of the Pakistan National Climate Change Policy, the Court directed the responsible ministries of the Government to strictly oversee the implementation of this policy.

It recommended the ministries to each nominate “a climate change focus person” to ensure that the framework is compiled with. The judges also created a climate change commission which is composed of representatives of key ministries, non-governmental organizations, lawyers, academicians, representatives of the media, and technical experts to monitor the government’s progress.⁸² In the judgment the Court acknowledged that the role of this commission was to change the focus of the government’s departments towards “climate resilient development”.⁸³ Over the next three years, the newly set up commission oversaw the training and sensitization of the various Government departments.⁸⁴ In the final report of 2018, it was noted that about 2/3rds of the priority items mentioned under the framework had been successfully completed.⁸⁵ Subsequently, the Court disbanded the climate change committee, but it constituted another a standing committee on “climate change” which acted as a liason between the Court and the Government. This committee also ensures that most policies are effectively im-

⁸¹ *Ashgar Leghari v. Federation of Pakistan | ELAW*, available at: https://elaw.org/PK_AshgarLeghari_v_Pakistan_2015 [last accessed 03.4.2022].

⁸² *Ashgar Leghari*, *supra* note 76.

⁸³ I. Alogna, E. Clifford, “Climate Change Litigation: Comparative and International Perspectives”, *British Institute of International and Comparative Law*, 2020, p. 124, available at: https://www.biicl.org/documents/88_climate_change_litigation_comparative_and_international_report.pdf [last accessed 25.3.2022].

⁸⁴ *Ibid.*, p. 126.

⁸⁵ Alogna, Clifford, *supra* note 83, p. 124.

plemented before the final decision of this case. This goes to show that bold moves made by the judges of the Pakistan High Court have had an impact on the legislators of the Country.⁸⁶

Not long after the Leghari case, similar new petitions were filed in both India and Pakistan. The case of *Maria Khan et al. v. Federation of Pakistan*⁸⁷ is one such case where a coalition of women filed a constitutional petition on their behalf and on behalf of future generations against the Federation of Pakistan. The petitioners sought orders that the Pakistani government must support renewable energy sources and must enforce the Paris Agreement in letter and spirit.⁸⁸ Once again, the Court in this case, reminded the Government of its role as a taker of care in protecting the future and providing a safe environment to the many generations of the country.

4. THE PHILIPPINES

The Philippines is an island country in South-East Asia consisting of more than 7,000 islands and has been declared the country that is most vulnerable to climate change.⁸⁹ Its geographical location and weather patterns are the main factors which contribute to its vulnerability. Climate change has led to an increase in the amount and intensity of rainfall in the past two decades.⁹⁰ Thus, the need for enforcement of environmental laws and policies to protect the country from the adverse effects of climate change is becoming crucial. Apart from the climatic patterns of this country, the Philippines have a vast number of natural resources, flora, and fauna. These resources are essential for the survival and the livelihood of a large part of the population, and thus, any changes in the fragile ecological balance of the Philippines can push

⁸⁶ Ibid., p. 127.

⁸⁷ *Maria Khan et al. v. Federation of Pakistan et al*, *supra* note 2.

⁸⁸ Ibid.

⁸⁹ Amnesty International, *Philippines country most at risk from climate crisis*, 2021, available at: www.amnesty.org.uk/philippines-country-most-risk-climate-crisis [last accessed 06.4.2022].

⁹⁰ Future Learn, *Everything you need to know about climate change in the Philippines – Future Learn*, 2021, available at: www.futurelearn.com/info/futurelearn-international/climate-change-philippines, [last accessed 06.3.2022].

people into poverty.⁹¹ However, the Philippines have a long list of climate change related litigation and constitutional provisions which have been a source of inspiration to several other countries.

The case of *In Re Greenpeace Southeast Asia and Others*,⁹² was an important climate change case in which Greenpeace Southeast Asia, other organizations, and a few individuals filed a petition before the Commission on Human Rights of the Philippines. They claimed that about 50 investor-owned carbon, oil, natural gas, and cement producers should be held accountable for the massive emissions in green-house gases and the acidification of the ocean.⁹³ These green-house gases were adversely impacting the environment and harming the human rights of the citizens of the Philippines. A part of the petition filed by these individuals stated that “Climate change interferes with the enjoyment of our fundamental rights as human beings. Hence, we demand accountability of those causing climate change”.⁹⁴ The commission took cognizance of the petition in the year 2017 and confirmed that they would investigate the violation of human rights of the Filipinos and subsequent changes in the climatic patterns which arose out of the emission of green-house gasses by these 50 companies.⁹⁵ Many of the companies tried to defend themselves by contending that there was no well-known and effective alternative to burning fossil fuels to meet the energy needs of the country. They believed that the arguments for curtailing the use of fossil fuels were “neither practical, nor prudent”.⁹⁶ Some of them also argued that Carbon-dioxide is not a pollutant, but an essential ingredient of life, which has nothing to do with pollution, climate change, and air quality.

However, in the year 2019, the commission ruled that these 50 carbon companies could be held legally liable for the climate change impact which had resulted because of their unaccounted green-house gasses emissions.⁹⁷ As per the commission, these companies had “knowingly

⁹¹ Ibid.

⁹² *In re Green Peace Southeast Asia and others*, *supra* note 19.

⁹³ Ibid.

⁹⁴ *In re Green Peace Southeast Asia and others*, *supra* note 19.

⁹⁵ Climate Change Litigation, *In re Greenpeace Southeast Asia and Others – Climate Change Litigation*, available at: <http://climatecasechart.com/climate-change-litigation/non-us-case/in-re-greenpeace-southeast-asia-et-al/> [last accessed 20.3.2022].

⁹⁶ *In re Green Peace Southeast Asia and others*, *supra* note 19.

⁹⁷ Ibid.

contributed to the root cause of climate change”.⁹⁸ It held that the carbon major companies had concluded that legal responsibility was not yet covered under the current international laws, but these fossil fuel majors had a moral responsibility to cause the least damage to the environment and prevent climate change. They also stated that the onus of holding these companies legally liable for the damages caused would lie with the individual countries to pass new legislations and strictly enforce them.⁹⁹ The commission also suggested that the existing laws of the Philippines provided grounds for action against these companies. The commission concluded their meetings by reiterating that all fossil fuel companies must respect human rights as mentioned under the United Nations Guiding Principles on Business and Human Rights.

Another important case among the climate change related litigations in the Philippines is *Global Legal Action on Climate Change v. The Philippines Government*.¹⁰⁰ In this case, a petition was filed by a group named Global Legal Action on Climate Change (GLACC) before the Supreme Court of the Philippines. This petition was filed against several government departments including the Department of Public Work and Highways, and the Climate Change Commission amongst others, seeking relief against the severe flooding that was caused as a result of the intensifying change in climatic patterns. The GLACC contended that the government of the Philippines was in violation of a few local laws such as the “Rainwater collector and springs development law” which requires every locality to ensure that the residents are provided with fresh drinking water during the time of floods. Another such law was the local code of 1991¹⁰¹ which made local governments responsible for the water management of the region. This case finally got resolved

⁹⁸ G. R. Bueta, “Environmental Jurisprudence from the Philippines: Are Climate Litigation Cases Just Around the Corner?”, *International Union for Conservation of Nature*, 2019, available at: <https://www.iucn.org/news/world-commission-environmental-law/201906/environmental-jurisprudence-philippines-are-climate-litigation-cases-just-around-corner> [last accessed 19.3.2022].

⁹⁹ Beuta, *supra* note 98.

¹⁰⁰ The Correct citation is not available; See Climate Change Litigation, *GLACC v. The Philippines Government*, 2015, available at :<http://climatecasechart.com/climate-change-litigation/non-us-case/global-legal-action-on-climate-change-v-the-philippines-government/> [last accessed 20.3.2022].

¹⁰¹ Republic Act No. 716 (1991) (Philippines).

when the government signed a memorandum to undertake all the necessary tasks to prevent climate change related problems. These cases thus demonstrate how individuals and the judiciary have collectively taken up the responsibility of holding violators responsible for environmental damage caused, not only laying responsibility, but emphatically pronouncing causal links to the perpetrators against the pristine climate.

5. SOUTH AFRICA

Unlike the above discussed countries, the South African Courts' efforts are laudable in the face of a poor legislative framework on climate change-related laws and limited access to funds. The case of *Earthlife Africa Johannesburg v. Minister of Environmental Affairs and Others*¹⁰² was one of the major climate change litigations that took place in South Africa. In this case, an environmental NGO brought a claim against the Ministry of Environmental Affairs of South African, the decision makers working under the directions of the Ministry of Environmental Affairs who were in charge of granting environmental authorizations and the companies who had proposed to build a 1200 MV coal-fired *Thabametsi* Power project.¹⁰³

The petitioners contended that the Ministry of Environmental Affairs had not taken into consideration the climate change-related consequences of this Power project under the National Environment Management Act 107 of 1998 (South Africa NEMA).¹⁰⁴ Some of the ministers tried to justify the construction of the plant by stating that the benefits of generating electricity from the plant far outweigh the adverse impacts the plant would have on climate change.¹⁰⁵

¹⁰² *Earthlife Africa Johannesburg v. Minister of Environmental Affairs and Others*, Case No. 65662/16, 19.11.2020, The High Court of South Africa, Pretoria.

¹⁰³ M. Burianski, M. Clarke, F. p. Kuhnle, G. Wackwitz, "Climate change litigation in Africa: Current status and future developments", *White & Case LLP International Law Firm – Global Law Practice*, 2021, available at: www.whitecase.com/publications/insight/africa-focus-autumn-2021/climate-change-litigation-africa [last accessed 31.3.2022].

¹⁰⁴ *Ibid.*

¹⁰⁵ Burianski, Clarke, Kuhnle, Wackwitz, *supra* note 103.

The Court, after due consideration and review of the proposal came to a conclusion that the plans to construct the new coal plant did not take into consideration the impact of the emission of the green-house gasses on the environment and climate change. Thus, the approval for the construction of the project was deemed unlawful. The Court also cited some of the principles mentioned under the Paris Agreement to come to the reasonable conclusion that the construction of the coal plant was indeed unlawful since no efforts to mitigate climate change were mentioned in the proposal. After this decision by the court, the Ministry of Environmental Affairs reconsidered the permit and included the climate change assessment plan which subsequently got approved. However, Earth life Africa filed another petition to get the plan quashed since it had not taken into consideration the “site specific climate change impacts associated with the construction and operation of the power plant”.¹⁰⁶ In 2020, the Court set aside all the government authorizations and approvals granted to the coal power plant and directed the defendants to pay all the court costs involved.¹⁰⁷ This case set out a significant precedent in the history of climate change which would require authorities to take relevant consideration of climate change and its mitigation before any authorization or approvals for such projects.

Another noteworthy case is *Philippi Horticulture Area Food and Farming campaign et al. v. MEC for Local government, Environmental Affairs and Development Planning: Western Cape, et al.*¹⁰⁸ wherein, the provincial and planning authority of Cape Town gave an environmental approval under the National Environment Management Authority (NEMA) to allow urban development in the Philippi Horticulture Area (PHA). The PHA Food and Farming Campaign and other individuals challenged these actions on several grounds including the potential destruction of an aquifer. In 2020, the judge opined that the provincial and planning

¹⁰⁶ *Earth life Africa Johannesburg v. Minister of Environmental Affairs and Others*, *supra* note 102.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Climate Change Litigation, Philippi Horticultural Area Food & Farming Campaign, et al. v. MEC for Local Government, Environmental Affairs and Development Planning: Western Cape, et al.* - *Climate Change Litigation*, available at: <http://climatecasechart.com/climate-change-litigation/non-us-case/philippi-horticultural-area-food-farming-campaign-et-al-v-mec-for-local-government-environmental-affairs-and-development-planning-western-cape-et-al/> [last accessed 22.3.2022].

authorities had made many errors with regards to the approvals and were subsequently asked to reconsider the decision in the light of water scarcity and its larger effects.¹⁰⁹

The case of *Trustees for the Time Being of Ground Work v. Minister of Environmental Affairs, ACWA Power Khanyisa Thermal Power Station RF (Pty) Ltd, and Others*¹¹⁰ is similar to the *Earth life*¹¹¹ case in many ways. It involved an environmental organization, called Ground Work filing a petition with the High Court of South Africa to set aside the development of a 600 MW coal power plant called the Khanyisa Project. The organization contended that the Environment ministry had granted permission to build this project without taking into consideration the impacts, mitigation, and domestic and international policy.¹¹² This decision has not yet been decided by the Court, but is a clear indicator that the individuals and the judiciary of South Africa have been playing a critical role in mitigating climate change.

All the above five discussed countries have made contributions in their own way to paving the way for climate strategies to be birthed as will be discussed in the next chapter.

III. PRINCIPLES EVOLVED FROM THESE JURISDICTIONS

There is a clear and evident disparity of the socio-economic, geographical conditions between the Global North and the Global South. The Global South consisting mostly of developing nations, faces fundamental domestic problems such as poverty, unemployment, corruption when compared to the Global North which has overcome these prob-

¹⁰⁹ Ibid.

¹¹⁰ *Trustees for the Time Being of Ground Work v. Minister of Environmental Affairs, ACWA Power Khanyisa Thermal Power Station RF (Pty) Ltd, and Others*, Case No. 5407/17, Decision Pending, High Court of South Africa, Pretoria.

¹¹¹ *Earth life Africa Johannesburg v. Minister of Environmental Affairs and Others*, *supra* note 102.

¹¹² *Trustees for the Time Being of Ground Work v. Minister of Environmental Affairs, ACWA Power Khanyisa Thermal Power Station RF (Pty) Ltd, and Others*, *supra* note 110.

lems.¹¹³ Therefore, considering these existing struggles, environmental issues are given little attention unless they directly impact everyday lives.¹¹⁴

Despite resource and legislative constraints, climate change cases from the Global South have accomplished gallant results. There is a prevalent transformative approach in adjudicating cases, especially those related to fundamental rights discourse.¹¹⁵ Although the paper recognises that the Global South is not a homogenous group and has a variety of differences in legal and political makeup of the countries, there are common principles and strategies have evolved in the field of climate change litigation¹¹⁶ and they are discussed below.

1. A RIGHTS-BASED APPROACH

Over the years, scholars like Peel and Osofsky have identified a “rights-based turn” in climate litigation as the linkages between human rights and climate change have begun to emerge in the courts of the Global South.¹¹⁷ Although human rights and climate change linkages are becoming more well-defined, courts were initially reluctant to adjudicate in ways that had these linkages in the foreground. Despite substantial constraints, litigants in the Global South linked climate change and human rights in efforts to combat climate change.¹¹⁸ Among the climate

¹¹³ J. Setzer, L. Benjamin, “Climate Litigation in the Global South: Constraints and Innovations”, *Transnational Environmental Law*, 2020, Vol 9 Issue 1, p. 521, available at: doi:10.1017/S2047102519000268 [last accessed 15.3.2022].

¹¹⁴ J. Auz, *Global South climate litigation versus climate justice: duty of international cooperation as a remedy?*, 2021, available at: <https://voelkerrechtsblog.org/global-south-climate-litigation-versus-climate-justice-duty-of-international-cooperation-as-a-remedy/> [last accessed 3.4.2022].

¹¹⁵ E. Barritt, B. Sediti, “The Symbolic Value of Leghari v. Federation of Pakistan: Climate Change Adjudication in the Global South”, *Kings Law Journal*, 2019, Vol 19, available at: <https://doi.org/10.1080/09615768.2019.1648370> [last accessed 19.3.2022].

¹¹⁶ M. Bazilian, B. F. Hobbs, W. Blyth, I. MacGill, M. Howells, “Interactions between Energy Security and Climate Change: A Focus on Developing Countries”, *Energy Policy*, 2011, Vol 39 Issue 6, available at: <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1063.4482&rep=rep1&type=pdf> [last accessed 22.2.2022].

¹¹⁷ Peel, Osofsky, *supra* note 34, p. 689.

¹¹⁸ Setzer, Benjamin, *supra* note 14, p. 54.

change cases in the Global South, about 44 % are rights-based cases. Interestingly, only 5 percent of the cases involved human rights claims from the United States which is one of the biggest contributors to climate change litigation. This shows that the Global South is being more interpretative in the framing of their climate issues.¹¹⁹

In Asia, both Pakistan and India have developed a practice of progressive jurisprudence which aims to protect the rights of vulnerable groups of the population and the environment through public interest litigation.¹²⁰ An instance of a case that was based on human rights arguments is the case of *Ashgar Leghari*,¹²¹ which is an outstanding example of transformative adjudication while striving for climate justice and its very stand for the “rights perspective” in climate change litigation.¹²² The other striking feature of commonality is that all the above discussed five countries read the right to a clean and pollution free environment from a constitutional perspective.

2. TRANSFORMATIVE ADJUDICATION

In the face of deep-rooted poverty, dormant governments, and with the legacy of colonialist and apartheid infrastructures, Courts from the Global South have adjudicated cases, especially those related to fundamental rights, in a transformative approach.¹²³ There is also a rising trend amongst the Courts in the Global South to adorn the role of a proactive tribunal that spells put the protection of its people against climate change through the lenses of separations of powers, laying structural links between the access to justice and socio-economic rights.¹²⁴ The Indian Courts and their transformative interpretation of the constitution and pursuit of environmental justice are one of the biggest testaments

¹¹⁹ Peel, Lin, *supra* note 1, p. 681.

¹²⁰ Setzer, Benjamin, *supra* note 113, p. 523.

¹²¹ *Ashgar Leghari*, *supra* note 76.

¹²² *Ibid.*

¹²³ Bazilian, Hobbes, Blyth, Mcgail, Howells, *supra* note 116.

¹²⁴ D. B. Maldonado (ed.), *Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia*, Cambridge University Press, 2013, p. 124.

to this. The Judiciary is an active conduit in bridging the gap between governance and execution of climate policies.¹²⁵

3. PUSH FOR ENFORCEMENT OF EXISTING LAWS

Climate change litigation in the Global South does not aim at bringing out new legislation or regulatory targets from the governments.¹²⁶ Rather, they use prevailing legislative tools and human rights discourses to bring to light the vulnerability to the climate crisis of the populations in their countries. A more ancillary route is chosen than a direct approach of pressing provincial governments to enforce climate policies and legislation.¹²⁷ A classic example of this scenario is the environmental class actions brought by the Brazilian prosecutor's office filing to protect the mangroves¹²⁸ wherein there was a violation by the government of natural resource management laws. This way, some governmental agencies act like double edged swords to pave new path-ways in addressing the issues of climate change,¹²⁹ in other terms, pressing for the effective implementation of laws that are already in place and stacked away in an unwanted corner.

4. PUBLIC TRUST DOCTRINE

The roots of the public trust doctrine can be traced back to the Romans.¹³⁰ According to this doctrine, the state is the natural guardian of nature and should conduct itself in the manner of preserving the re-

¹²⁵ Ibid.

¹²⁶ Setzer, Benjamin, *supra* note 113, p. 523.

¹²⁷ Ibid., p. 524.

¹²⁸ *Federal Prosecutor's Office v. H. Carlos Schneider S/A Comércio e Indústria and Other*, Special Appeal No. 650.728, 12.02.2009, Supremo Tribunal Brazil, Brazil.

¹²⁹ G. Wedy, "Climate Legislation and Litigation in Brazil", *Sabin Centre Climate Change Law Working Papers Columbia Law School*, 2017, p. 23, available at: <http://columbia-climatelaw.com/files/2017/10/Wedy-2017-10-Climate-Legislation-and-Litigation-in-Brazil.pdf> [last accessed 09.4.2022].

¹³⁰ H. M. Babcock, "The Public Trust Doctrine: What a Tall Tale They Tell", *George Town Law Review*, 2009, Vol 61, p. 54, available at: <https://scholarship.law.georgetown.edu/>

sources for the betterment of the people.¹³¹ In the *Rohtang Pass* case¹³² in India, for example, the public trust doctrine required the court to order the government to address the pollution crisis. The public trust doctrine prominently featured in four other Global South cases – *Pandey v. India*,¹³³ *Ali v. Pakistan*,¹³⁴ and the *Carbon Majors*.¹³⁵ The public trust doctrine is well established in some Global South jurisprudences, especially in Indian and Pakistani environmental jurisprudence. This doctrine, although a common law principle, is also well-welcomed in some civil law jurisdictions and has been codified into the national constitution of Indonesia (Article 33). This can be also seen as an emerging trend in using other arguments outside the rights-based purview to bind the State and see that it is fulfilling its responsibility of being the bastion of climate related jurisprudence.¹³⁶

5. CASES FEATURING CLIMATE CHANGE ISSUES AT THE PERIPHERY

Cases with climate change at its “core” are those where the arguments raised are issues related to climate law or climate science and are central to the pleadings or judgment. Essentially, these are those cases that are recognised within the radar as portrayed by scholars.¹³⁷ Conversely, “peripheral” climate cases are those where climate-related issues are supplementary to other arguments, or as one among the many arguments raised before the court.¹³⁸ In the Global South, cases tend to fol-

cgi/viewcontent.cgi?referer=&httpsredir=1&article=1949&context=facpub [last accessed 19.3.2022].

¹³¹ A. O. Richardson, “Judicial Resources and the Public Trust Doctrine: A Powerful Tool of Environmental Protection? *Transnational Environmental Law*”, *Transnational Environmental Law Journal*, 2018, Vol 7 Issue 3, p. 54, available at: <https://doi.org/10.1017/S2047102518000213> [last accessed 15.3.2022].

¹³² *In re Court on its Own Motion*, *supra* note 67.

¹³³ *Ridhima Pandey*, *supra* note 2.

¹³⁴ *Rabab Ali*, *supra* note 2.

¹³⁵ *In re Green Peace Southeast Asia and others*, *supra* note 19.

¹³⁶ Setzer, Benjamin, *supra* note 113, p. 524.

¹³⁷ Peel, Lin, *supra* note 1, p. 682.

¹³⁸ C. G. Gonzalez, S. Atapattu, “International Environmental Law, Environmental Justice, and the Global South”, *Transnational Law and Contemporary Probing*, 2017, Vol 26, available at: <https://doi.org/10.1017/CBO9781107295414> [last accessed 12.3.2022].

low the trend of climate change arguments being at the periphery, and therefore it can be observed that issues related to the climate are embedded in other and wider disputes on human and constitutional rights, environmental protection, and disaster management.¹³⁹

Another similar strategy observed in the cases arising from the Global South is the very creative strategy of outlining them and grouping them along with local political agendas. This style of operation focuses on developing the agenda of climate change through the local governments from the very bottom rather than the much-taken road of top-down approach. The Global South is slowly yet steadily catching up on this method of climate advocacy too.

In a sense, all five of these principles present a unique yet promising future for the Global South to further develop new approaches in dealing with the actual perpetrators of climate change.

IV. WHY IS THERE A NEED TO CHRONICLE AND DE-BUNK THE GLOBAL NORTH MYTH?

The popular narrative of scant initiatives taken by countries in the Global South needs to see a shift. Climate change litigation is not just a Global North phenomenon when there is a skewed matrix of viewing it in a certain way.¹⁴⁰ For Trans-national climate change litigation to gain traction, cases, legislation, and policy from the Global South have to be taken into consideration. Stating that climate change litigation in the Global South is outside the circles of “issue framing” does greater harm to an entire jurisdiction’s endeavour in tackling the issue of climate change.¹⁴¹

From the previous chapters, it can very well be observed that there is much work happening in the Global South. The way it is presented is unique and different as follows: viewing climate change from a rights-

¹³⁹ Setzer, Benjamin, *supra* note 113, p. 524.

¹⁴⁰ Setzer, Benjamin, *supra* note 113, p. 524.

¹⁴¹ L. Rajamani, “Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics”, *International and Comparative Law Quarterly*, 2016, p. 245, available at: doi:10.1017/S0020589316000130 [last accessed 13.3.2022].

based perspective, applying a bottom-up approach than the usual top-down approach in the aspect of climate policies,¹⁴² creatively interpreting climate change policies through other political agendas and peripherally looking at climate change through the lenses of right to life, right to a clean environment, disaster management, and the larger ambit of environmental protection.¹⁴³

The route of the Global South is not unforeseen at all. However, unlike the Global North, it is a path that has been firmly grounded in the concept of socio-economic rights through many years of litigation.¹⁴⁴ The tracks of this route took shape in the form of creative advocacy, class action litigation, research, wide-spread publications, and judicial activism through interpreting national constitutions to the cause of the environment. Some landmark cases are the way in which the Indian courts have dealt with the issue of hunger, the South African court's ruling on housing, and Latin American countries like Brazil, Colombia and others dealing with issues of health, education, work, and housing with a constitutional focus.¹⁴⁵

All this happening in the face of inequality socially, politically, and economically is worth noting rather than side-lining.¹⁴⁶ In fact, on the flip side, the world scholarly community should laud its efforts in expediting avenues of climate progress despite their vulnerability.¹⁴⁷ As mentioned in the previous paragraph, countries like India, Pakistan, the Philippines, and South Africa have also developed specific legal remedies in tackling violations of socio-economic rights. The writ of *kalikasan* which is frequently invoked in the Philippines to protect "the right of the people to a balanced and healthy ecology in accord with the rhythm and harmony of nature"¹⁴⁸ guaranteed by Section 16 of Article

¹⁴² Ibid., p. 246.

¹⁴³ Garavito, *supra* note 29, p. 24.

¹⁴⁴ Ibid.

¹⁴⁵ C. R. Garavito, "Empowered Participatory Jurisprudence: Experimentation, Deliberation and Norms in Socioeconomic Rights Adjudication", in Katharine Young (ed.), *The Future of Economic and Social Rights*, Cambridge University Press, 2019.

¹⁴⁶ Ibid.

¹⁴⁷ C. R. Garavito, "Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America", *Texas Law Review*, 2011, Vol 89, available at: <https://www.corteidh.or.cr/tablas/r27171.pdf> [last accessed 09.3.2022].

¹⁴⁸ Section 16 of Article II of the Philippines' Constitution.

II of the Philippines' Constitution is one such unique remedy. Climate cases have also been viewed in this light and this has had a major impact on the rights of indigenous people, with changes happening in pervasive climate policies and human rights discourse specifically making major corporate actors liable for their negative contributions to climate change.¹⁴⁹

In the Global South, there is also a great level of mutual co-operation of countries in dealing with climate-related issues. A classic example of this is a case in Indonesia which was about local community members filing against the setting up of a power plant fired by coal:¹⁵⁰ very interestingly the Indonesian Administrative court used the principles from its interactions of an environmental group in South Africa and their advocacy measures in dealing with similar issues.¹⁵¹

Another striking contribution from the Global South is the case of *Ashgar Leghari*¹⁵² in terms of fundamental rights. The law formulated in this case is more likely to be used by the courts in the Global South than one pronounced in the famous *Urgenda case*.¹⁵³ In a comparative approach, if one were to introspect, the court in *Leghari case*¹⁵⁴ formulated the government's inaction as a violation of the plaintiff's rights while in *Urgenda*,¹⁵⁵ the court struggled to frame the Dutch government's inaction in the same light. Leghari, thus lays out a precedent that bespeaks the realities and needs of the Global South. In future, there is every possibility that a court in the Global North will use this rubric in establishing fault on the part of a government in protecting its citizens against the ramifications of climate change.

For reasons mentioned in this paper, the chronicling of cases from the Global South becomes very essential to break the narrative of the Global Norths' glory in tackling the issue of climate change. The Global South is equally contributing to this field.

¹⁴⁹ D. R. Boyd, *The Environment Rights Regulation: A Global Study of Constitutions, Human Rights and the Environment*, UBC Press, 2012, p. 123.

¹⁵⁰ *Greenpeace Indonesia and Others v. Bali Provincial Governor*, Case No. 2/G/LH/2018/PTUN.DPS, Case not yet Decided.

¹⁵¹ Burt, *supra* note 12.

¹⁵² *Ashgar Leghari*, *supra* note 76.

¹⁵³ *State of the Netherlands*, *supra* note 8.

¹⁵⁴ *Ashgar Leghari*, *supra* note 76.

¹⁵⁵ *State of the Netherlands*, *supra* note 8.

CONCLUSION

“What is the use of a house if you haven’t got a tolerable planet to put it on?”¹⁵⁶

Henry David Thoreau

Climate change is an engulfing scenario, not only for one part of the world (the north or the south). It brings the whole of humanity together on one platform. The authors have tried to justify the role of the Global South and its contributions around the litigation that is happening in all of these jurisdictions all- across these jurisdictions. The article strongly argues for a need to recognise the contributions of the courts in the Global South and their boldness in standing up against stronger forces of power, politicians, and corporate structures. These efforts cannot go unchronicled simply for the reason of scholarly lack of attention. The future of trans-national will remain stunted if the same continues to happen.

In fact, the Global North should make use of the principles that have evolved from the courts in the Global South, as they are far-reaching in their ideas of mitigating the aspect of climate change. The making of these contributions by the Global South, with all its inequality socially, culturally, and politically, is telling. This should be recognised, given credit and chronicled, for the road of sustainable development in the area of climate justice cannot be achieved without the mutual co-operation of both sides.

How can the principles that came out of *Ashgar Leghari*¹⁵⁷ (accountability of the government); the *Carbon Majors*¹⁵⁸ (accountability on the part of giant corporations); *Luciano Lliuya*¹⁵⁹ (Global South litigant petitioning a court in Germany for their actions) be ignored? All these have contributed towards building a climate justice jurisprudence based on the Global South. This is happening despite the existence of lack of

¹⁵⁶ Henry David Thoreau, *Letters to Harrison*, available at: <https://monadnock.net/thoreau/blake-39.html> [last accessed 8.4.2022].

¹⁵⁷ *Ashgar Leghari*, *supra* note 76.

¹⁵⁸ *In re Green Peace Southeast Asia and others*, *supra* note 19.

¹⁵⁹ *Saul Luciano Lliuya*, *supra* note 4.

funds, lack of political consciousness, and in the face of the greatest human poverty at the greatest face of human poverty.

In conclusion, the authors want to stress the importance of creating a system of stronger governance and greater accountability for both hemispheres. Comparing the progress of developed to that of developing nations places the latter always behind. Instead, the global scholarly community should aim at studying the real polluters and advocating greater global responsibility. The way ahead lies in fostering mutual cooperation between the Global North and South.