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## CLIMATE JUSTICE IN INDIA: IS THE LAW PROTECTING THE VULNERABLE OR THE POWERFUL?

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### ABSTRACT

*Climate change increasingly exposes and intensifies existing socio-economic inequalities, raising critical questions about the role of law in addressing distributive justice. In the Indian context, environmental jurisprudence has evolved to recognise the right to a clean and healthy environment under Article 21, with recent judicial developments extending constitutional protection to include the right against the adverse effects of climate change. Despite this progressive recognition, significant gaps persist between legal principles and their implementation. The existing legal framework, including constitutional provisions, statutory mechanisms, and environmental governance tools such as the Environmental Impact Assessment (EIA) regime, reflects a formal commitment to environmental protection. However, regulatory practices often emphasise procedural compliance over substantive risk mitigation, limiting their effectiveness in addressing climate-related vulnerabilities. Empirical indicators, including air pollution, heat stress, and climate-induced displacement, demonstrate that the impacts of climate change are disproportionately borne by marginalised populations, particularly informal workers and residents of environmentally vulnerable settlements. Institutional constraints, including weak enforcement mechanisms, post-facto regulatory approaches, and fragmented governance structures, further undermine the equitable distribution of environmental protection. The persistence of these structural challenges highlights the limitations of a rights-based framework in the absence of enforceable standards and accountability mechanisms. Achieving climate justice requires a transition from reactive environmental governance to preventive, equity-oriented legal frameworks that prioritise vulnerability and ensure the effective realisation of constitutional protections.*

**Key Words:** - Climate Justice, Environmental Law, Constitutional Rights, Environmental Impact Assessment

## I. FRAMING CLIMATE JUSTICE IN INDIA

In India, climate change is no longer a distant environmental concern confined to scientific discourse or diplomatic negotiations—it is a lived, immediate, and deeply unequal reality. It determines who breathes toxic air and who escapes it, who labours under extreme heat and who retreats into insulated spaces, who is displaced by floods and who rebuilds elsewhere with relative security. Climate change, therefore, is not merely an ecological disruption; it is a question of justice. It compels us to confront a fundamental legal and moral inquiry: when environmental harms unfold, does the law protect those who suffer the most, or those who possess the capacity to shape, delay, or deflect accountability?

Over the past few decades, the Indian legal system has made significant strides in recognising environmental rights. Through an expansive interpretation of Article 21, the judiciary has embedded environmental protection within the right to life and dignity. However, a decisive doctrinal shift occurred in *M.K. Ranjitsinh v. Union of India*, where the Supreme Court explicitly recognised a *right to be free from the adverse effects of climate change*, grounding it in both Article 21 and the equality guarantee under Article 14.<sup>1</sup> This articulation marks a critical evolution—from environmental protection as a regulatory concern to climate protection as a constitutional entitlement.

The significance of *M.K. Ranjitsinh v. Union of India* lies in the Court's constitutionalisation of climate harm. While the case arose from biodiversity concerns, the Court *expanded Article 21* to include protection from climate impacts and linked it with *Article 14*, acknowledging unequal vulnerability. However, the judgment stops short of laying down enforceable standards, leaving climate rights normatively strong but institutionally underdeveloped. This gap between recognition and enforceability reflects a recurring limitation in Indian environmental jurisprudence.

The judgment also invites a deeper inquiry into the operationalisation of climate rights within the Indian legal framework. While the Court's recognition of climate harm as a constitutional concern represents a significant doctrinal advancement, it remains largely declaratory. The absence of clearly defined standards, enforceable obligations, or institutional mechanisms for implementation limits the immediate impact of such recognition. Unlike in certain comparative

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<sup>1</sup>*M.K. Ranjitsinh v. Union of India*, (2021) 1 SCC 598

jurisdictions, where courts have imposed concrete emission-reduction targets or mandated state accountability frameworks, the Indian approach continues to rely heavily on executive discretion.<sup>2</sup> This raises a critical question: can constitutional recognition alone translate into meaningful protection without corresponding enforcement structures? In practice, the gap between normative recognition and institutional capacity often results in rights that are formally acknowledged but substantively diluted. The trajectory of environmental jurisprudence in India has frequently reflected this pattern, where progressive principles coexist with inconsistent enforcement and limited accountability.<sup>3</sup> In this context, the recognition of climate rights, while symbolically powerful, risks remaining aspirational unless it is accompanied by concrete regulatory frameworks that translate constitutional guarantees into enforceable realities.

This limitation is particularly significant in the context of climate change, where the scale, urgency, and transboundary nature of the problem demand coordinated and enforceable responses. The absence of binding standards not only weakens accountability but also creates regulatory uncertainty, leaving environmental governance reactive rather than preventive. As a result, climate litigation in India risks reinforcing existing structural gaps unless it evolves beyond recognition toward enforceability, where rights are not merely articulated but actively protected through institutional design and legal obligation.

Nevertheless, the recognition of rights does not ensure their realisation. The central paradox of climate justice in India lies in the widening gap between legal promise and lived experience. This gap is not incidental; it is structured by entrenched inequalities that determine who is exposed to environmental harm and who is shielded from it.

## II. LAW, INEQUALITY, AND THE LIMITS OF ENVIRONMENTAL GOVERNANCE

The scale of this inequity is stark and measurable. Air pollution alone contributed to approximately 1.67 million deaths in India in 2019, disproportionately affecting lower-income populations with limited access to healthcare.<sup>4</sup> Extreme heat, intensified by climate change, has

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<sup>2</sup>J. Peel & H. Osofsky, *Climate Change Litigation*, Cambridge University Press, 2018.

<sup>3</sup>L. Rajamani, "Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability," *Journal of Environmental Law*, Vol. 19, No. 3, 2007, pp. 293–321.

<sup>4</sup>A. Pandey et al., "Health and Economic Impact of Air Pollution in the States of India: The Global Burden of Disease Study 2019," *The Lancet Planetary Health*, Vol. 5, No. 1, 2021, pp. e25–e38.

emerged as both a public health crisis and an economic shock. In 2023, India lost an estimated 181 billion potential labour hours due to heat exposure, resulting in economic losses of nearly US\$141 billion, primarily affecting informal and outdoor workers.<sup>5</sup> Meanwhile, climate-induced disasters continue to displace millions, with 5.4 million internal displacements recorded in 2024, largely driven by floods and extreme weather events.<sup>6</sup>

These figures reveal a deeper structural reality: *climate change amplifies pre-existing vulnerabilities*. In India, vulnerability is not randomly distributed—it is shaped by caste, class, gender, occupation, and geography. Informal settlements are often located in flood-prone or environmentally degraded areas. Marginalised communities are more likely to be engaged in climate-sensitive occupations such as agriculture and construction. Women, particularly in rural contexts, face disproportionate burdens due to water scarcity and livelihood disruptions. Climate justice, therefore, is fundamentally about the distribution of risk, resilience, and legal protection. This distribution is both spatial and social. In Indian cities, informal settlements are often located in flood-prone or environmentally degraded areas, exposing residents to recurring climate risks. Nevertheless, legal responses frequently frame these settlements as "*encroachments*," shifting focus from vulnerability to legality. Similarly, informal workers—who are directly exposed to heat and pollution—remain outside the reach of enforceable protections. Climate vulnerability, therefore, is not incidental; it is structurally embedded.

To evaluate whether Indian law addresses this imbalance, it is necessary to examine both its doctrinal foundations and its institutional performance. The Constitution, though silent on climate change in explicit terms, has been interpreted expansively by the judiciary. Article 21 guarantees *the right to life with dignity, which courts have consistently linked to environmental quality*. Article 14 provides a framework to challenge disproportionate impacts, particularly where environmental harm intersects with structural inequality. *The Directive Principles under Article 48A and the fundamental duties under Article 51A(g)* further reinforce the obligation of both the state and citizens to protect the environment.

Statutory frameworks reinforce this constitutional foundation. The *Environment (Protection) Act, 1986*, grants the central government broad powers to regulate environmental quality.<sup>7</sup> The *Air*

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<sup>5</sup> Lancet Countdown, *Health and Climate Change in India: 2024 Report*, 2024.

<sup>6</sup> Internal Displacement Monitoring Centre, *India Displacement Data*, 2024.

<sup>7</sup>The Environment (Protection) Act, 1986

*Act, 1981*, and *the Water Act, 1974*, establish regulatory mechanisms to control pollution<sup>89</sup>. The *National Green Tribunal Act, 2010*, creates a specialised adjudicatory forum designed to deliver efficient and expert environmental justice.<sup>10</sup>

Judicial interpretation has further strengthened this framework by incorporating environmental principles. In *Vellore Citizens Welfare Forum v. Union of India*, the Supreme Court recognised the precautionary principle and polluter pays principle as essential components of sustainable development.<sup>11</sup> The precautionary principle mandates anticipatory action in the face of environmental risk, while the polluter pays principle seeks to internalise environmental costs that are otherwise externalised onto society—often disproportionately onto vulnerable communities.

However, a robust legal framework does not necessarily translate into equitable outcomes. *The Environmental Impact Assessment (EIA) regime*—arguably the most critical preventive tool in India's environmental governance architecture—reveals this disconnect with particular clarity.

The EIA Notification, 2006, mandates prior environmental clearance, impact assessment, and public consultation before the approval of development projects.<sup>12</sup> In theory, this framework is designed to ensure that environmental and social risks are identified and mitigated before they cause harm. In practice, however, it has increasingly functioned as a procedural checkpoint rather than a substantive safeguard.

Public consultations, intended as a democratic mechanism for community participation, are often reduced to mere formalities. Hearings may be conducted in inaccessible formats, technical documents remain unintelligible to affected populations, and responses to community concerns are frequently superficial. More critically, environmental impact assessments often fail to adequately account for cumulative impacts and climate-related risks, such as flood vulnerability, heat stress, and long-term ecological degradation.

The limitations of the EIA framework also reflect a deeper structural issue—its orientation toward procedural compliance rather than substantive environmental protection. In several instances, project approvals have been granted despite significant ecological risks, with environmental clearances serving as mere administrative formalities rather than rigorous

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<sup>89</sup>The Air (Prevention and Control of Pollution) Act, 1981.

<sup>90</sup>The Water (Prevention and Control of Pollution) Act, 1974.

<sup>10</sup>The National Green Tribunal Act, 2010.

<sup>11</sup>*Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647

<sup>12</sup>Ministry of Environment and Forests, Notification on Environmental Impact Assessment, S.O. 1533(E), 14 September 2006

evaluation. This proceduralisation of environmental governance weakens the preventive intent of the EIA mechanism, allowing risk to be assessed narrowly rather than holistically. Furthermore, the lack of cumulative impact assessment and inadequate integration of climate considerations into project appraisal processes further undermines its effectiveness.<sup>13</sup> As a result, the EIA framework often operates as a legitimising tool for development rather than a regulatory safeguard, particularly in contexts where affected communities have limited access to information or participation.

The Draft EIA Notification, 2020, intensified these concerns by proposing provisions for post-facto environmental clearances, effectively allowing projects to seek approval after commencing operations. This proposal was widely criticised for undermining the preventive logic of environmental regulation. Judicial responses to such practices have reinforced this concern. The Supreme Court has repeatedly emphasised that ex post facto clearances are fundamentally inconsistent with environmental jurisprudence, as they convert regulatory compliance into a retrospective exercise rather than a preventive obligation.

This is where the central tension of climate justice becomes most visible. When regulatory frameworks prioritise procedural compliance over substantive risk assessment, they inadvertently favour actors with greater institutional and economic power. Projects proceed, risks are externalised, and the costs are borne by communities with limited capacity to resist or recover.

The consequences of this imbalance are most evident in environmental disasters. The *LG Polymers gas leak in Visakhapatnam in 2020*, which resulted in fatalities and widespread health impacts, exposed significant failures in regulatory oversight. The National Green Tribunal's suo motu intervention acknowledged the incident as a substantial environmental issue.<sup>14</sup> However, the case also underscored a recurring pattern: *environmental law often intervenes after harm has occurred, rather than preventing it.*

A similar pattern is visible in the governance of air pollution. Despite extensive legal frameworks and judicial interventions, Indian cities continue to experience hazardous air quality levels. Measures such as the *Graded Response Action Plan (GRAP)* are implemented during peak pollution periods, but these interventions remain reactive and episodic.<sup>15</sup> Structural

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<sup>13</sup>Rajamani, supra note 3.

<sup>14</sup>National Green Tribunal, *In Re: LG Polymers India Pvt. Ltd. Gas Leak, Visakhapatnam*, Original Application No. 73 of 2020, Order dated 08 May 2020.

<sup>15</sup>Commission for Air Quality Management, *Graded Response Action Plan (GRAP)*, 2023.

drivers—such as fossil fuel dependence, urban congestion, and industrial emissions—remain inadequately addressed. The result is a persistent cycle where pollution control measures are activated in crisis mode, while long-term structural reforms remain elusive.

Climate-induced heat presents an even more compelling case of regulatory inadequacy. While Heat Action Plans have been developed across several states, they lack enforceable legal status. For millions of informal workers, there are no binding protections governing exposure to extreme heat. The absence of enforceable standards—such as regulated working hours, access to cooling infrastructure, or income protection—translates into direct economic and health vulnerabilities.<sup>16</sup> In this context, the constitutional recognition of a right against climate harm risks remaining symbolic unless it is accompanied by enforceable obligations.

Displacement caused by floods and coastal erosion further illustrates the limitations of current legal responses. Climate change is intensifying extreme weather events, leading to recurrent displacement, particularly in urban and coastal regions. Government data indicates that approximately 33.6% of India's coastline is vulnerable to erosion, posing long-term risks to livelihoods and settlements.<sup>17</sup> Nevertheless, legal responses often prioritise immediate evacuation or removal of settlements—frequently labelled as "*encroachments*"—without ensuring adequate rehabilitation or livelihood security—such approaches risk transforming environmental protection into a mechanism of exclusion rather than justice.

At this stage, it becomes necessary to interrogate whether the limitations of climate justice in India stem from deficiencies in law or failures of governance. The failure is not merely institutional—it is structural, where enforcement deficits consistently privilege economic actors over vulnerable communities. Environmental governance often suffers from weak enforcement, fragmented authority, and limited accountability.<sup>18</sup> Compliance becomes negotiable, particularly where economic interests are significant. As a result, environmental harm is frequently addressed through post-facto penalties rather than preventive action, undermining the very principles of precaution and protection.

The judiciary has played a proactive role in expanding environmental rights and articulating principles of sustainable development. However, courts operate within institutional constraints

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<sup>16</sup>Lancet Countdown, *supra* note 5

<sup>17</sup>Press Information Bureau, Government of India, "Coastal Erosion," 2023

<sup>18</sup>Bundesverfassungsgericht, Order of the First Senate of 24 March 2021.

and depend on executive agencies for implementation. Without effective enforcement mechanisms, even the most progressive judicial pronouncements risk remaining aspirational. Comparative global developments reinforce this insight. Courts in jurisdictions such as Germany and the European Court of Human Rights have recognised climate change as a human rights issue, emphasising intergenerational equity and state responsibility. These cases highlight a broader shift toward rights-based climate litigation, while also underscoring the importance of institutional capacity and follow-through.<sup>19</sup>

### **III. FROM RECOGNITION TO REALISATION: THE FUTURE OF CLIMATE JUSTICE**

For India, the path forward lies not in creating entirely new legal frameworks but in strengthening the enforceability, accountability, and equity orientation of existing ones. Climate risk must be systematically integrated into environmental assessments, with explicit consideration of vulnerable populations. Public participation processes must be made genuinely inclusive, ensuring that affected communities are not merely heard, but meaningfully engaged. Regulatory agencies must have the capacity and autonomy to enforce compliance effectively. More fundamentally, the recognition of a constitutional right against climate harm must be translated into tangible, enforceable standards. This includes legally binding protections for workers exposed to extreme heat, integrating climate resilience into urban planning, and establishing safeguards to prevent displacement from further marginalisation. Climate justice requires a shift from reactive compensation to proactive prevention.

At a deeper level, it demands a transformation in legal imagination. It requires recognising that formal equality before the law is insufficient in a context where outcomes remain deeply unequal. It calls for a reorientation of environmental governance—from balancing development and conservation to ensuring that development itself does not exacerbate existing vulnerabilities. It challenges the legal system to move from managing environmental harm to actively preventing it.

The Indian legal system stands at a critical juncture. It has acknowledged the realities of climate change, articulated rights, and developed a body of jurisprudence that places environmental

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<sup>19</sup>European Court of Human Rights, *KlimaSeniorinnen v. Switzerland*, 2024.

protection within the ambit of fundamental rights. Nevertheless, the effectiveness of this framework ultimately depends on its ability to translate principles into practice.

As it stands, the Indian legal system does not fail due to the absence of law—it falters in the distribution of its protection. Progressive jurisprudence coexists with uneven enforcement, creating a system where those who generate environmental risk are often better equipped to navigate legal frameworks than those who bear its consequences.

*Climate change*, ultimately, is not just an environmental crisis—it is a test of constitutional morality. It asks whether the law can move beyond recognition to redistribution, beyond articulation to enforcement, and beyond neutrality to justice. Until the legal system prioritises vulnerability over visibility, it risks reinforcing the very inequalities it seeks to resolve.

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