



Research Consortium Archive

P(ISSN) : 3007-0031

E(ISSN) : 3007-004X

<https://rc-archive.com/index.php/Journal/about>



Climate Change Litigation: A Comparative Study of Legal Approaches in Pakistan, the United States, and the Netherlands

Muhammad Ahsan Iqbal Hashmi

Assistant Professor of Law, Bahauddin Zakariya University, Multan (Vehari Campus),

ahsanhashmi@bzu.edu.pk

Muhammad Faisal

Lecturer in Law, University of Okara, PhD Scholar, Anglia Ruskin University, Cambridge, United Kingdom. Muhhammad.faisal@uo.edu.pk

Ishfaq Ahmad

Ph.D. Scholar, Lecturer in Law, Bahauddin Zakariya University, Multan (Vehari Campus) Pakistan. Corresponding Author Email: ishfaq.ahmad_vcamp@bzu.edu.pk

Publisher : EDUCATION GENIUS SOLUTIONS

Review Type: Double Blind Peer Review

ABSTRACT

As the climate crisis continuing to reach new directions, the use of litigation as the purely reactive legal instrument has evolved to be a more proactive way of establishing climate governance and accountability. Climate justice around the world has become an important tool to hold States to their duty, tighten up the regulatory codes and exercise environmental rights. The success and nature of such litigation however, differs greatly regarding legal traditions, the strength of institutions and participation in society. The present paper provides a comparative analysis of climate change litigation in Pakistan, the United States, and the Netherlands, three of the jurisdictions with different legal cultures, levels of development and environmental priorities. Instead of looking into particular court cases, the paper evaluates regulatory environments, high-level legal mechanisms and philosophies that favor or obstruct climate-related litigation in both countries. In Pakistan, the courts have built an environmental litigation within the umbrella of constitutional rights, more specifically the right to life and dignity. The court in taking the activist approach to interpretation of the right to environmental protection as an extension of basic rights, has taken the activist approach through the concept of public interest litigation. Although there is no concrete climate law and scanty institutional framework in Pakistan, courts have demonstrated readiness to participate in climate governance by way of broad interpretation of the constitution. Conversely, the United States has a diffuse and regularly discordant setting of climate litigation. Environmental enforcement has been highly politicized attributed to regulatory fragmentation, tensions between the federal and states, and dynamism in the executive priorities. Even though new legal concepts have arrived on the scene litigation of an atmosphere trust and litigation of statutory challenges, procedural obstacles have placed constraints on systemic change, standing, justiciability, and separation of powers are all procedural barriers. The Netherlands presents an opposite picture of rights-based evidence-based climate litigation in a friendly civil law-system. NGO litigation, supported by a well-developed public trust code and the adoption of procedural rules in support of the same, has made Dutch courts core players in forcing governmental action in meeting the commitments on emission reductions. The Dutch legal environment is gestured of the more general cultural and institutional receptivity in judicial participation in climate policymaking. This comparative question provides insight into how the crucial role of legal frameworks is just a part of what makes the climate litigation effective or not; other forces, including the independence and presence of civil society, as well as the political will, have an immense impact on the effectiveness of climate litigation. The research helps to promote the increasing literature on transnational climate legislation by depicting the roles that legal frameworks play in defining the form

of climate justice. It asserts that despite being a contextual aspect, litigation can be employed as a transformative-ness tool- but only in the context of having powerful legal norms, institutional integrity, and societal legitimacy. Based on the experience of these three jurisdictions the paper suggests greater integration in climate governance, which focuses on constitutional rights, inter-institutional collaboration and increasing the role of the affected populations in the environmental-decision making.

Key Words: Climate litigation, climate justice, constitutional rights, environmental governance, public interest litigation, institutional frameworks, judicial activism

Introduction

The worsening impacts of global warming, i.e., sea-level rise, weather extremes, biodiversity loss, and forced migration, amongst the vulnerable communities, have escalated to form a crisis with a multi-dimensional cover, requiring immediate legal, political, and social action. Although mitigation and adaptation have a universal reference under the Paris Agreement, climate obligations are frequently enforced through national laws. In this scenario, climate change litigation has emerged as a popular vehicle to hold state and non-state actors accountable to the damage caused to the environment and to mobilize the supervision of the promises made regarding regulation and safeguarding human-based rights. Single cases that originally were considered an isolated problem in the legal field have now turned into world movements that aim to change climate governance by legal challenge.¹

Climate litigation is legal proceedings aimed to deal with the causes as well as outcomes of climatic transformation, either by making the governments responsible of inadequate response or by attacking corporate habits that have caused environmental contamination. Once traditionally rooted in environmental law and administrative law, current climate litigation is expanding to constitutional law, a tort law, international law and even into corporate practices. These activist judges have elicited different reactions in the various jurisdictions depending on their legal traditions, socio-political conditions, and institutional capabilities.² The present paper attempts a comparative analysis of climate litigation strategy in Pakistan, United States and the Netherlands. Every jurisdiction represents a different legal environment, within which climate change litigation is enacted: an underdeveloped constitutional democracy (Pakistan) with a high-activism judiciary and a weak regulatory environment; a federal system (United States) with perennial hostile jurisdictional lines and intensely political

¹ "Climate Change Litigation," accessed December 24, 2024, <https://www.cambridge.org/core/books/climate-change-litigation/DB1A948D69FE080EBFFB938EE2D58545>.

² "The Emergence of Climate Change Litigation in the Global South | Litigating Climate Change in the Global South | Oxford Academic," accessed December 24, 2024, <https://academic.oup.com/book/56370/chapter-abstract/448159942?redirectedFrom=fulltext>.

contestation; and a civil law system (Netherlands) where the rule of accountability to the environment is deeply rooted and an effective administrative machinery is in place. The legal backgrounds of these nations are drastically different, yet both of them are substantial examples of climate-related legal action development all across the world.

Notably, this research does not make substantial efforts of giving a specific analysis of the basis of court cases. Rather, it addresses structural legal factors, which include constitutional clauses, statutory regimes and regulatory frameworks, and judicial philosophy that currently dictate the future viability and success of climate litigation in each particular country. The approach can be used to better discern how all of the legal systems impact the achievement or failure to achieve environmental justice, rather than only looking at the outcome of particular lawsuits.

In Pakistan, life has been interpreted very broadly to protect the environment so that courts can take action even where there is no comprehensive law. However, the long-term effects of judicial decisions are restricted by poorly limited implementation, executive will and enforcement measures.³ In America despite an emergence of many innovative legal approaches and tactics, it is noticeable that they succeed or fail based on the ability to negotiate a legal landscape that is rather rough and based on legal questions involving standing and federalism and the doctrines of political questions. On the other hand, the Netherlands is an example of how the procedural openness, civil society and the governmental accountability can enable courts to assume a more active role in the attainment of climate goals.

The importance of climate litigation cannot be limited to judicial decisions; it is also the symbolic and normative strength to alter the discourse in the minds of citizens as well as the policies that governments make, and the assertion of environmental rights. This paper seeks to explain the circumstances under which litigation may be an agent of transformation at the junction of climate governance by making comparisons between three jurisdictions. It aims to add to the growing body of literature on transnational environmental law by providing possible ways of interpreting the use of litigation in the different legal and institutional settings.

The paper is designed in the following way: In the second section, the theoretical framework and the methodological approach are described. The three laws in sections 3, 4 and 5 evaluate the legal environment of Pakistan, the United States and the Netherlands respectively. In Section 6, a comparative synthesis with shared ideas, differences, and lessons is brought forward.

³ Muhammad Saad Saleem et al., "Investigating Judicial Activism in Pakistan: Analyzing Significant Precedents in the Promotion of Environmental Sustainability," *Journal of Religious and Social Studies* 3, no. 02 Jul-Dec (2023): 1–19.

Section 7 is summed up by main findings and policy recommendations of empowering litigation in the global climate governance.

Conceptual Framework and Methodology

Although the subject of climate change litigation has a deeply embedded legal doctrine, it is also impossible to interpret without broader conceptions that not only aid in understanding interactions between law, society and the environment, but also contribute to the degree of sophistication in climate change litigation. In this section, the theoretical background against which the comparative study of this paper is conducted is outlined and the methodological assumptions under which the study is being conducted are clarified.

Theoretical Foundations

The analysis is based upon three major conceptual frameworks: rights-based environmentalism, regulatory environmental governance, and climate constitutionalism. Collectively, they can offer a multidimensional perspective through which the enabling conditions and structural impediments to climate litigation in Pakistan, the United States and the Netherlands can be assessed.

Rights-based environmentalism is the perception in which environmental conservation is seen as a continuation of elementary human rights. It addresses access to a healthy and clean environment as part of the right to life, health, dignity and equality. This view has become popular in countries where the activist judiciary interprets the wording of the constitution in a broader sense, as is the case in Pakistan.⁴ It highlights judicial degrees of environmental damage as a means to strive to protect human health and intergenerational fairness.

The regulatory environmental governance on the other hand accords environmental litigation within the context of administrative law and statutory adherence. This structure is common in the federal systems such as in the United States where the climate governance takes place through a web of laws, branches and doctrines of procedures.⁵ With this model, regulatory inaction and rollback is likely to produce litigation as a check to such action, with a heightened focus on legislative demands and administrative and enforcement mechanisms.

Climate constitutionalism is a fresh yet growing framework, which emphasizes the incorporation of climate accountabilities in the constitution writings and interpretations. It focuses on discussions of the operationalization of the state responsibilities to reduce climate change in light of the constitutional principles, including the public trust doctrine, the sustainable development

⁴ "How Climate Change Jurisprudence Alters Human Rights from Within: Between Distributive Justice and Human Rights Concerns by Doreen Lustig, Ilil Gabison :: SSRN," accessed December 24, 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4570187.

⁵ Donald T. Hornstein, "Complexity Theory, Adaptation, and Administrative Law," *Duke LJ* 54 (2004): 913.

and climate justice.⁶ This notion manifests mainly in European courts such as Netherlands where constitutional principles inform the reasoning process of courts when addressing the issue of climate disagreement.

The frameworks are not mutually exclusive, instead, they usually overlap. The degree of their interaction with the legal systems differs and determines the face, the reach, and the effects of the climate litigation.

Methodology

The comparative legal paradigm is used in this study, and the focus is on the framework of the doctrinal and contextual analysis. The comparative study of law is apt to comprehend the unanimity of various regional systems of law in coping with a universal global issue with differing institutional forms along with values and ethics.⁷ The purpose is neither to assess which system is better in terms of normally understanding it, but to interpret how the conditions of laws, cultural perceptions, and institutional capabilities build climate litigation practically.

The doctrinal element comprises the review of applicable constitutional law, statutory law, administrative law and judicial arguments that constitute the core of what would constitute legal proceedings against climate change in every nation. This is complemented by the contextual analysis, which uses extra-legal dimensions, including political will, civil society participation, media discourses and the participation of non-state actors. These are also key factors in explaining the chances of litigation succeeding in one jurisdiction but failing in another, even though the law of the two jurisdictions has many aspects in common on paper.

The examples of primary sources are legal documents, government policy, regulatory documents, and higher court decisions (without getting into the details of the law). Secondary sources include peer-reviewed scholarly literature, legal commentaries, and policy analysis and reports of environmental organizations. This mix is made up of both legal exactitude and socio-political astuteness.

The choice of the case studies was carried out due to the representational diversity in Pakistan, the United States, and the Netherlands. Pakistan has a Global South view, and the level of vulnerability to climate and the institutional infrastructure is low. The United States is an example of a Global North federal democracy whose climate governance is fragmented, but has litigation occurring in different jurisdictions. A case of the

⁶ "Climate Litigation in the Global South: Constraints and Innovations | Transnational Environmental Law | Cambridge Core," accessed December 24, 2024, <https://www.cambridge.org/core/journals/transnational-environmental-law/article/abs/climate-litigation-in-the-global-south-constraints-and-innovations/C2FE951D203AC61414E72C9244125258>.

⁷ Mathias Siems and Po Jen Yap, *The Cambridge Handbook of Comparative Law* (Cambridge University Press, 2024).

progressive environmental jurisprudence can be realized in the Netherlands as one of the civil law jurisdictions focused on relatively powerful administrative and constitutional safeguards.⁸

Last, the methodological decision not to provide micro-level analysis of particular cases is not accidental. Although such landmark cases, as *Leghari v. Federation of Pakistan*, *Juliana v. United States*, and the *Urgenda* decision are equally powerful, this paper however looks at the structural conditions that enabled or limited such cases. It is a macro level strategy that provides some generalizable lessons to other jurisdictions that are aiming to empower climate litigation as an instrument of governance.

Pakistan's Legal Landscape for Climate Litigation

It is one of the most flood prone and drought prone and melting of glaciers and heat waves prone countries since Pakistan is one among them.⁹ However, the state despite the precarity in the environment, in the past had a poor legislative and institutional response to climate governance. In this regard, the Pakistani judicial system has surpassed as a surprising yet important player in determining the national adaptation to climate change issues, primarily, through the implementation of a broader sense of constitutional rights. In this section, it examines the legal and institutional contexts within which climate change litigation in Pakistan operate, and the constitutional grounds, regulatory tools, institutional factors and the increasing role of the public interest litigation.

Constitutional Foundations and Judicial Activism

The Constitution of Pakistan does not talk specifically about the environment or climate change. Nevertheless, the judiciary has read a number of basic rights namely Article 9 (right to live), Article 14 (right to dignity) amongst others to involve environmental protection.¹⁰ Under these provisions the judiciary has taken the stand that degradation of the environment challenges not just ecosystems but also life and dignity of the human being in general and therefore is against constitutional guarantees. It is in this basis of rights that the courts have issued extensive commandments in environmental issues even where there is no express climate law.

The most important part of this evolution was PIL (public interest litigation). By Article 184(3) of the Constitution, the Supreme Court can hear cases pertaining to fundamental rights even without being bound by the doctrines of the traditional standing. There is similarly something in the writ jurisdiction in Article 199 and 201 of the Lahore High Court and the Islamabad High Court to take notice of climate damages and in particular of

⁸ "(PDF) Courts and the Environment: An Introduction," accessed December 24, 2024, https://www.academia.edu/64980897/Courts_and_the_Environment_An_Introduction.

⁹ "Ministry of Climate Change and Environmental Coordination," accessed December 24, 2024, <https://www.mocc.gov.pk/>.

¹⁰ Adnan Adam et al., "An Analysis of Environmental Crisis under Environmental Constitutionalism in Pakistan," *Islamabad Law Review* 6, no. 2 (2022): 2.

failing policy that has flagrantly failed to address the damage.¹¹ This has given the public, civil society and environmental legal practitioners a special avenue to instigated judicial interferences which otherwise would be thwarted by procedural technicality.

Yet the same judicial exuberance regularly acts in a legal vacuum. Inadequate legislative system and feeble administrative enforcement leave gaps in policy and regulatory framework, which the courts resolve, and this begs the question as to whether judicial activism in environmental protection can be sustained in the long-term and whether the practice is democratic.

Legislative and Policy Framework

There are various efforts made by Pakistan in the institutionalization of climate governance through legal instruments. The most prominent one is the Pakistan Climate Change Act 2017 that formed the Pakistan Climate Change Council along with the Pakistan Climate Change Authority.¹² The Act ensures the formulation of national adaptation/mitigation policies and strategies, as well as, the establishment of the coordination of the activities of the federal and provincial governments.

Although promising, there has been a slow pace in the implementation of this Act. The Climate Change Authority is still quite dysfunctional and the inter-provincial coordination is still affected by jurisdictional fragmentation and bureaucracy. In addition, the Environmental Protection Acts in Pakistan (federal and provincial) are centered on managing pollution and carrying out an impact assessment and industrial regulation with minimal instrumentalities to deal with the larger problem of climate change.

The National Climate Change Policy (NCCP) that was initially promulgated in 2012 but updated in 2021 describes adaptation and mitigation priorities within the most challenging sectors (agriculture, water, energy, and disaster risk reduction). But the policy is not legally binding, and the level of its integration into the provincial development planning leaves much to be desired. The latter means that political intervention through litigation can be used as the ultimate weapon of enforcing governmental observation of its climate promises.

Institutional and Administrative Constraints

The existence of poor institutional capacity is weakening the effectiveness of climate litigation in Pakistan. Most environmental tribunals that are supposed to deliver court decisions on matters being heard concerning the environment are faced with inadequate resources, technical capacity, and ambiguous jurisdictional

¹¹ "Pakistan's Experience with Formal Law: An Alien Justice | Request PDF," accessed December 24, 2024, https://www.researchgate.net/publication/288710897_Pakistan's_experience_with_formal_law_An_alien_justice.

¹² "Pakistan Climate Change Act, 2017 - Climate Change Laws of the World," accessed December 24, 2024, https://climate-laws.org/document/pakistan-climate-change-act-2017_3453.

issues.¹³ Several major positions are still unoccupied and there is inconsistency in enforcing of tribunal orders.

Also, political uncertainty, various agendas of governance, and inter-agency shortage hamper any significant progress on the climate front. Environmental departments are marginalized in the budget-policy procedures, and provincial governments continue to allocate a low priority on climate change in spite of its inordinate effects on local communities.

This is a very unstable political environment in which litigation is used as a reactionary process instead of a policy-based tool. Courts become a response to the abrupt failure of climate action plan implementation or lack of adaptation strategies, although they cannot affect real change due to the lack of enforcement power. In absence of complementary legislative, executive and administrative reform, there is the danger of judicial pronouncement being a declaration and not a transformation. Religious civil society and legal mobilization.

Civil Society and Legal Mobilization

Such factors as the rising influence of the civil society organizations, legal advocates, and affected communities should also not be overlooked as further facilitating climate litigation in Pakistan. Research literature (appealed by LEAD Pakistan and Pakistan Environmental Law Association as environmental NGOs) has helped in the creation of awareness and legal capacity to support climate-related advocacy.¹⁴

In addition, the academic institutions and the media are somewhat increasingly working up the debate on the human right to the environment however the scholarly work so far is descriptive rather than analytical. Nevertheless, the existence of a socially and environmentally conscious civil society increases the level of legitimacy and possible influence on the litigation.

This tendency is an indication of wider transition toward multi-stakeholder paradigm of environmental governance, courts are regarded as policy actors not merely adjudicating stressing the role of courts as policy reform drivers and engagement agents.

Climate Litigation Dynamics in the United States

America has emerged as one of the most dynamic yet disjointed climate change litigation field in the whole world. In distinction to most Global South nations where the courts fill in institutional indifference, in the United States the climate cases exist in a web of federalism, administrative procedure, corporate responsibility, and constitutional limits. This section looks at the regulatory, judicial and institutional environment under which the U.S. climate litigation occurs and explains its potential as well as its shortcomings.

¹³ Muhammad Aslam Khan, "Problems and Prospects of Urban Environmental Management in Pakistan," *The Pakistan Development Review*, JSTOR, 1996, 507–23.

¹⁴ Jen C. Dyer et al., "Partnership Models for Climate Compatible Development: Experiences from Zambia," *Resources* 2, no. 1 (2013): 1–25.

Federalism and Regulatory Complexity

The influence of the federalist organization of the American legal structure is strong to the point that it allocates the duties regarding climate between the state and federal governments. The patchwork results in disparity, where states with strident climate measures, like California or New York, are fighting over state climate regulation, and opposing those that seek to counter the federal directive on the environment and reverse their policies.¹⁵

The Environmental Protection Agency (EPA) is the core federal agency responsible in governing climate matters under the clean Air Act has the authorizing power to control green house gas emissions. But the success of it has been extremely subject to the political persuasion of the executive branch. The Republican administrations have attempted reduced powers of the EPA mainly whereas the Democratic administrations have allowed it to go on and it spread its wings. It has caused high cost in environmental regulation as the conduct of the policy is often politicized and therefore, the rules tend to change with every new party in power.

Along with acting as a mechanism to enforce the law, litigation also serves as a tool against the backsliding or the non-enactment of regulation. States and at times even municipalities sue the federal government or a corporation over deregulatory policies or obligation-enforcing statutes.

Doctrinal Barriers: Standing and Justiciability

Nevertheless, U.S. climate-related litigation has undergone a number of procedural challenges despite the long historical experience of environmental litigation. One of the most important is the doctrine of standing, according to which the plaintiffs must establish that they have suffered a concrete and specific injury that is closely traceable to actions of defendant and that is probably to be remedied with the help of a positive court outcome.¹⁶

This has been particularly difficult in the environment litigation, whose harmful are diffuse, global, and prospective. Judges have often thrown out climate liability suits because plaintiffs have been too speculative or broad-based in their claims of injury. Also, the political question doctrine, the doctrine that some issues are not suitable to decide by judiciary, has been employed in attempt to declare that climate policy is a subject of legislative and executive branches and not the judiciary.

These principles operate as formidable obstructions of structure, usually by disincentivizing meaningful decision-making of climate cases. They further support the notion that courts ought to leave political processes undisturbed even in circumstances

¹⁵ "Statehouse and Greenhouse | Brookings," accessed December 24, 2024, <https://www.brookings.edu/books/statehouse-and-greenhouse/>.

¹⁶ "(PDF) Stand or Deliver: Citizen Suits, Standing, and Environmental Protection," ResearchGate, accessed December 24, 2024, https://www.researchgate.net/publication/254585608_Stand_or_Deliver_Citizen_Suits_Standing_and_Environmental_Protection.

where they do not provide sufficient responses on climate problems.

Role of Subnational and Non-State Actors

The partiality at the national levels has seen the emergence of subnational jurisdictions, specifically states and municipalities, that have taken an active role in climate claims. Such states as Massachusetts, Washington and California have dragged the federal agencies into lawsuits in a bid to enforce environmental regulations or protect and maintain standards of emission or test the fossil fuel infrastructure.¹⁷ These initiatives help illustrate the way that states have been able to work as check-balls to federal paralysis or repeal. In addition, NGOs, and other individuals in the private sector, have been on the fore-sheet of launching litigation. Strategic suits have been undertaken by organizations like the Natural Resources Defense Council (NRDC), Our Children's Trust, etc., that focused on the inaction of the government and misinformation by the corporations. Such actors position climate change as both environmental and intergenerational justice-related problem and plead to the higher public principles than to legalistic ones.

Another way of pursuing the legal innovation is the use of the tort law, especially, the tort claims about the nuisance that is brought against large companies that produce fossil fuel. The cases, even though they have not succeeded as of yet to hold individual companies responsible of causing the global emissions, they can have a valuable normative role in terms of establishing global harm to the climate by defining as a legal wrong to which legal remedies are due.¹⁸

Market-Based Instruments and Corporate Governance

A new aspect of United States climate litigation is corporate divulges and fiduciary duty. Increasingly as environment-related financial risk is recognized, shareholders have posed questions of companies over non-disclosure of environmental liabilities or greenwashing. Securities law and corporate governance are where these cases can be commonly put that introduces a new level of climate accountability.

Besides, the emergence of carbon markets, renewable energy credits, and climate risk assessment measures brings out both risks and opportunities to litigation. Authorities like Securities and Exchange Commission (SEC) have added more inquiring eyes into climate-related reports made by companies, and this potentially sets up legal conflicts regarding misrepresentation or non-conformance.

Such market-based instruments represent not only the transition away from conventional environmental-law governance to a financialized climate regime but also the emergence of

¹⁷ "Climate Change Litigation by Jacqueline Peel, Hari M. Osofsky :: SSRN," accessed December 24, 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3711276.

¹⁸ "Douglas.Kysar.What Climate Change Can Do about Tort Law," n.d.

litigation as a result not only of harm but also as a result of informational asymmetry and governance failures.¹⁹

Litigation as a Governance Strategy

Climate litigation however, as a governance tool has not been in vain as much as the losses maybe in the U.S. It can put pressure on the society, compel the regulating bodies to act and keep the issues of climate in the political realm. In fact, even cases dismissed on procedural grounds can tend to affect the public debate, inform the media discussion, and give legislative or executive efforts impetus.

In that regard, litigation is used not only as an instrument of enforcement but also as legal mobilization. It enables the stakeholders, citizens, states or NGOs, to stake claims and dispute policies as well as offer alternative proposals to climate responsibilities. This expression and iconic aspect are of especial importance in a partialized political climate where legal triumphs are not always frequent consequently but normative opportunity is much.

The Netherlands - A Model of Transformative Climate Litigation?

The Netherlands is one of the countries that has been in the spotlight of the world due to its progressive and rights-oriented strategy of climate litigation. In the context of the global development of the environment law there exist a particular jurisprudence that was developed by the Dutch courts and whose sources are the civil law legacy, combined with constitutional and international duty. Though the paper does not deconstruct individual verdicts, it examines the legal, institutional, and socio-political characteristics that encompassed Dutch climate lawsuits to change into a common instrument of state responsibility.

Legal and Constitutional Context

The constitution of the Netherlands does not expressly provide a right to a healthy environment. However, courts have deduced environmental responsibility to more general provisions, including the protection of life and welfare, the rule of law and engagement to international environmental agreements.²⁰ The Dutch system of law is highly open to environmental claims owing to the characteristics of its civil law system whereby collective legal proceedings are legally admissible and rules regulating the standing of proceedings are not harsh.

The Netherlands also ratified key international treaties, including the European Convention on Human Rights (ECHR) and the Aarhus Convention, both of which have influenced domestic courts to recognize environmental harm as a human rights issue.²¹

¹⁹ "(PDF) The Law of the Corporation as Environmental Law," accessed December 24, 2024, https://www.researchgate.net/publication/332030821_The_Law_of_the_Corporation_as_Environmental_Law.

²⁰ Christina Eckes, "Constitutionalising Climate Mitigation Norms in Europe," *Constitutionalism and Transnational Governance Failures*, Brill–Nijhoff, Leiden, 2024, 107–44.

²¹ "European Environment Agency's Home Page," accessed December 24, 2024, <https://www.eea.europa.eu/en>.

This internationalization of domestic legal reasoning creates space for courts to reference transnational norms when evaluating climate policy.

Role of Civil Society and Strategic Litigation

The most characteristic aspect of climate litigation in the Netherlands is the fact that the civil society organizations, particularly, environmental NGOs, take a key position in initiating strategic lawsuits. These forces prop up their positions by formulating sound legal appeals and the abundance of scientific material to motivate courts to acknowledge the responsibility of states in climate management.²²

A powerful element of Dutch legal culture is that it is characterized by a strong sense of citizen action and that it is highly transparent that makes the rights-based litigation thrive in a fertile environment. Climate justice campaigns have gained wide popularity in society and this fact increases the validity of judicial policymaking.

Further, we have instruments of legality that are open to NGOs. As per the Dutch Civil Code, interest groups are allowed to claim damages in the name of the general welfare or of the injured person and thus the litigation can be preventive as well as structural in approach.²³ This is because of the procedural prowess of Dutch law, especially by acknowledging collective harms and the precautionary principle, thus allowing courts to act in advance, instead of allowing the situation of environmental deterioration to occur.

Administrative Law and Judicial Review

Judicial review and judicial fairness are also methods of dealing with climate litigation in the Dutch administrative law. Courts have the authority to examining the government conduct and comparing it to the law standards and government policy. Although the rule of restraint by the Dutch courts in political issues is historically common, the constitutional doctrine on the rule of law allows the courts to intervene in cases where lack of action by the state is a breach of either the statutory or international obligations.

The availability of binding carbon reduction commitments under the European Union (EU) directives, including, most recently, the EU Climate Law (Regulation (EU) 2021/1119) offers a solid legal ground in the domestic judicial arena to challenge the national implementation plans.²⁴ These are enforceable and judiciable thus when courts feel that something needs to be corrected, they are within their mandate to put them to action.

Moreover, the Netherlands is a country of monist system, which

²² Otto Spijkers, "The Influence of Climate Litigation on Managing Climate Change Risks: The Pioneering Work of the Netherlands Courts," *Utrecht Law Review* 18, no. 2 (2022).

²³ Xandra Kramer, "Public Interest Litigation at the Intersection of Public Law and Private Enforcement," *Netherlands International Law Review*, Springer, 2024, 1–12.

²⁴ "Regulation - 2021/1119 - EN - EUR-Lex," accessed December 24, 2024, <https://eur-lex.europa.eu/eli/reg/2021/1119/oj/eng>.

implies that international treaties, as well as EU law are applied in the country in a direct manner unlike in other countries where they must have their own laws in order to be applicable. It enables claimants to pursue European climate duties in the national court jurisdiction, de facto fortifying the legal basis of ambitious climate litigation.

Political Climate and Institutional Maturity

Another key enabler is institutional maturity of the Dutch governance. The state has traditionally expressed its readiness to follow the will of the court even when it directs it to make significant policy adjustments. The observance of the rule of law and transparency in administration by the government makes the judicial verdicts enforceable in climatical issues.²⁵

In contrast to other jurisdictions where the courts opinions on the issues of environment are usually disregarded or even postponed, in the Netherlands the buildings of authorities are more likely to be met with some form of administrative responses to incorporate court actions in the current policy regimes. This will create an atmosphere of respect towards each other by the judiciary and the executive which is paramount to a significant climate governance practice.

Nevertheless, new political trends indicate that even in the Netherlands, the issue of climate litigation is affected by new tail winds. According to the increasing strength of climate-sceptic political formation, there has been increased opposition to the judicially imposed emissions reductions mirroring the wider international economic and environmental contradictions.²⁶ Still, legal institutions are remaining strong points that guarantee stability and continuity amidst such challenges.

Normative and Global Influence

The case of the Dutch proves the possibility of courts acting as a co-governor to resolve environmental issues on the global level. Although litigation is not a panacea to the climate crisis, it has the potential of developing accountability, advancing on environmental rights, and enshrining climate concerns in the law.

The Dutch climate litigation draws normative effects far beyond the Dutch border. A number of other jurisdictions, such as Germany, Colombia, and South Korea have resorted to the Dutch design in developing their own domestic climate-related states

²⁵ "The Role of the Judiciary in Environmental Governance in the Netherlands by Jonathan Verschuuren :: SSRN," accessed December 24, 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1291263.

²⁶ "(PDF) Toward Legitimate Governance Strategies for Climate Adaptation in the Netherlands: Combining Insights from a Legal, Planning, and Network Perspective," accessed December 24, 2024, https://www.researchgate.net/publication/257480805_Toward_legitimate_governance_strategies_for_climate_adaptation_in_the_Netherlands_Combining_insights_from_a_legal_planning_and_network_perspective.

responsibility jurisprudence.²⁷ The inter-country transferability of the Dutch litigation proves the fact that strategic litigation enhanced by the institutional credibility and social acceptability are capable of turning the hypothetical climate commitments into legal obligations.

Comparative Analysis: Divergent Paths, Shared Imperatives

With the increased crisis of global climate change, states are becoming more and more answerable to their statements regarding the environment. However, the means and efficacy of the same accountability vary considerably in jurisdiction. Comparative review of climate lawsuits in Pakistan, the United States and the Netherlands unveil glaring differences in each of the jurisdictions regarding their legal frameworks, institutional reactivity, and civic mobilization, but converges on the same normative objectives.

Legal Culture and Doctrinal Foundations

The legality behind the possible legal framework to accommodate the prospective climate litigation is quite different among the three countries. The most enabling environment is found in the Netherlands, which is based on a civil law implementing a collective action model and focusing on the transparency of the administration. The Dutch courts adhere to the law of their country and international documents on human rights when making a judgment on climate requirements. This kind of legal pluralism allows broad reasoning by the judiciary yet does not carry beyond institutional limits²⁸

In comparison, Pakistani system of common law highly depends on the constitutional principles especially, the interpretation of Article 9 (right to life) and Article 14 (dignity of man) of the Constitution of Pakistan, 1973. Sometimes judicial activism has been seen by the Pakistani courts whereby environmental degradation has been defined as the infringement of basic rights. Still the implementation is not strong at all because of the bureaucratic inertia and enforcement capacity being low.²⁹ Federal organization presents complexity in the United States.

Although the common law doctrines endorse claims on the tort basis including the popular claim of a nuisance in the town, application and indeed success is restrained by the doctrines of standing and political question. The U.S. environmental law is highly fragmented and thus the litigation would not be in a coordinated manner as its jurisdiction is divided between the

²⁷ "Transnational Climate Litigation: The Contribution of the Global South," *ResearchGate*, n.d., <https://doi.org/10.1017/ajil.2019.48>.

²⁸ Christina Eckes, "Constitutionalising Climate Mitigation Norms in Europe," *Constitutionalism and Transnational Governance Failures*, Brill–Nijhoff, Leiden, 2024, 107–44.

²⁹ Aroosa A. Aadil, "Climate Justice in Pakistan: Bridging Human Rights and Environmental Governance," SSRN Scholarly Paper no. 5250325 (Social Science Research Network, April 5, 2024), <https://doi.org/10.2139/ssrn.5250325>.

federal system and the state system.³⁰ Moreover, judicial innovation has been limited by the politicization of environmental regulation that is growing.

Role of Judiciary: Activist vs. Restrained Approaches

In Pakistan and the Netherlands, courts have been willing to adopt a more proactive or activist stance, albeit through different mechanisms. In Pakistan, judges often frame climate protection as a moral and legal imperative, invoking Islamic principles, international law, and constitutional obligations.³¹ However, this activism often lacks the institutional backing needed for sustained impact.

In contrast, the Dutch judiciary employs a procedurally cautious yet substantively transformative approach. Courts use administrative law tools to enforce emissions targets without appearing to make policy. Their legitimacy is enhanced by public trust, strong institutional frameworks, and compliance by the executive branch.³²

Meanwhile, U.S. courts are generally more judicially restrained, particularly at the federal level. The Supreme Court's decision to curtail the Environmental Protection Agency's (EPA) authority underlines a doctrinal reluctance to allow courts to assume quasi-legislative roles.³³ Some state courts remain more receptive, but their decisions lack national reach.

Civil Society and Public Engagement

Civil society has been pivotal in mobilizing legal action in all three jurisdictions, though with differing degrees of success. In the Netherlands, NGOs have established themselves as expert litigators, supported by robust public opinion and legal mechanisms that allow collective actions. Their litigation is strategic, well-funded, and often grounded in scientific consensus.³⁴

In Pakistan, environmental NGOs face institutional barriers, including opaque bureaucracies and weak regulatory frameworks. However, they have found some success by aligning their claims with Islamic environmental ethics and framing climate change as a

³⁰ Akoh Atadoga et al., "A Comparative Review of Data Encryption Methods in the USA and Europe," *Computer Science & IT Research Journal* 5, no. 2 (2024): 447–60.

³¹ Annalisa Savaresi and Joana Setzer, "Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers," *Journal of Human Rights and the Environment* 13, no. 1 (2022): 7–34.

³² "Environmental, Social and Governance Criteria in the Netherlands: Interaction Between Government and the Courts | SpringerLink," accessed December 24, 2024, https://link.springer.com/chapter/10.1007/978-3-031-36457-0_12.

³³ "Climate Change and the Death of the Administrative State?: West Virginia v. Environmental Protection Agency Notes 32 *Journal of Law and Policy* 2024," accessed December 24, 2024, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jlawp32&div=8&id=&page=>.

³⁴ "The State of the Netherlands v Urgenda Foundation: Distilling Best Practice and Lessons Learnt for Future Rights-based Climate Litigation - Wewerinke-Singh - 2021 - Review of European, Comparative & International Environmental Law - Wiley Online Library," accessed December 24, 2024, <https://onlinelibrary.wiley.com/doi/full/10.1111/reel.12388>.

development and justice issue.³⁵

In the United States, NGOs have long histories of climate litigation but are increasingly stymied by judicial doctrines and regulatory rollback. Litigation tends to be defensive, reacting to policy reversals rather than driving proactive climate action. That said, youth-led movements such as *Our Children's Trust* illustrate a resurgence of strategic litigation aimed at building moral and legal momentum.

Enforcement and Compliance

The capacity of states to enforce court rulings is perhaps the most significant variable in determining the efficacy of climate litigation. The Dutch model excels in this regard: judicial decisions are enforced swiftly, often with minimal political resistance. This is due in part to a strong rule-of-law culture and institutional mechanisms that link judicial outcomes to administrative processes.³⁶

Pakistan, on the other hand, suffers from chronic implementation failures. Environmental tribunals lack resources, and executive agencies are often uncooperative or under political pressure. As a result, even landmark decisions fade into bureaucratic inertia.³⁷

The U.S. presents a unique case where enforcement is often more a matter of political will than institutional incapacity. Even when courts issue pro-climate judgments, changes in federal administration can lead to rapid policy reversals. The administrative state plays a decisive role, and its direction depends heavily on electoral outcomes.

Global Influence and Norm Diffusion

The Netherlands has emerged as a normative leader, with its climate litigation influencing global jurisprudence. Courts in Colombia, South Korea, and Germany have cited Dutch principles when developing their own environmental rulings.³⁸ This internationalization of climate law underscores the soft-power role of judicial innovation.

Pakistan's litigation has attracted attention within South Asia and Islamic legal circles, especially for its integration of religious and human rights discourse. However, its global influence remains limited by weak enforcement and inconsistent jurisprudence.

The U.S., despite its ambivalent domestic stance, continues to serve

³⁵ Fakhra Shahid, "Climate Change: Impacts on Pakistan and Proposed Solutions," *Pakistan Social Sciences Review* 5, no. II (2021): 223–35, [https://doi.org/10.35484/pssr.2021\(5-ii\)18](https://doi.org/10.35484/pssr.2021(5-ii)18).

³⁶ "Public Interest Litigation at the Intersection of Public Law and Private Enforcement | Netherlands International Law Review," accessed December 24, 2024, <https://link.springer.com/article/10.1007/s40802-025-00275-x>.

³⁷ "Pakistan Environmental Protection Agency," accessed December 24, 2024, <https://environment.gov.pk/>.

³⁸ Jill Bähring, *Chapter 26: Transnational Litigation Networks: Agents of Change in the Global Constitutional Order* (2023), <https://www.elgaronline.com/edcollchap/book/9781802200263/book-part-9781802200263-35.xml>.

as a source of legal precedents and academic influence, especially through law school-led initiatives and transnational climate law networks. Its litigation strategies are often emulated, even if their success is mixed.

Conclusion and Policy Implications

The environment of climate change litigation has now become very vibrant and has changed the perspective of who can be responsible in front of the government, corporations and individuals in regard to their efforts on the climate crisis. This comparative analysis of Pakistan, the United States, and the Netherlands demonstrates that although legal frameworks vary to an extra-ordinary extent, each of these three jurisdictions is becoming more accustomed to courts intervening where the political/regulatory environment fails.

The experience of the Dutch example to a considerable extent underlines the potential of successful strategic litigation, its foundation based on the right-based arguments, that eventuate in significant climate action when it is facilitated by a robust institutional environment. By contrast, the U.S. legal system, which is less procedurally harmonious and coherent, nonetheless remains the venue of innovative legal argument, especially at the state level, even despite substantial obstacles at the federal level. Meantime, the constitutional jurisprudence of Pakistan also shows the readiness of courts to read environmental rights widely, despite the fact that the still limited institutional capacity and enforcement frameworks have yet to be translated into reality.

Among the major findings is the fact that, though important, courts are not alternatives to a whole-climate governance. Criminal success should not be divorced of political commitment, government action, and civic activism. The most effective way to litigate is to make its use a part of the combination of law reform, public advocacy, and international collaboration. The judgment of the court can create a crucial precedent, but the follow-up by the executive and law won body will have to be complimentary to the fulfillment of climate judgment.

Moreover, nowadays the formation of international climate law proceeds. There is also a growing reliance of courts in different countries to landmark decisions in another country that may be a pointer to a new normativity that is not nation-specific. The spread of legal tools, doctrines and laws beyond national borders suggests an emerging awareness that climate change is an international justice issue and an intergenerational justice issue. Environmental law and human rights are meeting at domestic courts that are slowly becoming a place of transnational legal dialogue.

Based on this analysis, policy recommendations that can be made include the enhancement of the judicial capacity in environmental law, the creation of special environmental courts, encouraging the access to justice in vulnerable groups, and any harmonization of the domestic laws with international climate commitments. The development of the civic climate literacy and

the creation of a mutual understanding of a higher level of cooperation between legal institutions, academia, and civil society are also crucial.

Finally, the climate litigation will remain an essential instrument against the destruction of nature. It would require courts to be alert, innovative and daring enough in the application of rule of law as a response to environmental degradation. Simultaneously, the governments should react positively to the judicial rulings, and sustainable development should become its lawful and ethical responsibility. The role of law, as a system of accountability, protection of rights, and establishment of institutional authority cannot be overemphasized as the climate crisis increases.

Reference

- Aadil, Aroosa A. "Climate Justice in Pakistan: Bridging Human Rights and Environmental Governance." SSRN Scholarly Paper No. 5250325. Social Science Research Network, April 5, 2024. <https://doi.org/10.2139/ssrn.5250325>.
- Adam, Adnan, Sohaib Mukhtar, and Amara Amir. "An Analysis of Environmental Crisis under Environmental Constitutionalism in Pakistan." *Islamabad Law Review* 6, no. 2 (2022): 2.
- Atadoga, Akoh, Oluwatoyin Ajoke Farayola, Benjamin Samson Ayinla, Olukunle Oladipupo Amoo, Temitayo Oluwaseun Abrahams, and Femi Osasona. "A Comparative Review of Data Encryption Methods in the USA and Europe." *Computer Science & IT Research Journal* 5, no. 2 (2024): 447-60.
- Bähring, Jill. *Chapter 26: Transnational Litigation Networks: Agents of Change in the Global Constitutional Order*. 2023. <https://www.elgaronline.com/edcollchap/book/9781802200263/book-part-9781802200263-35.xml>.
- "Climate Change and the Death of the Administrative State?: West Virginia v. Environmental Protection Agency Notes 32 Journal of Law and Policy 2024." Accessed December 24, 2024. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jlawp32&div=8&id=&page=>.
- "Climate Change Litigation." Accessed December 24, 2024. <https://www.cambridge.org/core/books/climate-change-litigation/DB1A948D69FE080EBFFB938EE2D58545>.
- "Climate Change Litigation by Jacqueline Peel, Hari M. Osofsky :: SSRN." Accessed December 24, 2024. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3711276.
- "Climate Litigation in the Global South: Constraints and Innovations | Transnational Environmental Law | Cambridge Core." Accessed December 24, 2024. <https://www.cambridge.org/core/journals/transnational-environmental-law/article/abs/climate-litigation-in-the-global-south-constraints-and-innovations/C2FE951D203AC61414E72C9244125258>.
- Dyer, Jen C., Julia Leventon, Lindsay C. Stringer, et al. "Partnership

- Models for Climate Compatible Development: Experiences from Zambia." *Resources* 2, no. 1 (2013): 1-25.
- Eckes, Christina. "Constitutionalising Climate Mitigation Norms in Europe." *Constitutionalism and Transnational Governance Failures*, Brill-Nijhoff, Leiden, 2024, 107-44.
- Eckes, Christina. "Constitutionalising Climate Mitigation Norms in Europe." *Constitutionalism and Transnational Governance Failures*, Brill-Nijhoff, Leiden, 2024, 107-44.
- "Environmental, Social and Governance Criteria in the Netherlands: Interaction Between Government and the Courts | SpringerLink." Accessed December 24, 2024. https://link.springer.com/chapter/10.1007/978-3-031-36457-0_12.
- "European Environment Agency's Home Page." Accessed December 24, 2024. <https://www.eea.europa.eu/en>.
- Hornstein, Donald T. "Complexity Theory, Adaptation, and Administrative Law." *Duke LJ* 54 (2004): 913.
- "How Climate Change Jurisprudence Alters Human Rights from Within: Between Distributive Justice and Human Rights Concerns by Doreen Lustig, Ilil Gabison:: SSRN." Accessed December 24, 2024. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4570187.
- Khan, Muhammad Aslam. "Problems and Prospects of Urban Environmental Management in Pakistan." *The Pakistan Development Review*, JSTOR, 1996, 507-23.
- Kramer, Xandra. "Public Interest Litigation at the Intersection of Public Law and Private Enforcement." *Netherlands International Law Review*, Springer, 2024, 1-12.
- "Ministry of Climate Change and Environmental Coordination." Accessed December 24, 2024. <https://www.mocc.gov.pk/>.
- "Pakistan Climate Change Act, 2017 - Climate Change Laws of the World." Accessed December 24, 2024. https://climate-laws.org/document/pakistan-climate-change-act-2017_3453.
- "Pakistan Environmental Protection Agency." Accessed December 24, 2024. <https://environment.gov.pk/>.
- "Pakistan's Experience with Formal Law: An Alien Justice | Request PDF." Accessed December 24, 2024. https://www.researchgate.net/publication/288710897_Pakistan's_experience_with_formal_law_An_alien_justice.
- "(PDF) Courts and the Environment: An Introduction." Accessed December 24, 2024. https://www.academia.edu/64980897/Courts_and_the_Environment_An_Introduction.
- "(PDF) The Law of the Corporation as Environmental Law." Accessed December 24, 2024. https://www.researchgate.net/publication/332030821_The_Law_of_the_Corporation_as_Environmental_Law.
- "(PDF) Toward Legitimate Governance Strategies for Climate Adaptation in the Netherlands: Combining Insights from a Legal,

- Planning, and Network Perspective.” Accessed December 24, 2024.
https://www.researchgate.net/publication/257480805_Toward_legitimate_governance_strategies_for_climate_adaptation_in_the_Netherlands_Combining_insights_from_a_legal_planning_and_network_perspective.
- “Public Interest Litigation at the Intersection of Public Law and Private Enforcement | Netherlands International Law Review.” Accessed December 24, 2024.
<https://link.springer.com/article/10.1007/s40802-025-00275-x>.
- “Regulation - 2021/1119 - EN - EUR-Lex.” Accessed December 24, 2024. <https://eur-lex.europa.eu/eli/reg/2021/1119/oj/eng>.
- ResearchGate. “(PDF) Stand or Deliver: Citizen Suits, Standing, and Environmental Protection.” Accessed December 24, 2024.
https://www.researchgate.net/publication/254585608_Stand_or_Deliver_Citizen_Suits_Standing_and_Environmental_Protection.
- Saleem, Muhammad Saad, Aqsa Tasgheer, and Tehreem Fatima. “Investigating Judicial Activism in Pakistan: Analyzing Significant Precedents in the Promotion of Environmental Sustainability.” *Journal of Religious and Social Studies* 3, no. 02 Jul-Dec (2023): 1-19.
- Savaresi, Annalisa, and Joana Setzer. “Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers.” *Journal of Human Rights and the Environment* 13, no. 1 (2022): 7-34.
- Shahid, Fakhra. “Climate Change: Impacts on Pakistan and Proposed Solutions.” *Pakistan Social Sciences Review* 5, no. II (2021): 223-35. [https://doi.org/10.35484/pssr.2021\(5-ii\)18](https://doi.org/10.35484/pssr.2021(5-ii)18).
- Siems, Mathias, and Po Jen Yap. *The Cambridge Handbook of Comparative Law*. Cambridge University Press, 2024.
- Spijkers, Otto. “The Influence of Climate Litigation on Managing Climate Change Risks: The Pioneering Work of the Netherlands Courts.” *Utrecht Law Review* 18, no. 2 (2022).
- “Statehouse and Greenhouse | Brookings.” Accessed December 24, 2024. <https://www.brookings.edu/books/statehouse-and-greenhouse/>.
- “The Emergence of Climate Change Litigation in the Global South | Litigating Climate Change in the Global South | Oxford Academic.” Accessed December 24, 2024.
<https://academic.oup.com/book/56370/chapter-abstract/448159942?redirectedFrom=fulltext>.
- “The Role of the Judiciary in Environmental Governance in the Netherlands by Jonathan Verschuuren:: SSRN.” Accessed December 24, 2024.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1291263.
- “The State of the Netherlands v Urgenda Foundation: Distilling Best Practice and Lessons Learnt for Future Rights-based Climate Litigation - Wewerinke-Singh - 2021 - Review of European, Comparative & International Environmental Law - Wiley Online

Library." Accessed December 24, 2024.
<https://onlinelibrary.wiley.com/doi/full/10.1111/reel.12388>.
"Transnational Climate Litigation: The Contribution of the Global
South." *ResearchGate*, n.d. <https://doi.org/10.1017/ajil.2019.48>.