

International Journal Research Publication Analysis

Page: 01-18

GREEN CONSTITUTIONALISM: COMPARATIVE STUDY OF ENVIRONMENT RIGHTS IN INDIA GERMANY AND SOUTH AFRICA

***Chahat Chawla**

Student LL.M. (Master of Laws), Amity Institute of Advance Legal Studies, Amity University, Noida, Uttar Pradesh, India.

Article Received: 14 August 2026

***Corresponding Author: Chahat Chawla**

Article Revised: 04 September 2026

Student LL.M. (Master of Laws), Amity Institute of Advance Legal Studies, Amity

Published on: 24 September 2026

University, Noida, Uttar Pradesh, India.

DOI: <https://doi-doi.org/101555/ijrpa.8471>

ABSTRACT

Environmental protections in the U. S. Constitution have shifted from placing protections at the edge of public law to deciding when the scope of constitutional protections of personal freedom is constrained. This Article analyses green constitutionalism in India, Germany, and South Africa. It analyses how environmental and climate rights are recognized, implemented, and framed within institutions. The methodology is iterative and uses constitutional text, leading cases, recent climate cases, and relevant institutions. The analysis identifies three distinct, yet converging, models. In India, an implied right to the environment was recognized and expanded through Articles 14 and 21, supported by Article 48A and Article 51A(g), and the right against the impacts of climate change was recently recognized. Germany uses Article 20a as an objective constitutional commitment and combines it with fundamental rights and a contemporary personal freedom doctrine that limits shifting the burden of emission reduction to future generations. South Africa provides an environmental right in Section 24. It integrates the right to/protection of the environment and health, as well as the protection of future generations. The form of textual protection of the right to the environment is important, but is not the only factor that defines environmental outcomes. Judicial innovation, preventive regulation, and institutional capacity are also important. The strongest lesson for India is to combine judicial innovations with a clearer legislative framework for climate protection without compromising constitutional rule.

KEYWORDS: Green constitutionalism; Environmental rights; Climate litigation; Intergenerational justice; Comparative constitutional law.

1.1 INTRODUCTION

Testing the constraints of constitutional law does not end with the evolving relationship between public power and the existing interests of human beings. Emerging ecological conditions define life, health, and even equality and democracy. Along with this, property rights and the right to culture need to be redefined. Environmental rights and obligations express concern for the protection of the environment. Constitutions try to capture these changes by incorporating environmental rights and directives that impose obligations. Some constitutions rely on judges to determine the right to environmental protection from existing guarantees. The core concerns include the standards of filing a lawsuit and the remedies, as well as the environmental protection administration and the time period over which constitutional protection applies.¹

There are several approaches to this concern. The first is whether environmental rights are incorporated in constitutions. The key concern of this research is more complex. It is about how, through constitutional procedures, the enforcement of environmental commitments is translated to rights and duties within a legal context. Constitutional environmental comparative studies are appropriate for this concern. India, Germany, and South Africa are some of the countries that have unique rights or obligations to the environment. The South African Constitution outlines environmental rights. India has managerial rights and duties. Germany has a managerial right and a right to a balanced environment. These three examples can be used to assess the rights, responsibilities, prevention, participation, and the responsibility of future generations.²

The author argues that successful implementation of green constitutionalism is a result of the combination of text, rights reasoning, preventive administration, and judicially manageable remedies rather than one specific type of constitutional framework. A similar approach regarding international constitutionalism suggests that we should not treat the inclusion of environmental clauses as a guarantee of transformation. India has a developed rights-based jurisprudence; however, the dependency on litigation means that there are significant gaps and inadequacies in India's climate governance and implementation. Germany has an advanced account of intertemporal freedom, and South Africa shows an example of a right to sustainable development and a procedurally fair system. When combined with Germany and

¹ David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* 115 (UBC Press, Vancouver, 1st edn., 2012).

² James R. May and Erin Daly, *Global Environmental Constitutionalism* 55 (Cambridge University Press, Cambridge, 1st edn., 2014).

South Africa as examples, the other countries discussed provide a strong case for a more structured and proactive climate system for India.³

1.2 CONSTITUTIONAL FOUNDATIONS AND THE INDIAN RIGHTS-BASED MODEL

Understanding India's model requires the analysis of more than just Article 21. Its particular form of green constitutionalism arose from the merging of constitutional duties, international environmental standards, public interest litigation and judicial expansion of the right to life. This has resulted in a rights based system of constitutionalism that, in its ambitious doctrinal reach, outstrips its effective implementation.⁴

1.2.1 Constitutional Ecology and the Right to Life

Green constitutionalism considers ecological integrity a prerequisite for authentic constitutional rights. Constitutional reasoning is difficult to separate from scientific reasoning on this matter, and the Intergovernmental Panel on Climate Change finds human activities cause global warming beyond a reasonable doubt. Furthermore, every degree of warming amplifies countless threats.⁵ There are also prevention, precaution, sustainable development, and intergenerational equity of international environmental law. Sands and his colleagues note that these principles define obligations before potential harm is caused, and this is especially important in relation to environmental harm caused by irreversible injury and scientific uncertainty.⁶

Environmental constitutionalism is consistent with international norms and public law of a state. As noted in the Oxford Handbook of International Environmental Law, contemporary international environmental law is more interdisciplinary than self-contained.⁷ In India, the law and order judiciary have adopted sustainable development and the precautionary principle. Article 48A and 51A(g) of the Constitution direct the state to safeguard the environment and wildlife and mandate all citizens to safeguard the environment, respectively.⁸ Neither of these Articles grants a right that is fundamental in a court of law.

³ Louis J. Kotzé, "Arguing Global Environmental Constitutionalism", 1 *Transnational Environmental Law* 199 (2012).

⁴ Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India: Cases and Materials* 46 (Oxford University Press, Oxford, 3rd edn., 2022).

⁵ Intergovernmental Panel on Climate Change, "Climate Change 2023: Synthesis Report" (2023).

⁶ Philippe Sands, Jacqueline Peel, et.al., *Principles of International Environmental Law* 197 (Cambridge University Press, Cambridge, 4th edn., 2018).

⁷ Lavanya Rajamani and Jacqueline Peel (eds.), *The Oxford Handbook of International Environmental Law* 249 (Oxford University Press, Oxford, 2nd edn., 2021).

⁸ The Constitution of India, arts. 48A, 51A(g).

The central doctrinal move was to juxtapose environmental commitments with Part III of the Constitution. As Divan and Rosencranz explain, the transformation of public interest environmental litigation meant that once framed, the pollutions, forests, and development debates became issues of life, dignity, and accountable governance.⁹ As a result, Article 21 gained substantive environmental content and Articles 48A and 51A(g) provided constitutional framework. Bhullar further says that India's environmental duties create a special kind of responsibility that transcends the State.¹⁰ This results in neither an explicit environmental right nor an entirely visionary goal of the State. It is a concurrent framework in which non-justiciable terms influence the interpretation of enforceable rights and give the courts the ability to verify the administration of the environment without amending the Constitution to include new fundamental rights.

1.2.2 Judicial Construction of Environmental Principles

The right to life's formative stages are attributed to *Subhash Kumar v. State of Bihar and Others*¹¹, where the Supreme Court said that the right to life means the right to have water and air that are not polluted. Although the court did not grant the relief because the court thought the litigation was for a private interest, the Court's decision has been influential. The importance of the case is less about the creation of an environmental law and more about the translation of pollution into a constitutional injury. This extension of Article 21 and the framing of an injury has made the administration of the environment and the failure to regulate the basic requirements of a dignified life a matter within the Jurisdiction of the Courts.

The Court also created tools to help resolve development/ecological protection conflicts. In *Vellore Citizens' Welfare Forum v. Union of India and Others*¹², the Court identified the precautionary principle, the polluter pays principle, and sustainable development as fundamental principles of Indian environmental law. This was a shift from reactive liability to proactive governance. The precautionary principle requires decision-makers to address genuine environmental problems in the absence of definitive scientific information, and the polluter pays principle requires the polluter to pay for the damage caused. In the context of sustainable development, the precautionary principle does not favor development. It integrates the precautionary principle into the decision-making process.

⁹ Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India: Cases and Materials* 46 (Oxford University Press, Oxford, 3rd edn., 2022).

¹⁰ Lovleen Bhullar, "Environmental Constitutionalism and Duties of Individuals in India", 34 *Journal of Environmental Law* 399 (2022).

¹¹ (1991) 1 SCC 598.

¹² (1996) 5 SCC 647.

Related issues include the status of common natural resources under the constitution. In *M. C. Mehta v. Kamal Nath and Others*¹³, the Court applied the public trust doctrine to prohibit the private appropriation of a river environment and held that the State is a trustee of the resources for the public. The public trust doctrine is better compared to the rest, but it must be restricted. Courts should not interpret the public trust doctrine as an open-ended invitation to substitute their views for the administration. It is primarily concerned with the legality and justification of the State's actions.

1.2.3 Climate Rights and Preventive Regulation

The most significant recent development is *M. K. Ranjitsinh and Others v. Union of India*¹⁴, in which the Indian Supreme Court recognised the right to be free from the harm caused by climate change in relation to Articles 14 and 21. The harm caused by climate change impacts health, life, and the inequality of poor and vulnerable groups, as these communities have added barriers in the ability to adapt. The decision adds a new dimension to Indian climate constitutionalism as it is now of a distributive nature. It also goes beyond the conventional cases in environmental law as the effects of climate change are diffuse and sustained in both space and time. How a broad right will be transformed into workable standards along various dimensions of mitigation, adaptation, biodiversity, and the energy transition is the challenge. The growth of climate litigation across the world demonstrates the need for the strategic application of legal principles. The UNEP report of 2025 stated that there were 3,099 climate related lawsuits filed in 55 countries at the national level and 24 international and regional forums by the end of June 2025. While litigation can create the need for regulatory actions, it cannot substitute for the legislative actions. The climate right that is still in the nascent stage in India has to be a floor within the Constitution. It requires rationality, equality, prevention, and reasons, and requires the legislative response, including the adoption of [continuous] binding deadlines, [response] designations, and [review] check[s] with the aim of managing the complexity of balance and inequality.¹⁵

Recent decisions in environmental law again show doctrinal volatility. In *Confederation of Real Estate Developers of India v. Vanashakti and Another*¹⁶, a majority of the review bench referred to the May 2025 judgment and rejected an absolute stand on the ex post facto environmental clearance, while a dissenting viewpoint supported the strong precautionary

¹³ (1997) 1 SCC 388.

¹⁴ 2024 SCC OnLine SC 570.

¹⁵ United Nations Environment Programme, "Global Climate Litigation Report: 2025 Status Review: Climate Change in the Courtroom: Trends, Impacts and Emerging Lessons" (2025).

¹⁶ 2025 INSC 1326.

principle. This case is important because green constitutionalism needs legal certainty for when the preventive assessment becomes compulsory. Sometimes, regularization avoids large economic disruption, but if it becomes a common practice, the environmental impact assessment loses its ex ante function. Constitutional jurisprudence must distinguish extraordinary remedial regularization from common practice permissiveness.

This preventive emphasis was further strengthened in *Harbinder Singh Sekhon and Others v. State of Punjab and Others*¹⁷. In February 2026, the Supreme Court held that the siting precautionary measures for a cement grinding unit must be instituted in an ex ante manner and based on objective and verifiable criteria, and legal relaxation of the protection of sensitive receptors must be invalidated. This judgment is of significant importance and goes beyond the boundaries of industrial zoning. Prevention is a legal discipline that decides the timing and the quality of evidence of regulatory decisions. In the context of constitutional law, environmental protection is less about ex post facto harm compensation and more about ex ante compliance by the authorities before the imposition of risk on vulnerable residents, schools, and other sensitive institutions.

1.3 COMPARATIVE CONSTITUTIONAL MODELS IN GERMANY AND SOUTH AFRICA

Germany and South Africa demonstrate that constitutional environmental protection does not mirror India's Article 21 jurisprudence. Germany integrates ecological state objectives with fundamental rights. South Africa places elements of environmental quality, future generations, and sustainable development in the Constitution. The uniqueness of their approaches demonstrates the deep connection between the wording of fundamental rights, justiciability, and institutional responsibility.¹⁸

1.3.1 Germany: State Objective and Intertemporal Freedom

Article 20a of the Basic Law requires the Federal Republic of Germany to protect the natural foundations of life and animals through legislation and lawful executive and judicial action. The State is obligated to do so with respect to future generations. Article 20a is not an autonomous individual environmental right. Public power is bound to ecological objectives in the formulation of laws and the adjudication of rights. This system avoids the generation of a

¹⁷ 2026 INSC 159.

¹⁸ James R. May and Erin Daly, *Global Environmental Constitutionalism* 128 (Cambridge University Press, Cambridge, 1st edn., 2014).

right to the environment in every case. However, the courts are obligated to define the limits of the State objective in the context of policies chosen through democratic means.¹⁹

The German Federal Constitutional Court addressed this concern in the case of *Climate Change*²⁰, in its order of 24 March 2021, concerning the Federal Climate Change Act. The Court held that Article 20a imposes a justiciable climate obligation and constructed fundamental rights across time. Considering a fixed carbon budget, current emissions will require more significant future restrictions. Thus, de facto ambiguous emissions beyond 2030 will be shouldered by future generations. This argument does not provide a constitutional answer to a chosen climate policy. Rather, it answers legislative choices to mitigate climate change in ways that provide significant future options and sufficient guidance for the transition to climate neutrality.

Minnerop indicates the main advance of the decision is to introduce an 'interference-like' or 'prior-legislation' effect. In this context, current legislation can restrict future choices if it affects the ecological space for future choice. The effect of the constitutional solution represents an improvement from the previously mentioned rhetorical position. While the argument is relevant to India, care must be taken in transplanting the reasoning to the Indian situation, because, oftentimes in Indian constitutional arguments, India has limited carbon budgets and a legislative goal to achieve neutrality.²¹

Winter asserts that the decision extends fundamental rights by connecting present-day emissions to future emissions restrictions. This framework establishes a form of temporal accountability without recognizing future persons as traditional rights-holders. It also sets parameters for judicial review: rather than fix emissions limits, courts review the legislature's determination of fairness in the transitions. In India, this model has the potential to stimulate interest in burden shifting, but cannot be reduced to a formula. Intergenerational review remains dependent on scientific integrity, budgetary transparency, and legal benchmarks that establish the future constraint.²²

This model also shows the procedural constraints of constitutional litigation, shown through Order of the First Chamber of the First Senate of 12 February 2025, 1 BvR 2047/23.²³ The

¹⁹ Basic Law for the Federal Republic of Germany, art. 20a.

²⁰ BVerfGE 157, 30.

²¹ Petra Minnerop, "The 'Advance Interference-Like Effect' of Climate Targets: Fundamental Rights, Intergenerational Equity and the German Federal Constitutional Court", 34 *Journal of Environmental Law* 135 (2022).

²² Gerd Winter, "The Intergenerational Effect of Fundamental Rights: A Contribution of the German Federal Constitutional Court to Climate Protection", 34 *Journal of Environmental Law* 209 (2022).

²³ 1 BvR 2047/23, ECLI:DE:BVerfG:2025:rk20250212.1bvr204723.

Federal Constitutional Court in Germany denied admissibility to a complaint against the 2023 Federal Government's Climate Protection Programme on the grounds that the requirements for admissibility, particularly the exhaustion of applicable remedies, had not been met. While this decision demonstrates Framutsal theory, this decision actually shows that substantive constitutional commitments operate within the usual constraints of the procedure. This is important for comparative purposes because green constitutionalism necessitates the availability of enforceable standards as well as stable rules about the organisation of the institutions.

1.3.2 South Africa: An Express Environmental Right

According to Section 24 of the Constitution of the Republic of South Africa, 1996, every person has the right to an environment that is not harmful to their well-being, and the right to be protected against pollution and ecological degradation and to be provided with sustainable environmental protection for the present and future generations through reasonable legislative and other measures. Those measures must ensure the prevention of pollution and degradation in an environmentally sustainable way and promote the conservation of ecological systems while creating an environment for socio-economic development. Therefore, South Africa's environmental right is found in the Bill of Rights whereas in India, it is not. Unlike Germany, South Africa's Constitution merges the protection of the individual, future generations and the prevention of depletion of resources and the promotion of sustainable use in one binding clause.²⁴

In their important judgment in *Fuel Retailers Association of Southern Africa v. Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others*²⁵, the Constitutional Court also recognized this integration. They rejected a definition of development whereby the environment is an afterthought and considered only once the economic decisions have been made. Sustainable development requires an integrated assessment of ecological, social, and economic factors, and it is a great strength of Section 24 that it places environmental concerns next to development in the same constitutional concern. This does not eliminate trade-offs, but it requires justification in a legal context rather than a formal administrative review.

Climate change was more directly incorporated in the environmental authorisation for *Earthlife Africa Johannesburg v. Minister of Environmental Affairs & Others*²⁶. The High

²⁴ Constitution of the Republic of South Africa, 1996, s. 24.

²⁵ [2007] ZACC 13.

²⁶ [2017] ZAGPPHC 58.

Court ruled that climate change impacts of a proposed coal fired power plant must be evaluated and addressed within the environmental decision-making process. This case shows that an environmental right is able to be operationalized in the absence of an abstract declaration of a constitutional right. This is especially critical in India, where the major climate change impacts happen as the result of project approvals. Addressing climate change impacts at the authorization stage helps link constitutional promises with the project's evidence, reasons and opportunities for challenge.

The operational aspect was strengthened in *Minister of Environmental Affairs v. The Trustees for the Time Being of Groundwork Trust & Others*²⁷. The Supreme Court of Appeal (2025) confirmed that the air pollution of the Highveld Priority Area was a breach of the right to an adequate environment, and that it warranted a response. This pollution case provides a positive examples of Section 24. In such cases, the state may have to implement its law to ensure that pollution is mitigated instead of the state being obligated to refrain from polluting activities. This also contrasts with most environmental rights systems, where the courts protect environmental interests, but are reluctant to define the limits of the state's administration and enforcement activities from which the government has a duty to perform.

Procedural environmental justice has its place in decision-making for fossil fuel projects as well. In *Green Connection NPC and Another v. Minister of Forestry, Fisheries and the Environment and Others*²⁸, the Western Cape High Court, South Africa, quashed a grant for offshore exploration in August 2025 due to failures with respect to socio-economic impacts, climate change, transboundary impacts and public participation. This judgment is important for not treating participation as an empty or ceremonial right to lodge a complaint. An informed record needs to address the burdens that a community is expected to bear. Along these lines, India also has a convenient route to strengthen environmental rights without making/asking the courts to make hard decisions and formulate primary policy.

1.3.3 Convergence Without Constitutional Uniformity

The three distinct systems (South Africa, India, and Germany) converge on protection while employing different constitutional techniques to enact protection. Climate litigation has continued to grow in the international realm as litigants join the dots between the injuries caused by climate change and the right to life, to health and to procedure. India, like South Africa, employs judicial discretion, while Germany uses the State's objective of reworking the temporal scope of the freedom to accomplish a conceptual shift. Each of the three systems

²⁷ [2025] ZASCA 43.

²⁸ [2025] ZAWCHC 349.

lacks superiority. The critical question is whether the three models produce the reasons which can avoid or prevent the functioning of environmental justice systems.²⁹

Weis advises that environmental constitutionalism should be assessed based on its ability to change rather than if it has aspirational constitutional language. This is especially important in a comparative study. A given right may exist in environmental law, but be poorly enforced, while an unwritten right may have a strong right through the practice of judges. Likewise, aggressive adjudication can lead to a series of orders that do little to effectuate meaningful change. Comparative study, therefore, must consider at least four factors: the constitutional status of the right, the judicial review standard, the level of procedural access, and the capacity for implementation. Green constitutionalism is strongest when these factors line up to empower courts to act, rather than leaving courts to address institutional weaknesses of the regulatory system.³⁰

1.4 COMPARATIVE EVALUATION AND LESSONS FOR INDIA

Comparison shows this central constitutional decision is not about judicial activism vs. legislative supremacy. The better question is how the law defines responsibility across institutions, across time and across communities. India can best learn foreign doctrine by focusing on prevention, intergenerational accountability, and administrative implementation rather than duplicating foreign text.³¹

1.4.1 Text, Justiciability and Institutional Design

India's implied-right model can evolve to deal with the latest ecological problems without having to go through the amendment process. Flexibility allowed pollution, public trust, and climate damage problems to be considered under the rights paradigm. The model's greatest difficulty is its indeterminacy: a broad environmental or climate right does not itself resolve what the emission paths might be, what the standards for adaptation will be, what project gates may be, or what priority of remediation will be. Germany resolves some of the indeterminacy through climate legislation whereas South Africa provides a rights clause and

²⁹ Jacqueline Peel and Hari M. Osofsky, "A Rights Turn in Climate Change Litigation?", 7 *Transnational Environmental Law* 37 (2018).

³⁰ Lael K. Weis, "Environmental Constitutionalism: Aspiration or Transformation?", 16 *International Journal of Constitutional Law* 836 (2018).

³¹ Louis J. Kotzé, "Arguing Global Environmental Constitutionalism", 1 *Transnational Environmental Law* 199 (2012).

detailed legislation. This means India needs stronger legislation to implement constitutional principle, rather than vice versa.³²

Table 1 illustrates principal constitutional distinctions in coded form. In India, there are implied environmental rights, expressed State and citizen duties. Germany has expressed State objectives with future generations language. South Africa has expressed environmental rights, State obligations, and intergenerational protection. All three provide a basis for rights-based climate change adjudication.³³

Table 1: Comparative constitutional features of environmental protection in India, Germany and South Africa.

Constitutional Feature	India	Germany	South Africa
Express Constitutional Environmental Right	0	0	1
Express State Environmental Duty or Objective	1	1	1
Express Citizen Environmental Duty	1	0	0
Express Future-Generations Language	0	1	1
Climate-Related Constitutional Adjudication	1	1	1

1.4.2 Intergenerational Justice and Temporal Allocation

There is a structural problem in conventional rights reasoning that future generations will expose; those most adversely affected by long-term climate policy will not be able to make informed choices about current policies. Germany accounts for future generations when balancing current emissions and future freedom. South Africa accounts for present and future generations by demanding environmental protection. India has recognized the concept of intergenerational equity in its environmental doctrine, but the Indian Constitution does not address future generations. India has not resolved this issue constitutionally. The courts and legislatures in India can give the existing Articles 14, 21 and 48A a temporal dimension when evaluating whether current policies unreasonably restrict future climate policy choices.³⁴

1.4.3 Prevention, Participation and Regulatory Legitimacy

The common thread in the three of the selected jurisdictions is the importance of the principle of 'prevention.' This is evidenced first by the Indian 2026 decision and jurisprudence on the precautionary principle; second, by South African climate impact decision cases; and lastly,

³² Lovleen Bhullar, "Environmental Constitutionalism and Duties of Individuals in India", 34 *Journal of Environmental Law* 399 (2022).

³³ James R. May and Erin Daly, *Global Environmental Constitutionalism* 55 (Cambridge University Press, Cambridge, 1st edn., 2014).

³⁴ Gerd Winter, "The Intergenerational Effect of Fundamental Rights: A Contribution of the German Federal Constitutional Court to Climate Protection", 34 *Journal of Environmental Law* 209 (2022).

by German environmental decision cases. The prevention principle relies on the availability of evidence, alternatives, and reasons, which is the case when the goal is still achievable. The post-harm constitutional remedies that courts are charged with have sunk costs and factually complex issues to sort through. Once major capital projects have been built, the regulator and the court will face pressures to 'grandfather' the activity and allow what was previously unlawful to continue to avoid disrupting the status quo.³⁵

Meaningful participation helps prevention by dealing with both information and legitimacy. Many communities have knowledge about water, livelihoods, health, cultures, pollution and/or impacts that may be missing from project reports. Specific cases in South African law show how inadequate consultation and impact assessment can result in unlawful environmental authorizations. Public hearings in India as part of the environmental impact assessment process are largely a paper and process exercise that serve little purpose, and their effectiveness depend on the quality of disclosure, the timing of the process, and the responsiveness of the bureaucracy. Thus, the constitutional environmental rights must ensure that there is substance to the participation and not simply formal participation. A hearing held after decisions have been made has little, if any, value in the preventive governance of the environment.³⁶

1.4.4 Rights Recognition and Environmental Performance

There is no direct correlation between the ranking of countries and the strength of their constitutions, and environmental rankings should not be viewed in this manner. The 2024 Environmental Performance Index rates Germany at 74.5 with ranking of 3 while South Africa has ranking of 106 with a score of 42.7, and India has a score of 27.6 and a ranking of 176. These scores are based on 58 total indicators in 11 separate categories, so they should be viewed as contextual and not prescribed relationships. Germany's higher score is not determinative, nor can India's lower score discount the value of this Article. Other factors of a country affect the outcome, including economic and administrative structures, energy systems, geography and quality data.³⁷

Figure 1 adds to the headline index performance comparison. Germany has the highest Environmental Performance Index overall, ecosystem vitality, environmental health and

³⁵ Philippe Sands, Jacqueline Peel, et.al., *Principles of International Environmental Law* 197 (Cambridge University Press, Cambridge, 4th edn., 2018).

³⁶ James R. May and Erin Daly, *Global Environmental Constitutionalism* 77 (Cambridge University Press, Cambridge, 1st edn., 2014).

³⁷ 2024 Environmental Performance Index, available at: <https://epi.yale.edu/measure/2024/EPI> (last visited on August 22, 2026).

climate change scores with South Africa and India in the middle and lower segments respectively. Overall change over the last decade is small in the three countries.³⁸

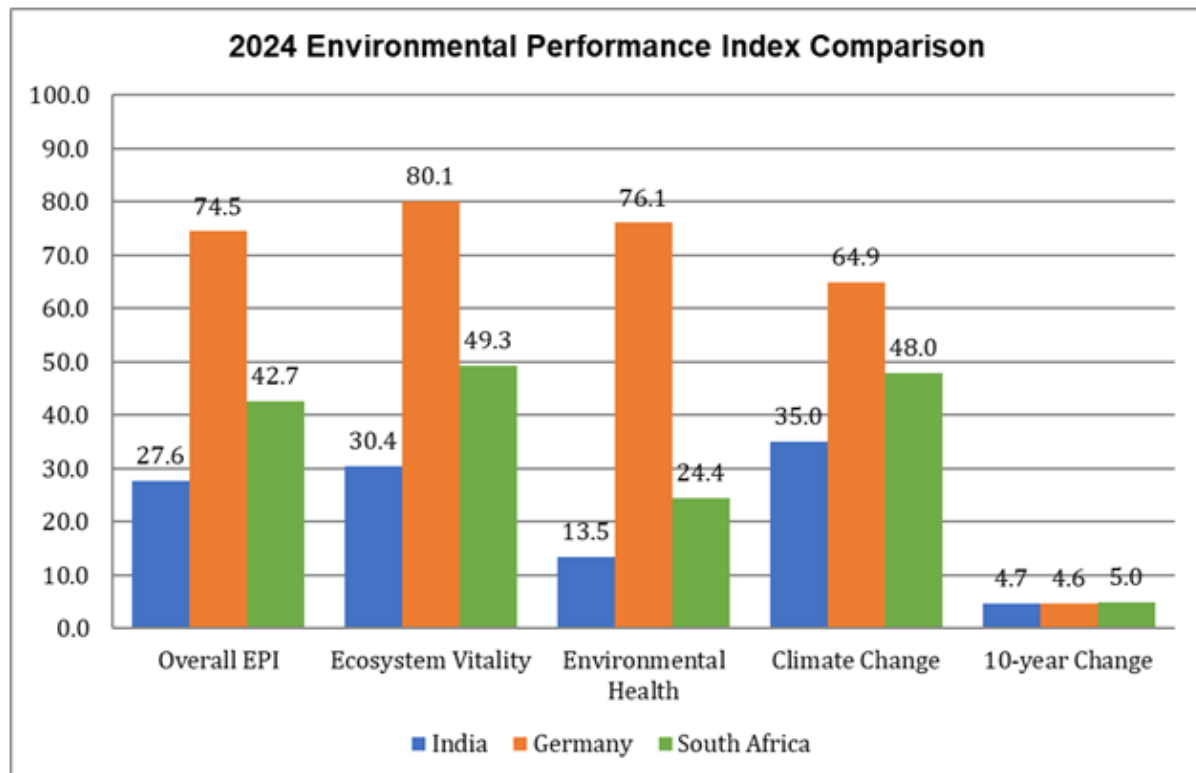


Figure 1: Comparative 2024 Environmental Performance Index scores and ten-year change.

1.4.5 A Structured Reform Agenda for India

The Indian climate framework has its strongest case for comparative analysis at the statutory level. A climate law that was able to operationalize the 2024 constitutional recognition of the right to a clean and healthy environment could set specified mitigation and adaptation targets, as well as establish an obligation for government agencies and departments to perform their certain functions, and prescribe mitigation and adaptation reporting and review obligations. Such a framework would need to allow the government some degree of flexibility concerning the timing and manner of fulfilling its obligations. Germany illustrates the value of legal frameworks and South Africa the value of articulating higher order rights so as to create an obligation to perform specific administrative duties. The enactment of such legislation would enable courts to adjudicate less on ominous Articles 14 and 21, thereby relieving courts from creating detailed climate governance on a case-by-case basis.³⁹

³⁸ David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* 231 (UBC Press, Vancouver, 1st edn., 2012).

³⁹ Lael K. Weis, "Environmental Constitutionalism: Aspiration or Transformation?", 16 *International Journal of Constitutional Law* 836 (2018).

Environmental clearance reform should also incorporate prevention. The 2025 review of ex post facto clearance illustrates the danger of a lack of clarity in the law when construction is completed and the livelihood and sunk investment are threatened by the law's challenge. A better approach would make prior assessment meaningfully possible by independent evaluation, the analysis of the cumulative impact, the availability of relevant data, and the imposition of consequences for violation of the prohibition of unapproved regulated activity. Regularization should remain exceptional, and should never be cheaper than compliance. Constitutional goals should aim to ensure that courts less often have to balance environmental legality and the economy.⁴⁰

1.5 CONCLUSION

India, Germany, and South Africa show how green constitutionalism should be understood as an institutional process rather than as a textual concept. Each of the three systems has brought ecological constraints within constitutional law in their own innovative ways, while demonstrating different strengths and challenges for climate governance.⁴¹

India's main achievement was the transformation of Article 21, a right against unlawful deprivation, into the right to environmental quality, and this transformation was reinforced by the right to equality and the Directive Principles and the Duty of Citizens. The recognition of a constitutional right to protection against the impacts of climate change extends this achievement to climate governance. The same flexibility in innovation which has been the strength of this system is capable of producing anxiety concerning the substance and remedy of this right. The recent Supreme Court cases on Environmental clearance and siting demonstrate why preventive standards must be in place before environmental harm and investment. Constitutional rights are most effective in limiting administrative action and providing administrative discipline well before they are used primarily as means to provide redress.⁴²

Germany and South Africa provide two different examples of solutions to the same problem. Article 20a and Germany's intertemporal freedom doctrine make the constitutional allocation of the burden of climate change more visible and leave a large part of the allocation to climate policy to the legislature. Similar to Germany's solution, South Africa's Section 24 inserts the rights to health and ecological protection as well as sustainable development and

⁴⁰ 2025 INSC 1326.

⁴¹ Louis J. Kotzé, "Arguing Global Environmental Constitutionalism", 1 *Transnational Environmental Law* 199 (2012).

⁴² 2024 SCC OnLine SC 570.

the rights of future generations in an administrative law and participatory system. For India, the combined example is institutional. Courts need to continue to maintain basic standards of the constitution, but the legislature needs to make real climate policy paths and the regulators need to make real evidence-based prevention and participatory systems. Green constitutionalism becomes a permanent feature of a governance system when these commitments are not made dependent on exceptional judicial interventions.⁴³

1.6 SUGGESTIONS

The proposals here aim to transfer the results of the analysis to India, aiming to retain constitutional review, democratic policy-making and the preventive dimension of environmental law, especially for climate accountability, while also addressing the shortcomings of institutional capacity, participatory systems and intergenerational equity, especially the gap between legally guaranteed rights and environmental outcomes.

1. Enact a comprehensive climate framework: Legislation defining mitigation and adaptation objectives, institutional duties and review cycles should be passed to allow Parliament to define its climate objectives. This legislation should retain policy flexibility while requiring measurable indicators along with publicly stated reasons and provisions for corrective action if objectives are missed.
2. Create legally transparent carbon pathways: National climate plans should establish measurable transition benchmarks and indicate the implications of current decisions on future challenges. Benchmarks should be reviewed based on the best available evidence and/or significant departures should be reported to the legislature, the judiciary and affected stakeholders.
3. Strengthen prior environmental appraisal: Clearance rules must require regulated activities to begin only after a decision-ready assessment has been conducted. Exceptional regularisation should have strict boundaries, be independently assessed, and not be able to displace the requirement for preventive compliance.
4. Integrate climate impacts into project review: Significant assessments of major infrastructure, energy, and land-use projects should evaluate the impact of greenhouse gas emissions and physical risks of climate change and consider viable alternatives. Decision-makers should describe how they accounted for climate evidence to facilitate judicial review and test the legality of the decision without the repetition of technical policy.

⁴³ Jacqueline Peel and Hari M. Osofsky, "A Rights Turn in Climate Change Litigation?", 7 *Transnational Environmental Law* 37 (2018).

5. Protect intergenerational interests explicitly: Climate change plans must consider how current emissions, the depletion of natural resources, and the choices made on adaptation will limit future options. This can be used to implement Articles 14, 21, and 48A, without creating an abstract veto for future Generations or de-prioritizing legitimate development.
6. Improve environmental public participation: Consultation should be done when there are real alternatives. Consultation should provide environment information in a timely and usable format in the local languages. Authorities should publish reasoned responses to the objections. Participation should allow decisions to be documented.
7. Build independent technical capacity: Environmental regulators must have available funding to retain staff in order to conduct their functions. Each regulator should have scientists, conflict-of-interest safeguards, and independent data. Structured and organised records would diminish the need for judges to create ad hoc expert mechanisms to compensate for insufficient regulatory analysis.
8. Institutionalise cumulative impact assessment: When evaluating projects within numerous impacted regions, regulators must consider the cumulative impacts on regions with high levels of pollution, water stress, or fragmented ecosystems. Regulators must address threats on vulnerable populations. Permitting projects has the potential to erode the Constitutionally guaranteed right to life, health, and quality of the environment.
9. Link remedies to prevention and restoration: Legal engineering remedies should prioritize the stopping of the unlawful activity, the restoration of damages, and the prevention of recurrence. Prior closure remedies should recommend that court orders include time-bound compliance, costs of restoration, and monitoring by an independent party, while preserving the prior-clearance rule's deterrence.
10. Publish constitutional environmental accountability data: The Union and the States must publish comparable data on clearances, inspections, pollution breaches, enforcement, adaptation spending, and climate change goals. They must publish this data on an annual basis in order to facilitate law making and litigation by affected communities and Parliament, on persistent implementation deficits.

BIBLIOGRAPHY

Books

1. Boyd, D. R.: The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment, UBC Press, Vancouver, 1st edn., 2012
2. Divan, S. and Rosencranz, A.: Environmental Law and Policy In India: Cases and Materials, Oxford University Press, Oxford, 3rd edn., 2022
3. May, J. R. and Daly, E.: Global Environmental Constitutionalism, Cambridge University Press, Cambridge, 1st edn., 2014
4. Rajamani, L. and (eds.), J. P.: The Oxford Handbook of International Environmental Law, Oxford University Press, Oxford, 2nd edn., 2021

Statutes

5. The Basic Law for the Federal Republic of Germany, 1949
6. The Constitution of India, 1950
7. The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
8. The Constitution of the United States, 1787
9. The Federal Climate Action Act, 2019

Reports

10. Report of Intergovernmental Panel on Climate Change: Climate Change 2023: Synthesis Report, 2023.

Articles

11. Bhullar, L., "Environmental Constitutionalism and Duties of Individuals in India", 34 Journal of Environmental Law 399 (2022).
12. Kotzé, L. J., "Arguing Global Environmental Constitutionalism", 1 Transnational Environmental Law 199 (2012).
13. Minnerop, P., "The 'Advance Interference-Like Effect' of Climate Targets: Fundamental Rights, Intergenerational Equity and the German Federal Constitutional Court", 34 Journal of Environmental Law 135 (2022).
14. Peel, J. and Osofsky, H. M., "A Rights Turn in Climate Change Litigation?", 7 Transnational Environmental Law 37 (2018).
15. Programme, U. N. E., "Global Climate Litigation Report: 2025 Status Review: Climate Change in the Courtroom: Trends, Impacts and Emerging Lessons" (2025).
16. Weis, L. K., "Environmental Constitutionalism: Aspiration or Transformation?", 16 International Journal of Constitutional Law 836 (2018).

17. Winter, G., "The Intergenerational Effect of Fundamental Rights: A Contribution of the German Federal Constitutional Court to Climate Protection", 34 Journal of Environmental Law 209 (2022).

Websites

18. <https://epi.yale.edu/measure/2024/EPI>