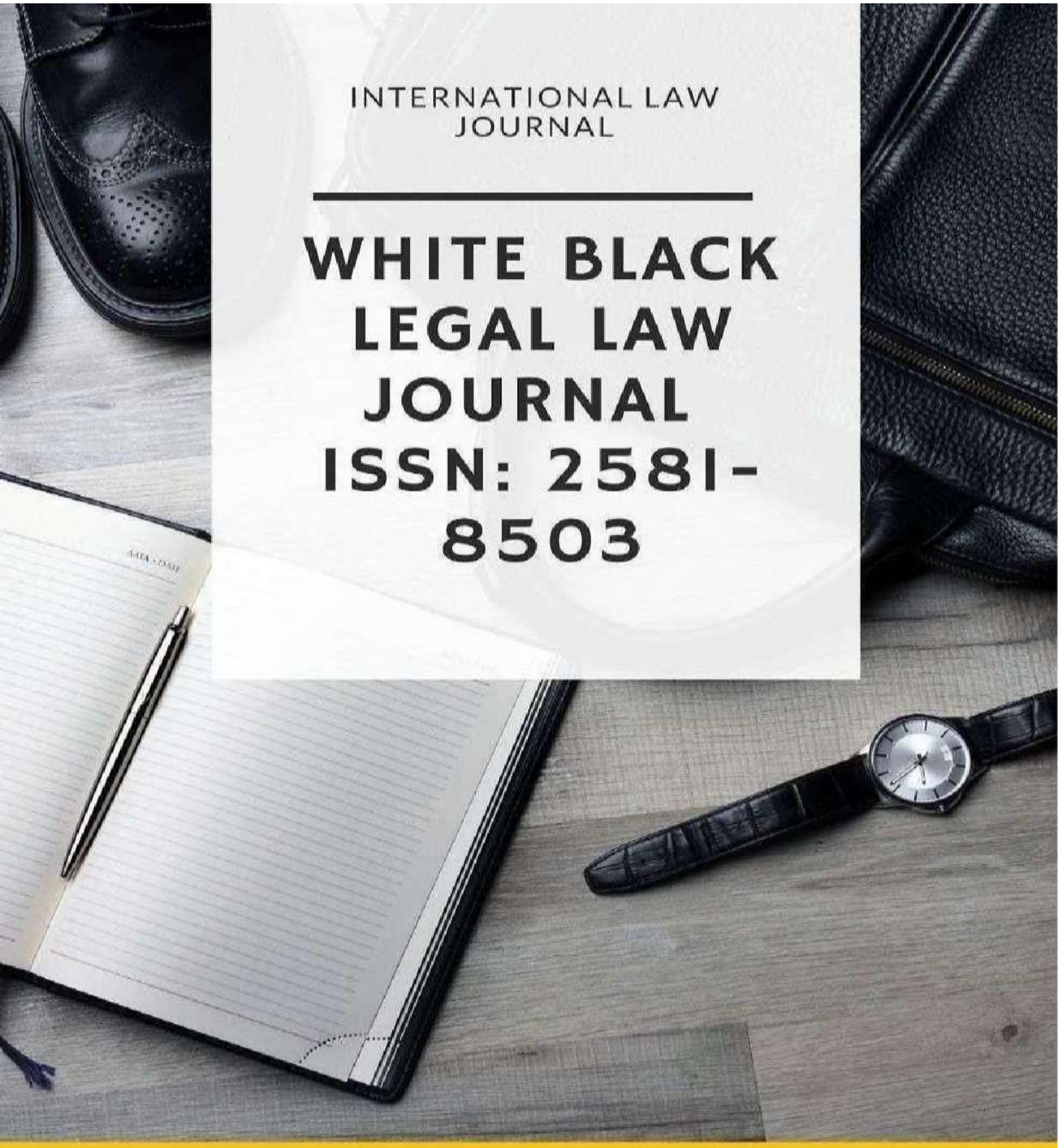

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

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FROM HUMAN RIGHTS TO NATURE'S RIGHTS: THE RISE OF ENVIRONMENTAL CONSTITUTIONALISM IN CONTEMPORARY LEGAL DISCOURSE

AUTHORED BY - MOHAMMAD ARHAM & MOHD SAIFULLAH KHAN

Abstract

This paper traces the shift from an exclusively human-rights framing of environmental protection to a broader constitutional paradigm that increasingly recognizes nature as a rights-bearing subject. It argues that environmental constitutionalism has evolved along three reinforcing axes: the derivation of environmental guarantees from fundamental human rights (life, health, dignity, equality); the entrenchment of explicit environmental rights and state duties within constitutional texts; and the emergence of ecocentric doctrines, including the public trust and the rights of nature, that safeguard ecological integrity independent of immediate human utility. Through a comparative lens—drawing on jurisprudence and constitutional design from India, South Africa, Ecuador, and European human-rights adjudication-the paper shows how courts translate abstract principles such as precaution, polluter pays, non-regression, and intergenerational equity into enforceable baselines for climate action, biodiversity protection, and environmental justice. It analyses the remedial turn toward structural orders, measurable targets, and transparent monitoring, which enhances implementation while respecting democratic discretion. The paper also situates Global South leadership in doctrinal innovation and participatory enforcement alongside Global North trajectories that operationalize proportionality review and Paris-aligned benchmarks. Finally, it identifies the conditions for real-world effectiveness—strong procedural rights, capable institutions, interoperable data, and just transition policies—and contends that constitutional recognition of both human and nature's rights provides a durable, legitimate framework for governing long-horizon environmental risks. By bridging rights, democracy, and sustainability, environmental constitutionalism offers a pragmatic pathway to align development with planetary boundaries and to preserve ecological options for future generations.

Keywords: environmental constitutionalism; rights of nature; human rights; intergenerational equity; precautionary principle.

Introduction

Environmental Constitutionalism is an emerging field of legal and philosophical thought that connects environmental protection with constitutional rights and duties. Traditionally, constitutions have been regarded as instruments to define governance, justice, and fundamental rights. However, in recent decades, the idea has gained ground that a healthy environment is equally indispensable to the enjoyment of life and liberty. This shift in perspective has given rise to *Environmental Constitutionalism*, which incorporates ecological values into constitutional texts, judicial interpretations, and policy frameworks.

Today, many countries across the globe explicitly recognize environmental protection within their constitutions. Nations such as India, South Africa, Ecuador, and Bhutan have enshrined environmental rights and responsibilities in their constitutional provisions. At the international level, institutions like the United Nations and various regional human rights courts have also affirmed the "Right to a Healthy Environment" as an essential human right. In this sense, Environmental Constitutionalism is not merely a legal framework for environmental regulation; rather, it is a jurisprudential approach that treats ecology, human life, and sustainable development as interdependent and inseparable.

Environmental concerns entered legal and constitutional discourse gradually, in response to concrete harms, scientific advances, and social mobilization. In the late nineteenth and early twentieth centuries, law approached nature mainly through conservation and public health. Governments adopted measures to manage forests and wildlife for sustained use, while cities used sanitation and public health statutes to combat water contamination and smoke. Courts relied on common-law nuisance to restrain polluters whose emissions or effluents interfered with neighbors' health and property, laying a foundation for recognizing environmental harm as legally actionable. The modern turn began in the 1960s and 1970s, when industrial growth, visible disasters, and scientific warnings galvanized new statutes and institutions. Oil spills, smog episodes, and rising public awareness amplified by landmark writing and investigative reporting—spurred comprehensive legislation on clean air and water, hazardous substances, wildlife, and land use, and led to the creation of specialized environmental agencies. Internationally, the 1972 Stockholm Conference brought an important shift: it framed environmental protection as a global concern linked to human well-being and prompted states to adopt principles that would influence domestic legislation and judicial reasoning.

Over the following decades, environmental governance deepened through procedural commitments and public participation. Environmental impact assessment became a core requirement for major projects, embedding notice, alternatives analysis, and public comment into decision-making. Access-to-information laws expanded transparency, enabling civil society and local communities to scrutinize permits and plans, and courts increasingly entertained public interest litigation to test whether authorities had considered environmental effects adequately. As science evolved, so did legal principles: prevention and precaution gained traction where uncertainty was significant but risks were grave and potentially irreversible. From the 1980s onward, many constitutions explicitly recognized a right to a clean or healthy environment or imposed duties on the state to protect nature. In other jurisdictions, courts derived environmental protection from existing rights-life, health, dignity, housing, property-elevating environmental quality from a policy preference to an enforceable entitlement. The public trust doctrine was revitalized to portray the state as a trustee of common resources-air, water, forests, and coasts- bound to safeguard them for present and future generations. By the 1990s and 2000s, sustainable development emerged as a unifying paradigm, integrating environmental protection with economic growth and social inclusion, reinforced by international agreements on biodiversity, climate change, and desertification. In the 2010s and beyond, two developments pushed constitutional discourse further: recognition in some places of rights of nature or legal personhood for ecosystems, and a surge in climate litigation challenging inadequate mitigation, demanding adaptation planning, and protecting vulnerable groups. Courts refined standards such as proportionality, reasonableness, non-regression, and equality to evaluate environmental and climate policies, and experimented with structural remedies-compliance plans, milestones, monitoring committees-to turn judgments into measurable action.

The subject's relevance in the twenty-first century is anchored in three interlocking crises: climate change, biodiversity loss, and the pursuit of sustainable development. Climate change poses a constitutional problem because it directly affects rights to life, health, water, food, housing, work, and dignity, and because its impacts unfold over long horizons that exceed electoral cycles and strain ordinary administrative processes. Constitutions, by setting durable commitments and reviewable duties, stabilize climate governance across political shifts, require public reasons for high-impact choices, and empower courts to test whether state action is timely, evidence-based, and proportionate to the risks. This framework also secures intergenerational equity, turning concern for future generations from aspiration into a practical

duty that influences present policy. Biodiversity loss intensifies the stakes: the erosion of species and ecosystems undermines essential services-pollination, water purification, soil fertility, coastal protection, and disease regulation-that sustain basic rights and livelihoods. Constitutional principles can compel the state to prevent irreversible harm, apply precaution amidst uncertainty, and manage cumulative impacts across sectors like land use, agriculture, fisheries, and infrastructure, while doctrines such as public trust and, in some places, rights of nature, provide legal hooks to protect ecosystems for both their intrinsic and cultural value.

Sustainable development brings these threads together by insisting that growth respect environmental limits and social fairness. Constitutional norms like non-regression, progressive realization, equality, and non-discrimination guide how societies share the costs and benefits of decarbonization and adaptation. They shape decisions in energy, transport, housing, and industry so that transitions preserve livelihoods, avoid disproportionate burdens on low-income communities, and respect Indigenous rights and local knowledge. Procedural environmental rights-access to information, public participation, and access to justice-function as engines of accountability, opening emissions and land-use data to scrutiny, improving the quality of environmental assessments through lifecycle and cumulative impact analysis, and enabling communities to challenge inadequate plans. Because major sources of emissions and habitat loss lie in the private sector, constitutional values increasingly influence corporate behaviour through horizontal effect, statutory duties of vigilance and disclosure, and fiduciary obligations that recognize climate and nature as material risks. At the same time, federal systems require coordination across national, state or provincial, and local governments; constitutional design clarifies responsibilities, resolves conflicts, and supports cooperative bodies that manage shared resources and cross-border risks. Finally, courts have adapted remedies to complex, long-term problems by ordering plans with clear timelines and indicators, appointing experts, and requiring periodic reporting tools that preserve democratic choice over policy details while preventing drift. Together, these elements make environmental constitutionalism a vital framework for converting broad sustainability goals into concrete duties, protecting vulnerable communities and future generations, and equipping institutions to navigate climate and biodiversity crises while sustaining development.

Conceptual Framework of Environmental Constitutionalism

A. Theoretical Basis

Environmental constitutionalism rests on the insight that environmental quality is not a standalone policy preference but a precondition for the enjoyment of fundamental human rights. When air is unbreathable, water is unsafe, or ecosystems collapse, rights to life, health, housing, food, water, work, and dignity become hollow. This linkage operates in two directions. First, environmental degradation directly interferes with core interests that constitutions protect; second, constitutional rights supply enforceable standards that can steer environmental decision-making toward outcomes that preserve those interests. In this sense, environmental harm is reframed as a rights problem, which invites constitutional scrutiny of state action and inaction and provides remedies when ordinary regulation fails or is captured by short-term pressures.

Constitutional law shapes ecological governance by setting durable commitments, clarifying institutional roles, and embedding principles that guide public power over long horizons. Constitutions allocate authority among branches and across levels of government, define state duties to protect and prevent harm, and create procedural guarantees—access to information, public participation, and access to justice—that make environmental governance transparent and contestable. They also establish standards of review, such as reasonableness and proportionality, through which courts can assess whether policies are coherent, evidence-based, and commensurate with environmental risks. By elevating key environmental objectives to constitutional status, states insulate them from abrupt political swings, enable judicial oversight of under-enforcement, and provide citizens with a language of rights to demand accountability. Philosophically, environmental constitutionalism is often analyzed along an anthropocentric–ecocentric spectrum. Anthropocentric approaches justify environmental protection because healthy ecosystems support human welfare, rights, and flourishing; the environment is valued for its instrumental role in sustaining life, health, livelihoods, culture, and intergenerational continuity. Ecocentric approaches, by contrast, attribute intrinsic value and, in some frameworks, legal standing to nature itself—rivers, forests, species, and ecosystems—independent of human utility. Both perspectives can coexist in constitutional design. Anthropocentrism anchors environmental duties in widely accepted human rights and can facilitate judicial enforcement where courts are rights-focused. Ecocentrism broadens the moral and legal community, emphasizing duties to safeguard ecological integrity and resilience even

where immediate human interests are diffuse or long-term. Hybrid models increasingly appear in practice: courts and constitutions recognize environmental rights derivatively through human rights while also invoking doctrines (such as public trust or rights of nature) that reflect a more ecocentric orientation, especially for safeguarding critical ecosystems and ensuring stewardship for future generations.

B. Key Features

A central feature of environmental constitutionalism is recognition, explicitly in some constitutions, implicitly in others, of a right to a clean, healthy, and sustainable environment. Where explicit, the right provides a direct, justiciable claim to minimum environmental quality and imposes duties on the state to respect, protect, and fulfil that right. Where implicit, courts derive environmental protection from established rights such as life, health, dignity, housing, water, and property, reasoning that these cannot be secured without adequate environmental conditions. In both settings, the right serves as a legal anchor for claims against harmful pollution, dangerous land use, and climate inaction, and it supports remedial orders that require planning, targets, and monitoring rather than one-off, symbolic relief.

Parallel to rights recognition are state duties and citizen responsibilities that together form a constitutional ecology of obligations. State duties typically include preventing foreseeable environmental harm, regulating activities with significant environmental impact, enforcing standards effectively and without discrimination, remedying damage when prevention fails, and progressively improving environmental governance without unjustified regression. These duties often incorporate guiding principles-precaution (act despite uncertainty when risks are serious or irreversible), prevention (avoid harm at the source), and polluter pays (internalize environmental costs)-which help operationalize abstract commitments. Citizen responsibilities complement state duties by encouraging stewardship, participation in decision-making, and adherence to environmental norms in daily life and business conduct. While citizen duties are usually framed as exhortatory or programmatic rather than directly enforceable, they influence legislative design, shape social expectations, and can be referenced by courts when assessing the proportionality and fairness of regulations that require private actors to mitigate harm.

Constitutional principles-equality, dignity, and intergenerational equity-play a structuring role that extends beyond the environmental clause itself. Equality ensures that environmental burdens and benefits are not distributed in ways that systematically disadvantage vulnerable or

marginalized communities; it also requires the state to address disproportionate impacts from pollution and climate risks, including on women, children, Indigenous peoples, and persons with disabilities. Dignity grounds protections against environmental conditions that degrade human worth, such as exposure to toxic air or water, forced displacement due to disasters, or loss of culturally significant lands. Intergenerational equity bridges present decisions and future consequences, requiring institutions to consider long-term risks, preserve ecological options for those yet unborn, and avoid policies that create irreversible damage. Together, these principles shape how courts and policymakers calibrate environmental standards, design transition policies, and choose remedies. They favor transparent, participatory processes; they demand evidence-based justifications for trade-offs; and they encourage remedies that safeguard minimum environmental baselines today while steering continuous improvement over time.

Role of the Indian Judiciary

The Indian judiciary has been pivotal in shaping environmental constitutionalism by reading environmental protection into fundamental rights, importing and refining key environmental principles, and designing remedies suited to complex, long-horizon problems. Through an expansive interpretation of Article 21 (Right to Life) and the vehicle of public interest litigation, courts transformed environmental quality from a policy aspiration into an enforceable constitutional mandate. Central to this evolution are landmark cases that established liability standards, integrated international environmental principles into domestic law, and created ongoing supervisory frameworks to ensure implementation.

M.C. Mehta v. Union of India (1987, Oleum Gas Leak) marked a foundational shift in liability and constitutional protection against environmental harm. In the wake of a hazardous gas leak from an industrial unit in Delhi, the Supreme Court articulated the principle of absolute liability for enterprises engaged in inherently dangerous activities, moving beyond traditional fault-based standards. It linked industrial and environmental safety directly to Article 21, emphasizing that life with dignity includes protection from industrial and environmental hazards. This case also pioneered continuous judicial monitoring in environmental matters, signalling the Court's willingness to supervise compliance where risks are ongoing and regulatory capacity is uneven.

In Subhash Kumar v. State of Bihar (1991), the Supreme Court affirmed that the right to life encompasses the right to enjoy pollution-free water and air. Although the petition was dismissed for lack of bona fides, the judgment is frequently cited for its clear doctrinal statement that environmental quality is integral to Article 21. This articulation fortified the maintainability of bona fide public interest actions aimed at protecting communities from pollution and ecological degradation, and it provided a rights-based foundation for subsequent environmental litigation.

Vellore Citizens Welfare Forum v. Union of India (1996) consolidated international environmental principles within Indian law while addressing severe tannery pollution. The Court expressly adopted the Precautionary Principle and the Polluter Pays Principle as part of the law of the land, shifting the burden toward prevention in the face of scientific uncertainty and requiring polluters to internalize the costs of control, remediation, and compensation. The Court ordered concrete abatement measures, including effluent treatment, and framed sustainable development as the balancing norm between economic growth and ecological protection, thereby guiding future judicial review of development decisions.

Comparative Analysis

India, South Africa, and Ecuador: Contrasting Constitutional Models

India largely derives environmental protection from an expansive reading of the right to life under Article 21, supplemented by judge-made principles and public interest litigation, whereas South Africa embeds an explicit, justiciable environmental right (Section 24) paired with clear state duties, enabling structured reasonableness review. Ecuador adopts an ecocentric model by constitutionalizing the Rights of Nature, allowing ecosystems themselves to be rights-holders and orienting remedies toward ecological restoration alongside human interests.

Effectiveness of Constitutional Environmental Rights in Practice

Constitutional recognition-explicit or implicit-improves access to justice, empowers communities, and legitimizes judicial scrutiny of weak regulation, but outcomes hinge on administrative capacity, data quality, and intergovernmental coordination. Durable impacts arise when courts pair rights with workable remedies—time-bound plans, measurable indicators, transparent progress reporting, and independent oversight—rather than relying on broad declarations alone.

Global South Leadership and Global North Trajectories

The Global South has driven innovation by integrating environmental protection with socio-economic rights, equality, Indigenous stewardship, and intergenerational equity, often using expanded standing and structural remedies to address capacity gaps and high vulnerability. The Global North more commonly advances through human-rights channels and statutory frameworks, with courts aligning national policies to climate science and Paris-consistent targets, while gradually incorporating proportionality, positive obligations, and carbon budgeting into review.

Conditions for Real-World Impact

Effectiveness is highest where constitutional rights are coupled with strong procedural guarantees (information, participation, access to justice), clear institutional roles across federal tiers, robust monitoring and enforcement capacity, and remedies designed for long-horizon follow-through that preserve democratic policy space while preventing drift.

Challenges to Environmental Constitutionalism

Enforcement and Implementation Issues

Even where constitutions recognize environmental rights and duties, day-to-day enforcement often falters. Regulatory agencies may face resource constraints, fragmented mandates across national, state, and local levels, and limited monitoring capacity. Environmental impact assessments can understate cumulative and lifecycle effects, while compliance audits and inspections may be sporadic or data-poor. Courts may issue strong orders, but without clear timelines, indicators, budgets, and responsible officials, implementation stalls. Persistent challenges include weak baseline data, inadequate public access to real-time information, and limited sanction-and-incentive regimes that fail to deter repeat non-compliance. Building credible enforcement demands stable funding, trained personnel, interoperable data systems, transparent reporting, and independent oversight that can verify progress and course-correct.

Political and Economic Resistance (Development vs. Environment)

Environmental constitutionalism frequently collides with short-term growth goals, electoral timelines, and vested interests. Projects promising jobs and infrastructure can generate pressure to dilute safeguards, truncate participation, or fast-track approvals. This “development vs. environment” framing obscures viable pathways for sustainable development and just

transition policies. Politically, environmental measures may be portrayed as anti-growth; economically, costs of compliance are highlighted while long-run risk reduction and co-benefits (health, resilience, innovation) are discounted. Overcoming resistance requires reframing: integrate environmental baselines into development planning, adopt predictable standards that reduce investor uncertainty, internalize externalities (polluter pays), and deploy transition support (retraining, regional development funds) so communities share in the gains of greener pathways.

Climate Change as a Test Case for Constitutional Protections

Climate change stresses constitutional architectures because it is polycentric, long-horizon, and marked by scientific uncertainty and distributive conflicts. Traditional judicial remedies aimed at discrete harms can be ill-fitted to national emissions trajectories, adaptation planning, or system-wide reforms. Courts must balance urgency against institutional competence: set constitutional baselines (adequate targets, coherent plans, transparency) without dictating policy minutiae. Effective judicial engagement uses standards like reasonableness and proportionality, aligns with precaution and non-regression, and employs structural remedies—time-bound plans, measurable indicators, periodic reporting, and expert input. Still, causal attribution, carbon budget allocation, and intergenerational claims pose evidentiary and remedial complexities. Climate litigation thus becomes a proving ground for whether constitutional rights can deliver durable, scalable change.

Environmental constitutionalism operates within a global common where transboundary harms and free-rider risks are pervasive. International regimes often lack hard enforcement, rely on voluntary or nationally determined contributions, and feature uneven monitoring, reporting, and verification. Domestic courts can reference international norms, but they cannot compel other states to act, and unilateral measures can face trade and investment challenges. Gaps in finance and technology transfer constrain developing countries' capacity to meet constitutional environmental commitments. Strengthening effectiveness requires improving transparency (comparable data, open MRV), embedding non-regression and progressive realization into domestic law, designing border-adjusted or procurement policies consistent with trade obligations, and building cooperative mechanisms (regional compacts, river-basin authorities) that align incentives across borders.

Conclusion

Environmental constitutionalism has matured into a comprehensive framework that elevates environmental protection from discretionary policy to binding constitutional duty, integrating substantive rights, state obligations, and procedural guarantees into a coherent system of accountability. Across diverse constitutional models-explicit environmental rights paired with defined state duties (South Africa), expansive judicial interpretation of the right to life and dignity to subsume environmental quality (India), and ecocentric recognition of the rights of nature the core insight is consistent: a safe, healthy environment is foundational to the enjoyment of fundamental rights and to the legitimacy of democratic governance. This recognition reshapes the role of the state from permissive regulator to constitutional trustee, responsible for preventing harm, safeguarding common resources, and planning for long-term ecological resilience. The practical effectiveness of environmental constitutionalism depends less on the presence of an environmental clause and more on the ecosystem of implementation that surrounds it. Where constitutions are coupled with strong procedural rights to access environmental information, meaningful public participation, and accessible justice, communities gain the tools to scrutinize, contest, and improve environmental decision-making. Where courts employ calibrated standards of review—reasonableness, proportionality, non-regression, and precaution they can demand evidence-based policies that align with scientific risk while preserving democratic discretion over policy instruments. And where remedies are designed for complex, long-horizon problems, time-bound compliance plans, measurable indicators, periodic public reporting, and independent expert oversight judgments are more likely to translate into durable, on-the-ground improvements rather than symbolic declarations. Climate change provides the clearest test of this architecture. Its polycentric, intergenerational, and distributive nature exposes the limits of ordinary politics and short budget cycles. Environmental constitutionalism responds by anchoring long-term commitments beyond electoral horizons, requiring governments to justify choices against rights-based baselines, and ensuring that the burdens and benefits of the green transition are shared fairly. In parallel, biodiversity loss, water stress, and pollution crises demonstrate that constitutional protection must extend beyond emissions to the ecosystems and services that sustain life, livelihoods, and culture. Integrating climate justice and biodiversity protection within constitutional frameworks enables states to manage trade-offs transparently, prioritize vulnerable groups, and adopt nature-positive pathways consistent with social equity and economic resilience.

The comparative record underscores the leadership of the Global South in doctrinal innovation, public trust, intergenerational equity, expanded standing, and structural remedies driven by acute vulnerability and development imperatives. The Global North has advanced complementary trajectories through human-rights adjudication, proportionality review, and Paris-aligned climate benchmarks. Convergence is emerging around shared principles, precaution, polluter pays, non-regression, and around methodological tools such as carbon budgets, cumulative impact assessment, and iterative stocktakes that allow policy to adjust as evidence evolves. The path forward will be strengthened by constitutionalizing procedural environmental rights, clarifying intergovernmental roles, investing in transparent data systems, and embedding just transition commitments that protect workers and communities during structural change. Ultimately, environmental constitutionalism functions as a bridge between human rights, democracy, and sustainability. It translates the moral urgency of ecological limits into legal standards that demand reasons, evidence, and accountability; it channels public participation into decisions that shape collective futures; and it equips courts to safeguard constitutional baselines while respecting the policymaking space of elected institutions. In doing so, it secures present needs—health, dignity, livelihoods—while preserving ecological options for future generations. As climate and biodiversity crises intensify, constitutions that protect the environment, empower communities, and insist on reasoned, transparent governance will be essential to achieving transitions that are not only greener but fairer and more enduring.

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