

Judicial activism and Climate Governance: The role of Judiciary in Advancing Climate Accountability in Pakistan and China

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Abstract

The judiciary has emerged as a consequential actor in climate governance across jurisdictions in the recent years. The role of judiciary in advancing climate accountability differs sharply in different legal and political structure and constitutional designs. This paper examines the role of judiciary in developing climate jurisprudence and advancing climate accountability in Pakistan and China. In Pakistan, courts address climate cases on rights based public interest litigation tradition, most famously in the Asghar Leghari case, where court enforces State's climate policy against executive inaction. On the other hand, in China judiciary operates primarily through procuratorate led environmental public interest litigation. There are specialized environmental courts, that enforce the governments own climate agenda and targets. Based on the judicial role theory and legal opportunity structure (LOS), this paper argues that the term 'judicial activism' in both jurisdictions is better understood as institutionally bounded rather than autonomous judicial behaviour that is shaped by state's distinct structure for legal mobilization. This paper compares judicial reasoning, remedial designs and the relationship between judiciary and state in both jurisdictions. It critically evaluates the role and limits of judiciary in climate governance in the global south context.

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1. Introduction

Climate litigation has grown as a strategic tool to address the climate concerns, illegal emission of corporate sector and executive inaction over the recent years. Landmark judgments by the courts compelled states to legislate and enforce climate laws and strengthen their emissions targets, most prominently in the Netherlands, Germany, and the wider European constitutional tradition. These rulings have generated a substantial body of climate jurisprudence and establish the emerging role of courts as climate policymakers. That role of judiciary however, is disproportionately drawn from Global North, common law or civil law constitutional democracies in which judicial independence is comparatively well established and rights-based constitutional review is the mode of adjudication. In Global south jurisdictions where rule-of-law guarantees are weaker, judicial independence is more constrained, or the legal and political system is organised around state-directed rather than

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rights-based adjudication the role of judiciary in climate governance is yet to be decided. Pakistan and China are two such jurisdictions, and this paper examines the role of courts in these jurisdictions to tackle the climate related cases.

Judiciary in Pakistan has engaged with environmental and climate claims through a long-standing public interest litigation (PIL) tradition under article 9 (right to life) and 184(3) of the Constitution. That tradition produced *Shehla Zia v WAPDA*, which first read environmental protection into the right to life and dignity,³ and culminated two decades later in *Asghar Leghari v Federation of Pakistan*, in which the Lahore High Court held that the federal and provincial governments' failure to implement the National Climate Change Policy 2012 offended citizens' fundamental rights, and ordered the creation of a Climate Change Commission to oversee compliance of climate policy.⁴ Leghari has since attained near-canonical status in global climate litigation scholarship as an example of ambitious judicial remedy-design from the Global South.⁵ More recently, the Twenty-Sixth Constitutional Amendment inserted Article 9A into the Constitution, that guarantees every person the right to a clean, healthy, and sustainable environment, giving Pakistan's judiciary an even more direct legal basis for climate-related adjudication.⁶

In China, judiciary engages with climate governance through a structurally different mechanism. Rather than rights-based citizen petitions, the judiciary relies on environmental public interest litigation (EPIL). There is limited standing to initiate climate cases in China. Climate litigation is initiated by the procuratorate rather than private litigants or non-governmental organisations, and increasingly worked through specialized environmental courts.⁷ This litigation operates within the state's own policy agenda rather than against the state's actions. Courts and procuratorates apply and enforce national ecological and 'dual carbon' targets, positioning the judiciary as an implementing organ of state climate policy rather than an independent check upon it. Scholars have accordingly characterized Chinese EPIL as a manifestation of 'environmental authoritarianism' in contrast to Pakistan.

³*Shehla Zia v WAPDA* PLD 1994 SC 693.

⁴*Asghar Leghari v Federation of Pakistan*, WP No 25501/2015 (Lahore High Court, 4 September 2015).

⁵Emily Barritt and Boitumelo Sediti, 'The Symbolic Value of Leghari v Federation of Pakistan: Climate Change Adjudication in the Global South' (2019) 30(2) *King's Law Journal* 203.

⁶Constitution of the Islamic Republic of Pakistan 1973, art 9A (inserted by the Constitution (Twenty-Sixth Amendment) Act 2024).

⁷Wei You, Shan Liang, Lei Feng and Zexuan Cai, 'Types of Environmental Public Interest Litigation in China and Exploration of New Frontiers' (2023) 20(4) *International Journal of Environmental Research and Public Health* 3273.

The existing literature on climate change litigation mostly focuses on global north jurisdictions, Pakistan and China are rarely placed in direct comparison with one another. Both are most vulnerable countries to climate change and suffering the severe consequences of harsh weather, urban flooding, air and water pollution. The States representing two of the most institutionally developed, and most structurally divergent, examples of non-Global North judicial engagement with climate governance. This paper seeks to address this literature gap and explore the role of courts in advancing climate accountability in both jurisdictions. The paper also examines the concept of judicial activism term that is frequently applied to both rights-based and state-directed litigation without examining whether a single concept can meaningfully describe both.

This paper addresses three connected research questions: first, how do courts in Pakistan and China reason about climate claims, and what remedies do they fashion in response; second, what accounts for the institutional divergence between the two systems; and third, whether ‘judicial activism’, properly understood, is an analytically defensible description of either jurisdiction’s practice, or whether a different vocabulary is required. In response, this paper argues that activism in both Pakistan and China is best understood not as an autonomous judicial disposition, but as behaviour bounded by each state’s Legal Opportunity Structure (LOS), the constitutional, procedural, and political conditions that determine which claims can be brought, by whom, and with what prospect of success. Pakistan’s expansive standing rules and rights-based constitutional text opens space for citizen-initiated mobilization; China’s procuratorate-centred model narrow down that space while opening a different one, in which the state itself mobilizes law against subordinate state and private actors. Comparing the two therefore shows different degrees of judicial activism, but also different institutional forms that activism can take. The findings suggests that a single, uniform definition of judicial activism may be the wrong analytical tool for comparative climate governance scholarship outside the Global North.

2. Institutional and Legal Framework

2.1 Pakistan: A Rights-Based Constitutional and Statutory Framework

In Pakistan judiciary relies on two legal foundations to address climate related cases against State’s inaction and corporate sector for their non compliance. The first and most commonly used legal foundation in provided by Constitution. The gateway is Article 184(3) of the Constitution, which grants the Supreme Court original jurisdiction to make orders for the

enforcement of fundamental rights in any matter of ‘public importance’. High Courts can exercise the same jurisdiction under Article 199 of the constitution that was invoked in Leghari case. These provisions allowed individual citizens to invoke the jurisdiction, rather than only organized civil society groups, to bring climate claims directly before the superior judiciary.

The other legal foundation is statutory, that includes the provisions of Environmental Protection Act of 1997 and the Pakistan Climate Change Act 2017. After Asghar Leghari case, the distinction between environmental and climate cases have been established in Pakistan. Climate Change Act 2017 primarily established the institutional framework for climate governance. Three institutions: the Pakistan Climate Change Council, chaired by the Prime Minister and responsible for high-level policy coordination; the Pakistan Climate Change Authority, tasked with formulating and implementing adaptation and mitigation measures; and a Climate Change Fund to finance the Authority’s functions were established.⁸ The act does not provide any specific provisions for invoking courts jurisdiction for climate misconduct on behalf of government or corporate sector. The statutory framework lacks any remedial design, implementation mechanism or sanctions. This legal and institutional framework have been criticized as chronically under-resourced and subordinate in practice to the Ministry of Climate Change, a weakness in legislative implementation that has itself become a basis for further judicial intervention. Hence, the body of climate litigation in Pakistan primarily relies on constitutional provisions for the protection of fundamental rights of citizens. The Twenty-Sixth Constitutional Amendment inserted Article 9A that expressly provided the right to clean environment as an extension of the right to life under Article 9. Right to clean environment is now an express, freestanding constitutional guarantee, which is likely to further lower the threshold for future climate litigation.

2.2 China: A State-Directed Policy-Implementation Framework

China has a civil law system with an authoritarian governance model where courts traditionally have a limited and State-driven role in climate Change litigation(CCL).⁹ While Chinese courts have handled a number of environment-related cases, the explicit climate change dimension is still emerging. The climate legal framework consists of provisions of Environmental Protection Law and Civil Code rather than the Constitutional provisions.

⁸Pakistan Climate Change Act 2017 (Act No X of 2017), ss 3–9.

⁹ Baruch Boxer, ‘China’s Environmental Prospects’ (1989) 29 Asian Survey 669 <<https://doi.org/10.2307/2644673>>.

Recent studies have analyzed the rise of environmental policies and the role of the Supreme People's Court in CCL in China. "CCL in China is still at a formative stage, significant judicial trends suggest a gradual but deliberate integration of climate concerns into the legal system primarily through environmental litigation framework, administrative enforcement and public interest lawsuits."

A significant milestone in climate jurisprudence and climate-related litigation potential was the amendment of the Environmental Protection Law in 2015.¹⁰ This amendment expands the scope of environmental law and allows NGOs to file cases against the corporate sector against climate harm. The legal standing to invoke climate jurisdiction is limited to public prosecutors and NGO's only. The substantive content that these courts and procuratorates apply is increasingly organised around China's 'dual carbon' targets — peak emissions before 2030 and carbon neutrality before 2060 — announced by President Xi Jinping at the UN General Assembly in September 2020 and subsequently written into the Fourteenth Five-Year Plan, the first in China's history to incorporate explicit climate targets.¹¹ China included targets to reduce carbon emissions in its five- year economic plan, which recognized the climate and sustainability goals within the national economic model. In China, the legal framework does not differentiate between environmental and climate cases, and climate-related issues are typically addressed indirectly through environmental degradation cases. China has established the specialized environmental courts and tribunals with a mandate to handle civil, criminal and administrative cases related to environmental and climate harms.

After the environmental law reform, there has been a rise in public interest litigation against corporations. In *Friends of Nature V. Jiangyin Port Container Company*,¹² an NGO filed the case against a company for polluting a river with hazardous waste. The court held the company liable for environmental damage, ordering compensation to the aggrieved. This judgment laid

¹⁰ Environmental Protection Law of People's Republic of China (Adopted 24 April 2014, effective 1 January 2015). art 58. The impact of the Environmental Protection Law (EPL) on climate change litigation in China has transitioned from a foundational period of "broad" environmental suits to a highly specialised and codified era. As of March 2026, this evolution has culminated in the adoption of the Ecological and Environmental Code, which formalises climate action within the statutory framework. The 2014 revisions to the EPL (effective 2015) acted as the initial catalyst for climate-related disputes, even though the word "climate" was largely absent from the text. Environmental Public Interest Litigation (EPIL): Article 58 granted qualified NGOs the standing to sue polluters. This opened the door for "indirect" climate litigation, where plaintiffs targeted CO2 emissions by framing them as traditional air pollutants (e.g., smog or soot). See: 'Environmental Protection Law of the People's Republic of China Environmental Legislation in China' (2004) 37 Chinese Law and Government 58.

¹¹ Statement by President Xi Jinping at the 75th Session of the United Nations General Assembly, China Daily (22 September 2020).

¹² *Friends of Nature v Jiangyin Port Container Company* (2015), [China] Nan Jing Intermediate People's Court (Environmental Public Interest Litigation).

a foundation for future climate-related accountability cases. In 2017, Taizhou Intermediate People's Court ordered multiple companies to pay compensation. In general, China's courts focus on upholding government policies among the corporate sector and local authorities. Limited legal mobilization, judicial autonomy and absence of a climate-specific legal framework are big challenges for the growth of climate litigation in China. Ruling a case against the central government for inadequate climate measures is almost impossible, but recent legal and judicial developments established a foundation for the effective future role of climate litigation in China.

2.3 A comparative analysis of judicial structure in Pakistan and China

The institutional picture of judiciary in this part confirm that Pakistan and China occupy near-opposite positions on all three LOS dimensions. Pakistan combines broad court accessibility and legal standing with an expanding rights-based legal structure including constitutional and statutory provisions and a judiciary is more receptive towards climate related concerns and inaction on part of executive, though operating against a persistently weak implementing bureaucracy. China offers limited accessibility for private and civil-society litigants with an extensive but state-authored legal stock (the ecological civilization amendment, the dual carbon targets) and a judiciary whose receptivity operates principally in the direction of enforcing, rather than reviewing executive policy. The remainder of this paper examines how these divergent institutional starting points translate into patterns of judicial reasoning (Part 3), remedial design (Part 4), and judiciary–state relationship (Part 5).

3. Judicial Reasoning Model

3.1 Pakistan: Liberal Constitutional Reasoning

In Pakistan judicial reasoning on climate change has developed primarily through the expansive interpretation of constitutional right to life and other fundamental rights. Shehla Zia read environmental protection into the right to life and dignity under Article 9; Leghari extended that reasoning to the state's prospective obligations under its own climate policy, holding that executive failure in implementation itself violated fundamental rights. Two subsequent, still-pending petitions have pushed the doctrine further, Rabab Ali invokes the Public Trust Doctrine and inter-generational equity on behalf of a child petitioner challenging

coal expansion,¹³ while Maria Khan frames the state's failure to pursue renewable energy as a violation of women's right to equal protection under Article 25, given the disproportionate impact of climate change on women.¹⁴ The Supreme Court's 2021 decision in *D.G. Khan Cement Company Ltd v Government of Punjab* added further doctrinal layers still, invoking the precautionary principle and the emerging international principle of *in dubio pro natura*, describing the environment as deserving protection 'in its own right', and locating what the Court called 'climate democracy' within the Constitution's preamble and fundamental rights provisions.¹⁵

The judgments draw freely on international climate laws including the Rio Declaration, the Paris Agreement, and constitutional principles, producing doctrinal ambitious but analytically loose decisions with implementation mechanism.

3.2 China: Statutory and Tort-Based Reasoning

Chinese judicial reasoning in environmental public interest litigation (EPIL) based on statutory provisions and state centered interpretation of climate policies. The Supreme People's Court's 2015 judicial interpretation frames EPIL in essentially tortious terms, authorising remedies such as cessation of infringement, removal of obstacles, and elimination of danger, rather than articulating free-standing constitutional principles.¹⁶ China's first successful NGO-led case under the revised Environmental Protection Law, brought by Friends of Nature and Fujian Green Home against an illegal quarrying operation, was decided by the Nanping Intermediate People's Court in October 2015 on narrowly tortuous grounds ordering site restoration according to technical forestry guidelines with no engagement with constitutional or rights-based reasoning of the kind found in *Leghari*.¹⁷ Reasoning of this kind is statutorily disciplined and well suited to clear-cut pollution disputes between private or quasi-private parties, but it has rarely been tested against powerful state-linked defendants.

¹³*Rabab Ali v Federation of Pakistan*, Constitutional Petition No 1 of 2016 (Supreme Court of Pakistan, filed 2016, pending).

¹⁴*Maria Khan and others v Federation of Pakistan and others*, WP No 8960 of 2019 (Lahore High Court, filed 14 February 2019, pending).

¹⁵*D.G. Khan Cement Company Ltd v Government of Punjab* 2021 SCMR 834 (Supreme Court of Pakistan, 15 April 2021), CP 1290-L/2019.

¹⁶Supreme People's Court of the People's Republic of China, Interpretation on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases (Fa Shi [2015] No 1).

¹⁷*Friends of Nature and Fujian Green Home v Xie and Others* (Nanping Intermediate People's Court, Fujian Province, 29 October 2015).

When Friends of Nature and Greenpeace attempted to bring a groundwater-depletion claim against Shenhua, China's largest coal company, both the Beijing and Inner Mongolia courts simply declined to accept the case for procedural reasons, so no judicial reasoning on the underlying claim was ever produced at all.¹⁸

Chinese courts have developed consistent and tort based reasoning, but that reasoning has had little opportunity to engage with the harder question of how to adjudicate climate-relevant disputes against the state-owned and state-linked emitters whose conduct is most consequential for the country's dual carbon targets. Reasoning, in other words, has developed where the LOS permits it to, and has simply not developed where the LOS forecloses the claim before judgment.

3.3 Comparative Assessment

The comparison yields that Pakistani courts reason ambitiously producing judgments rich in principle and doctrines but weak in enforcement thus not producing much impact. Chinese courts reason narrowly but rigorously, producing judgments that are technically disciplined precisely because the cases that reach judgment are the ones least likely to test the state's own conduct. Both of the systems have their own limitations and challenges that needs to be addressed. Judicial role theory helps explain why Pakistani courts have adopted the public law litigation posture across the board, including in cases that directly involves government inaction, whereas Chinese courts primarily enforces and upholds the States policy and have narrow role in producing new doctrinal principles through interpretation.

4. Remedial Design

4.1 Pakistan's Supervisory and Declaratory Remedies

The remedial design of Pakistan in climate cases is more supervisory rather than punitive. In Leghari's case remedy is the paradigm case of judicial supervision, rather than simply declaring the government's inaction unlawful. The Lahore High Court constituted a standing Climate Change Commission, with a mandate to supervise and report on compliance of the National Climate Change Policy of 2012. In D.G. Khan Cement, by contrast, applied precautionary principle to uphold restrictions on new cement plants. There, the Supreme

¹⁸Friends of Nature and Nature University v Shenhua Coal to Liquid and Chemical Co (Beijing Dongcheng District People's Court, 30 August 2013; Inner Mongolia Intermediate People's Court, 9 September 2013) (case not accepted).

Court's remedy was simply to uphold an existing executive moratorium against a private challenge the Court's role was validating rather than directing state action. The two pending petitions, Rabab Ali and Maria Khan, seek more mandatory relief still orders compelling a transition toward renewable energy but, not having reached judgment after six and seven years respectively. The supervisory and declaratory remedial model weakens accountability as the courts lack resources and institutional capacity to follow up and monitor the compliance.

4.2 China's Restitution Model and Administrative-Compliance Remedies

China's courts have used environmental public interest litigation as an administrative, state led model, which makes a helpful comparative lens to understand their remedial design and monitoring capacity. Chinese EPIL remedies are consistent with the tort-based reasoning described in Part 4, are typically restitutionary and time-bound rather than supervisory and open-ended. The Nanping court's order in *Friends of Nature* required site restoration within three months according to specific technical standards. It also provides with a monetary remedy in case of non-compliance, rather than an ongoing judicial oversight mechanism.¹⁹ Procuratarate-led public interest litigation follows a parallel but institutionally distinct pattern rather than routing compliance monitoring through the court itself, procuratorates frequently resolve matters through pre-litigation prosecutor recommendations that require the defendant to rectify its conduct within a set period of time and report back to the procuratorate. In case of non compliance the right to go into formal litigation is reserved. The result is that ongoing oversight in the Chinese system is lodged with an executive-adjacent prosecutorial body rather than with the judiciary.

4.3 Comparative Analysis

Neither system's remedial design has demonstrated strong post-judgment enforcement. Pakistan's supervisory commission has been criticized for inconsistent and weak follow up mechanism. China's procuratorate-monitored compliance process lacks independent judicial verification once a recommendation is accepted, leaving open the question of whether rectification actually occurred as reported. The comparison therefore suggests that the problem in both jurisdictions is not remedial design at the point of judgment, where both systems have produced genuinely creative mechanisms, but the institutional capacity for enforcement of the judgment.

¹⁹*Friends of Nature and Fujian Green Home* (n 27).

5. The Judiciary–State Relationship

5.1 Pakistan: Courts as a Secondary Enforcement Mechanism

In Pakistan, it is duty of the executive to implement climate policies and judiciary can review the actions of executive. However, It would not be justified to describe Pakistan's judiciary–state relationship simply as courts checking on the state policies. In Leghari case judiciary intervened because the executive had failed to implement policies it had itself adopted. However, in D.G. Khan Cement, the judiciary upholds and reinforce an executive environmental restriction against a private party, aligning the Court with the state rather than against it. Hence, the more accurate description is that Pakistani courts function as a secondary enforcement mechanism for climate commitments the state has already made, whether that means compelling the executive to act where it has not, or upholding the executive's policies where they are challenged by regulated private actors.

5.2 China: Courts as an Extension of State Policy

China's courts and procuratorates operate as enforcer of the state's ecological policies and climate goals and targets. In China the most climate cases are initiated against carbon emitters and corporate misconduct rather than against inaction of State bodies. However, this also has some limitations, where a claim threatens a powerful state-owned enterprise or implicates local government interests directly, the judicial system has shown itself willing simply not to accept the case.²⁰ 'Activism', to the extent the term applies at all, is therefore selectively available within China's EPIL system: it is reserved for disputes that reinforce rather than threaten the prevailing political-economic order.

6. Critical Evaluation

The foregoing comparison supports a sceptical answer to the question posed in Part 1: whether 'judicial activism' is the right lens for either jurisdiction. In Pakistan, the doctrinal ambition traced in Part 4 climate democracy, Precautionary principle and rule of *in dubio pro natura* has not been matched by enforcement capacity. Judgment of Leghari case is significant in Global south climate literature as it is doctrinally rich, it has been discussed internationally but the Climate Change Commission it created has not resolved the underlying implementation failure that gave rise to the case.²¹ That Rabab Ali and Maria Khan remain

²⁰Friends of Nature and Nature University (n 28).

²¹Barritt and Sediti (n 5).

undecided six and seven years after filing. It suggests that the judiciary's doctrinal willingness to engage with climate claims has outpaced its institutional capacity to resolve them. Each new judgment adds doctrinal richness to Pakistani climate jurisprudence without developing an effective enforcement mechanism or creating real accountability to mitigate the climate crises.

In China, the term 'activism' arguably mis-characterises the phenomenon from the outset. A judiciary that implements policy targets set by the state, operating through a state litigant (the procuratorate), and that declines to accept the hardest cases against the most powerful state-linked emitters, is better described as a delegated enforcement mechanism than as an independent check on the government. The number of cases are not an evidence of independence since high case volumes concentrated in low-stakes disputes against private polluters can coexist with near-total closure on cases implies the state's own economic interests.

These findings suggest that Global North theories of judicial activism built around assumptions of judicial independence and counter-majoritarian review, translate poorly to either jurisdiction, and that the LOS-based account developed in this paper offers a more accurate description of what is actually happening. Courts doing what their respective opportunity structures permit, no more and no less. This judicial model carries its own legitimacy costs as in Pakistan, a judiciary that announces constitutional doctrines as significant as 'climate democracy' while leaving core implementation questions to an under-resourced executive. In China, on the other hand, judiciary operates as a bounded extension of state and upholds and enforces State's climate agenda rather reviewing, state climate policy raises the question of whether it is meaningfully 'governing' and addressing climate concerns effectively.

7. Conclusion

This paper has argued that judicial activism in Pakistan and China is better understood as institutionally bounded behaviour, shaped by each state's distinct Legal Opportunity Structure. The judiciary in both jurisdictions is willing to engage and address the climate concerns but both systems have their own limitations and challenges. In Pakistan judiciary operates a citizen-initiated, rights-based model in which doctrinal ambition is consistent but the evidence showed that remedial design is less effective and enforcement mechanism is weak. In China, courts and procuratorates operate a state-initiated, policy-implementation

model in which technical rigour is established but climate accountability against state policies and state owned enterprises is limited.

The judiciary in Pakistan can convert the doctrinal principles to establish climate standards for institutions. The effective role of judiciary in climate governance requires implementation not merely rhetoric. The legislative framework does not provide specific emission standards or effective remedies against non compliance. It is crucial to expand and strengthen statutory protections against climate misconduct on behalf of corporate sector. A strong cooperation and oversight mechanism of executive and judiciary combined can improve the enforcement mechanism of judgments. There must be strong pecuniary and criminal sanctions to make the corporate sector comply with climate standards and guidelines. The paper comparatively analyzed the role of judiciary in both jurisdictions to identify the challenges and limitations. Future research might extend the comparative framework developed here to other hybrid and authoritarian legal orders engaging with climate governance, to test whether the citizen-initiated/ and state-initiated distinction drawn in this paper holds more broadly, or whether Pakistan and China instead represent two poles on a wider spectrum of institutional pathways through which law is being mobilized for climate ends across the Global South and beyond.