

Judicial Responses to Climate Change in China: Environmental Public Interest Litigation as a Pathway

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ABSTRACT

With the progression of the times and ongoing development, climate change has become an issue that many countries must confront. In the current context of incomplete legislation, it is particularly important to explore pathways for addressing climate change through judicial means within the existing system. Environmental public interest litigation, with its unique institutional advantages and preventive function, has shown potential as an optimal judicial approach to tackling climate change. However, issues such as justiciability, evidentiary standards, the specific application of the precautionary principle, and how to balance judicial activism with restraint urgently need to be resolved.

KEYWORDS

Climate change; Preventive justice; Environmental public interest litigation

1 The potential of environmental public interest litigation in addressing climate change

Accelerated industrialization and intensified human activities have made climate change a critical global environmental crisis of the 21st century. Frequent extreme weather events, rising sea levels, and ecosystem degradation pose severe challenges not only to natural ecology but also directly threaten human survival and development. In this context, China set the "dual carbon" goals of peaking carbon emissions by 2030 and achieving carbon neutrality by 2060. While administrative measures remain the primary approach to climate governance in China, judicial mechanisms become essential when such measures fall short. Generally, judicial responses to climate issues can be divided into two perspectives: one focused on post-damage remediation and the other on preventative intervention before harm occurs. Given the irreversible nature of climate-related damage, a preventative judicial approach holds significant practical and theoretical value. This paper therefore explores pathways for regulating climate issues in China through environmental public interest litigation, emphasizing a preventative judicial perspective.

2 Theoretical basis and practical insights of using environmental public interest litigation to address climate change

2.1 The legal basis for applying environmental public interest litigation to climate change

A primary question that must be clarified before incorporating climate change into the scope of public interest litigation is why it constitutes "public interest" in the legal sense. China's current public interest litigation system adopts a legislative model of a "general clause + enumerated list," which includes acts such as "polluting the environment, damaging ecology, and harming the public interest" as actionable. However, it does not clearly define the connotation and extension of "public interest." Therefore, delineating the legal boundaries of public interest is fundamental to introducing climate change issues into public interest litigation procedures.

Within the legal system, public interest is not an unlimited concept; its identification must be based fundamentally on constitutional norms. Article 26, Paragraph 1 of the Constitution stipulates: "The State protects and improves the living environment and the ecological environment, and prevents and controls pollution and other public hazards." The phrase "protects and improves the living environment and the ecological environment" not only imposes environmental protection obligations on the State but also normatively confirms the public nature of ecological interests, thereby elevating environmental public interest to a significant legal interest protected by law.

Building on this, climate change, as a typical cross-sectoral and intergenerational environmental issue, affects the stability and sustainability of the ecosystem upon which humanity collectively depends. It therefore possesses the attribute of environmental public interest as confirmed by the Constitution. However, translating climate change from a constitutional-level public interest into a remediable public interest in judicial practice hinges crucially on clarifying who holds the authority to define public interest. According to the voluntarist conception of public interest, public interest

should be confirmed and specified through legislative procedures—that is, "only through the enactment of law can what constitutes public interest be determined." Under this logic, the 2015 revision of the Air Pollution Prevention and Control Law introduced a new provision requiring "implementing coordinated control of air pollutants and greenhouse gases," thereby providing a substantive legal basis for identifying public interests related to climate change. This provision not only expands the scope of air pollution prevention and control but also establishes an institutional link between greenhouse gas regulation and atmospheric environmental quality at the legal level. Consequently, environmental public interest litigation concerning air pollution has emerged as a viable judicial pathway for addressing climate change.

2.2 Practical challenges in addressing climate change through environmental public interest litigation in China

China's public interest litigation system currently faces several shortcomings in addressing emerging environmental issues like climate change. Firstly, the scope of eligible defendants remains relatively narrow, primarily targeting entities directly responsible for pollutant discharge, while insufficiently encompassing parties with indirect responsibilities, such as power grid enterprises failing to meet renewable energy consumption quotas as required by law.

Secondly, challenges exist regarding the justiciability of abstract administrative acts. According to Article 53 of the Administrative Procedure Law, it is difficult to bring the legality of abstract administrative acts—such as climate policies and plans—under judicial review. Furthermore, the current system lacks established criteria for applying the precautionary principle, particularly a clear definition of "significant climate risk," which hinders the effective initiation of preventative lawsuits. Concurrently, existing litigation forms demonstrate certain limitations when dealing with climate change issues. In judicial practice, most relevant cases still emerge as "peripheral litigation," indirectly touching upon climate issues through air pollution lawsuits rather than directly basing claims on climate change damages. The current emphasis on ex-post remedies, such as orders to cease infringements or conduct ecological restoration, creates a significant gap with the risk-prevention philosophy essential for tackling climate change, making it difficult to achieve forward-looking protection goals.

2.3 Insights from international practice

The *Urgenda v. The Netherlands* case stands as a landmark ruling in global environmental and climate change law, providing critical insights and a replicable model for addressing climate change through public interest litigation. The Urgenda Foundation, a non-governmental environmental organization, sued the Dutch government on behalf of 886 Dutch citizens. The plaintiffs argued that the government's target to reduce greenhouse gas emissions by only 17% below 1990 levels by 2020 was insufficient, constituting a failure to fulfill its obligation to address the dangers of climate change and thus violating Articles 2 (right to life) and 8 (right to respect for private and family life) of the European Convention on Human Rights. They requested the court to order the government to increase the 2020 emission reduction target to at least 25%. After undergoing three levels of judicial review, Dutch courts consistently upheld Urgenda's claims.

The courts in this case departed from traditional judicial restraint, explicitly affirming that in areas involving fundamental rights and significant public interests, the judiciary has the authority to review and compel the executive branch to fulfill its protective obligations. Furthermore, the case broke new ground in evidence admission by incorporating scientific reports from the Intergovernmental Panel on Climate Change (IPCC) as key evidence, thereby elevating global scientific consensus into a legally binding basis for judgment.

This ruling offers valuable lessons for climate litigation in China: Chinese lawsuits could attempt to link the nation's NDCs with provisions concerning the protection of citizens' right to health and environmental rights in the Constitution and the Environmental Protection Law. This would help argue that governmental or corporate inaction/violations not only breach administrative regulations but also infringe upon the public's fundamental environmental interests. Furthermore, drawing from the Urgenda case's use of scientific evidence, Chinese litigation could actively introduce research reports from authoritative institutions like the China Meteorological Administration and the Chinese Academy of Sciences as key evidence to support claims, thereby enhancing the scientific validity and rationality of the petitions.

3 Environmental public interest litigation as the core hub for china's judicial response to climate change

3.1 The Predicament of Climate Change Litigation from a Remedial Justice Perspective

Current climate change tort relief faces multiple challenges. Firstly, regarding the identification of damages, despite progress in climate attribution science, establishing a complete causal chain between specific carbon emission activities

and particular damages in individual cases remains difficult. The prolonged and complex natural and social mechanisms involved in climate change-induced losses mean science cannot yet provide irrefutable attribution evidence, creating significant difficulty in presenting evidence for plaintiffs. Even with rules like the inversion of the burden of proof or prima facie evidence, overcoming the fundamental obstacle of scientific uncertainty is challenging, often leading to substantive injustice in judicial rulings.

Secondly, concerning methods of liability assumption, existing tort remedies such as compensation for losses and restoration to the original state have limited effectiveness in addressing systemic, global climate damage. In judicial practice, courts often avoid substantive review of damages, instead basing decisions on procedural issues like causality or illegality of conduct, making it difficult to enforce liability for climate harm. Even when compensation is awarded, monetary payments cannot truly rebuild climate damage or fundamentally reverse the impacts of climate change.

Furthermore, systemic obstacles exist when applying tort liability laws to climate change litigation. Current reliance on the Tort Liability section of the Civil Code and the Environmental Protection Law presents difficulties, as their constructed fault liability and illegality requirements are ill-suited to the particularity of carbon emission activities. For instance, whether the principle of no-fault liability applies remains unsettled, and debates persist over standards for determining illegality (conduct illegality vs. result illegality), increasing legal uncertainty. Additionally, the conflict between the "uniformity" of causation and the "disparity" of damage outcomes places higher demands on precise judicial discretion.

3.2 The unique advantages of environmental public interest litigation from a preventive justice perspective

3.2.1 Environmental public interest litigation vs. ecological damage compensation

Ecological damage compensation serves as an ex-post legal remedy, aiming to hold parties responsible for ecological environmental damage liable for restoration costs or monetary compensation. It focuses on "rectifying" already occurred, specific environmental damages. Moreover, "illegality" is a crucial prerequisite for applying the ecological damage compensation system. Consequently, it "cannot perform the preventive function of environmental justice when facing 'lawful yet unreasonable' carbon emission environmental risks under administrative regulation". Moreover, due to its predominant focus on ex-post remedies, this approach is ill-suited to address behaviors like greenhouse gas emissions that are "cumulative" and "globally pervasive" in nature, and which do not directly cause locally visible damage.

Principle 15 of the Rio Declaration on Environment and Development establishes the precautionary principle, stating that "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." This principle is a crucial manifestation of the state's environmental protection obligations. Within this context, environmental public interest litigation's inherent emphasis on prior prevention gives it a distinct advantage in addressing climate change issues.

3.2.2 Environmental public interest litigation vs. NGO litigation

Traditional NGO litigation typically challenges either infringements of specific victims' rights (e.g., property, health) or the legality of administrative procedures, making it difficult to directly address the macro-level issue of climate change. Furthermore, in Chinese judicial practice, courts often dismiss such cases filed by NGOs on grounds of the plaintiff lacking standing. In NGO litigation, the plaintiff (the NGO) bears a heavy burden of proof, requiring them to demonstrate the fact of damage, the causal link between the defendant's actions and the harm, etc.—a task nearly impossible to fulfill in highly complex cases like climate change.

In contrast, environmental public interest litigation safeguards the environmental public interests of an unspecified majority, rather than private individual interests. This aligns highly effectively with the public nature of the climate change problem. Furthermore, the range of eligible plaintiffs for environmental public interest litigation is relatively broad and clearly defined by law. Notably, procuratorial organs, as one category of eligible plaintiff, possess strong investigative capabilities and public credibility.

3.2.3 The institutional advantages of environmental public interest litigation

Environmental public interest litigation demonstrates unique comprehensive, systematic, and forward-looking advantages in addressing climate change. Its "public interest" orientation allows it to transcend case-specific relief and target the root causes of systemic challenges like climate change. Compared to ex-post facto liability, environmental public interest litigation emphasizes prevention. It can directly challenge the planning and approval of high-carbon emission projects through judicial procedures, curbing greenhouse gas emissions at their source. Regarding litigation mechanisms, statutory rules on plaintiff eligibility and the inverted burden of proof effectively overcome the difficulty in

presenting evidence inherent in the climate change domain, providing a viable pathway for judicial intervention.

4 Activating and optimizing concrete pathways for environmental public interest litigation to address climate change

Firstly, the scope of eligible defendants in public interest litigation should be appropriately expanded through legislation or judicial interpretation to include entities with indirect responsibilities, thereby covering the diverse range of parties accountable in the climate change domain.

Secondly, the process of proving causation should be optimized, strengthening the use of scientific evidence. Appropriately take a example by scientifically sound standards of proof, such as scientific attribution and the NESS test, can make evidentiary rules more rational. Furthermore, the burden of proof should be allocated reasonably. Instead of directly applying the reversal of the burden of proof, the plaintiff should initially bear the burden. Once the court acknowledges the plaintiff's preliminary evidence, the burden then shifts to the defendant, who would be subject to the traditional reversal rule. The court would subsequently make a comprehensive judgment on whether the carbon emission environmental risk meets the requisite standard.

Thirdly, detailed rules for applying the precautionary principle in judicial practice must be clarified. The Supreme People's Court, in conjunction with ecological and environmental authorities, should formulate guidelines that provide a quantitative definition of "significant climate risk." This will facilitate courts in assessing risks and initiating preventative measures within litigation, thereby strengthening ex-ante intervention. Additionally, enhancing judges' training in environmental science and climate change expertise is crucial. Promoting the establishment of specialized environmental courts or panels, actively developing environmental forensic identification institutions, and encouraging technical collaboration networks among environmental organizations, procuratorates, and research institutes will provide solid intellectual and evidentiary support for litigation.

Finally, and crucially, a balance must be struck between judicial activism and restraint. Judicial organs should adopt a proactive yet prudent attitude in adjudication. They must have the courage to exercise their guiding and supervisory functions in climate governance, avoiding inaction due to excessive restraint, while also respecting the role of the executive branch. When assessing policy legality or setting specific emission reduction targets, maintaining necessary restraint is vital, focusing on procedural review and supervising obligation fulfillment. This ensures the legitimacy and effectiveness of judicial intervention, ultimately fostering a positive dynamic where the judiciary and the administration work in synergy to protect the public interest in climate stability.

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The pressing urgency of climate change necessitates continuous adaptation of judicial and administrative apparatus to address its challenges. Given the current imperfection of relevant legislation in China, employing judicial means to tackle climate issues—seeking solutions within the existing institutional framework—presents a more moderate and feasible alternative. Among the available mechanisms, environmental public interest litigation, with its unique advantages, demonstrates the potential to become the optimal solution for addressing climate change. However, numerous problems within this litigation system require urgent resolution, and its concrete implementation must advance steadily in practice to better contribute to achieving China's carbon peak and carbon neutrality goals.

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