

CASE COMMENT

Striving Towards ‘The Good Life’: What Environmental Litigation in India Can Tell Us About Climate Litigation in the Global South

Vedanta Ltd v. State of Tamil Nadu and Others, Supreme Court of India

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Abstract

The Supreme Court of India’s judgment in *Vedanta Ltd v. State of Tamil Nadu and Others*, affirming the closure of Vedanta’s copper smelting plant in Tuticorin in southern India, concludes a long and contentious chain of litigation. The plant’s troubled history and the ensuing litigation reflect contestations between economic development, environmental and social devastation, human well-being, and corporate responsibility, which are often characteristic of environmental litigation in the global south. This article analyzes the significance of the Indian Supreme Court’s reliance on established constitutional rights principles as well as settled environmental jurisprudence, and highlights the relevance of this judicial pronouncement for climate litigation in the global south.

Keywords: Climate litigation; Environmental litigation; Human rights; Industrial emissions; India; Global south

1. Introduction

This case comment discusses the significance of the judgment of the Supreme Court of India in *Vedanta Ltd v. State of Tamil Nadu and Others*,¹ affirming the closure of a copper smelting plant on grounds of flagrant violations of environmental regulations, and their impacts on the lives of local residents.

I argue that the judgment is significant for highlighting the tussle between economic activity on the one hand and environmental and social degradation on the other, in the context of an emerging economy. The Supreme Court in this case seeks to champion

¹ *Vedanta Ltd v. State of Tamil Nadu and Others*, Supreme Court of India, Judgment in Special Leave Petition (Civil) Nos. 10159–10168 of 2020 with Special Leave Petition (Civil) Nos. 10461–10462 of 2020 and Civil Appeal Nos. 276–285 of 2021, 29 Feb. 2024, available at: https://webapi.sci.gov.in/supreme-court/2020/18030/18030_2020_1_1_50971_Judgement_29-Feb-2024.pdf (*Vedanta* (2024)).

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human dignity and well-being, to support what it calls ‘the good life’. India’s rights-based environmental jurisprudence, as applied to this case to uphold the closure of a polluting industrial unit, reflects many commonly witnessed elements of climate litigation in the global south. Simultaneously, these elements offer a point of contrast to recent rights-based climate litigation in the global north, particularly in the European Union (EU). This case comment provides a critical analysis of the litigation process and its outcome, and reflects on the judgment’s relevance for climate litigation in similarly placed jurisdictions in the global south and its contradistinction with experiences in the global north.

2. Factual Background

2.1. *Vedanta and the Tuticorin Copper Smelting Plant in the Eye of the Storm*

The judgment under consideration, pronounced by the Supreme Court of India on 29 February 2024, concerns the closure of a copper smelter operated by Vedanta Ltd (Vedanta) in the SIPCOT industrial complex in Thoothukudi (Tuticorin) in the state of Tamil Nadu in southern India. The Supreme Court was approached by Vedanta in a Special Leave Petition² to challenge a judgment of the Madras High Court in Tamil Nadu in 2020, which had affirmed the closure of the copper smelting unit on grounds of multiple violations of environmental norms.³

This copper smelter plant has had a long and problematic history, involving persistent environmental violations leading to several rounds of litigation, a sulphur dioxide leak in 2013 leading to the poisoning and death of many residents,⁴ and protests against the plant in May 2018, which became violent and resulted in multiple fatalities following police firing.⁵ When a Government Order passed immediately after these protests shut down the copper smelting plant permanently in 2018, the residents of Tuticorin celebrated the closure of an industrial unit that had affected their health, environment, and livelihood for over two decades, and had led to the loss of many lives to cancer and other health issues.⁶

Vedanta Ltd is a subsidiary of Vedanta Resources Ltd, a company headquartered in London (United Kingdom (UK)) and engaged in business operations in the field of

² In India, it is permissible to approach the Supreme Court of India to appeal against judgments of the High Courts through a Special Leave Petition under Art. 136 of the Constitution of India.

³ *Vedanta Ltd and Others v. State of Tamil Nadu and Others*, Madras High Court, Judgment in Writ Petition Nos. 5756, 5764, 5771, 5772, 5773, 5774, 5776, 5792, 5793, 5801 and 21547 of 2019, 18 Aug. 2020, available at: <https://mhc.tn.gov.in/judis/index.php/casestatus/viewpdf/540049> (*Vedanta* (2020)).

⁴ N. Jayaraman, ‘10 Years since Sterlite Gas Leak: Another Reason Why Smelter Was Shut Down’, *The News Minute*, 23 Mar. 2023, available at: <https://www.thenewsminute.com/tamil-nadu/10-years-sterlite-gas-leak-another-reason-why-smelter-was-shut-down-174940>.

⁵ I. Kukreti, ‘Anti-Sterlite Protest in Tamil Nadu Turns Violent, At Least 11 Killed in Police Firing’, *Down to Earth*, 22 May 2018, available at: <https://www.downtoearth.org.in/news/environment/anti-sterlite-protest-in-tamil-nadu-turns-violent-at-least-8-killed-in-police-firing-60617>.

⁶ A. Sangomla, ‘After a 23-Year-Long Battle, Tamil Nadu’s Sterlite Plant Finally Shuts Down, Permanently’, *Down to Earth*, 28 May 2018, available at: <https://www.downtoearth.org.in/news/governance/tamil-nadu-govt-orders-permanent-closure-of-sterlite-plant-in-tuticorin-60676>.

minerals, power, and energy. In the fiscal year 2022–23, Vedanta Resources earned record revenues of US\$18.1 billion, with a profit of US\$4.6 billion.⁷ In the past, Vedanta Resources (the UK parent company) was allowed to be sued directly in the UK for environmental damage caused by its mining subsidiary in Zambia over the duty of care it owed to foreign claimants.⁸

2.2. Past Litigation Following the Court-Directed Closure of the Vedanta Plant in 2010

In a previous round of litigation, the Madras High Court, in September 2010, ordered the closure of the plant on environmental grounds.⁹ In 2013, the Supreme Court reversed this judgment based on the reasoning that certain deficiencies pertaining to the plant had been rectified, and 29 of the 30 directions of the Tamil Nadu Pollution Control Board (TNPCB) – a statutory authority appointed by the state government – had been complied with.¹⁰ This was supplemented by a direction for the company to pay rupees 100 crores (approximately US\$12 million, per the currency conversion rate in October 2024) as compensation for the damage caused to the environment during the plant's operation between 1997 and 2012.¹¹ The Court clarified, however, that a future direction for closure of the plant in the interests of protecting the environment would not be ruled out.¹²

In arriving at its findings, the Supreme Court acknowledged the misrepresentation and material suppression of facts by Vedanta (then Sterlite) but weighed them against the potential effects of closing the plant, citing 'considerations of public interest'; these included the plant's employment of over 1,300 people, its contribution to revenues at the state and federal levels, and the dependence of ancillary industries on the plant.¹³

2.3. Closure of the Plant in 2018 Culminating in the Supreme Court Judgment in 2024

On 9 April 2018, the TNPCB rejected Vedanta's applications for renewal (for a further period of five years) of the consent granted to operate the copper smelting plant, on the ground of continued violations under the Air (Prevention and Control of Pollution) Act, 1981 (Air Act)¹⁴ and the Water (Prevention and Control of Pollution) Act, 1974 (Water Act¹⁵).¹⁶

⁷ K. Sarkar, 'Vedanta Resources Posts Record Revenue in FY23 Despite Profit Decline, Debt Falls to \$7.8 Billion', *CNBC TV 18*, 9 June 2023, available at: <https://www.cnbctv18.com/earnings/vedanta-resources-posts-record-revenue-in-fy23-despite-profit-decline-debt-falls-to-78-billion-16890941.htm>.

⁸ *Vedanta Resources Plc and Another v. Lungowe and Others* [2019] UKSC 20, Supreme Court, on appeal from [2017] EWCA Civ 1528, Court of Appeal (*Vedanta Resources*).

⁹ *Sterlite Industries (India) Ltd and Others v. Union of India and Others* (2013) 4 SCC 575, Supreme Court of India (*Sterlite Industries*), paras 2–4.

¹⁰ *Ibid.*, paras 43–4.

¹¹ *Ibid.*, paras 45–7.

¹² *Ibid.*, para. 50.

¹³ *Ibid.*, para. 48.

¹⁴ Air (Prevention and Control of Pollution) Act, 1981 (Air Act).

¹⁵ Water (Prevention and Control of Pollution) Act, 1974 (Water Act).

¹⁶ *Vedanta* (2020), n. 3 above, paras 19–20.

Meanwhile, protests against the Vedanta plant continued, and 22 May 2018 would mark the 100th day of such protests.¹⁷

Apart from challenging the decision of the TNPCB before the appellate authority constituted under the Air Act and the Water Act, Vedanta also moved the Madras High Court (Madurai Bench) in a writ petition to seek a direction to the District Collector of Tuticorin District to consider declaring the area falling within a one-kilometre radius of the Vedanta plant, its warehouse, and its employees' residential premises as a 'protest-free zone', particularly in view of a protest planned on 22 May 2018 to seek the closure of the plant.¹⁸ The Madras High Court passed an order to dispose of the writ petition, directing the District Collector to consider Vedanta's representation, while also observing that 'the proposed protest is likely to trigger a law and order situation and in this scenario invoking Section 144 of Cr.P.C would be highly recommended in public interest'.¹⁹ This was a reference to a provision of India's Code of Criminal Procedure, which empowers magistrates to issue orders in urgent cases of nuisance or apprehended danger,²⁰ and is invoked in the Indian context to prohibit the assembly of people.

Subsequently, on 22 May 2018, protests seeking closure of the Vedanta plant became violent when firing by police led to several deaths.²¹ This was a protest where 50,000 people marched towards the District Collectorate to mark 100 days of protest and demanded that the plant be closed.²² On 23 May 2018, the TNPCB ordered closure of the Vedanta plant,²³ a decision endorsed by the Tamil Nadu state government through a further order five days later, on 28 May 2018.²⁴ Vedanta's challenge to these orders ultimately ended up before the Madras High Court, where a two-judge bench, in its comprehensive judgment of 18 August 2020, upheld the closure on grounds of multiple violations of environmental norms.²⁵

Far from conceding defeat, Vedanta took the matter to the Supreme Court by means of a Special Leave Petition. This petition ultimately was dismissed by a three-judge

¹⁷ See R. Cox & E. Calder, 'Five Years on from India's Thoothukudi Massacre, Families and Activists Demand Justice', *Global Witness*, 25 May 2023, available at: <https://www.globalwitness.org/en/blog/five-years-on-from-indias-thoothukudi-massacre-families-and-activists-demand-justice>.

¹⁸ *Vedanta* (2020), n. 3 above, para. 20; *Vedanta Ltd v. The District Collector, Thoothukudi District and Another*, Madurai Bench of the Madras High Court, Order in W.P. (MD) No. 11190 of 2018 and W.M.P. (MD) Nos. 10218 and 10219 of 2018, 18 May 2018, para. 2, available at: <https://mhc.tn.gov.in/judis/index.php/casestatus/viewpdf/155276> (*Vedanta* (2018)).

¹⁹ *Vedanta* (2018), *ibid.*, paras 7, 5.

²⁰ Code of Criminal Procedure, 1973, s. 144.

²¹ *Vedanta* (2020), n. 3 above, para. 20.

²² For a detailed account of the protest see 'High-Level People's Inquest Team Finds Tamilnadu Police / Thoothukudi District Admin Guilty of Serious Excesses', *ESG India*, 2 June 2018, available at: <http://www.esgindia.org/campaigns/press/high-level-peoples-inquest-team-finds-ta.html>. In 2024, the Madras High Court found that the firing on the protestors by the police was pre-planned (see Sureshkumar, '13 Protestors Killed in 18 Tuticorin Police Firing "At Behest of Industrialist": Madras High Court', *Times of India*, 17 July 2024, available at: <https://timesofindia.indiatimes.com/city/chennai/madras-high-court-orders-investigation-into-tuticorin-police-firing-incident/articleshow/111793206.cms>).

²³ *Vedanta* (2020), n. 3 above, para. 20.

²⁴ *Ibid.*, para. 21.

²⁵ *Ibid.*, para. 627.

bench of the Supreme Court led by the Chief Justice of India, Dr Dhananjaya R. Chandrachud; the unanimous judgment, on 29 February 2024, upheld the unit's closure on grounds of several environmental transgressions.²⁶ These included, in violation of the terms of authorization by the TNPCB for the unit to function, the dumping of vast quantities of copper slag leading to significant air and water pollution, as well as the flooding of a local river and the substantial presence of total dissolved solids in the water.²⁷ Other violations included (i) operation of the plant without consent from the relevant pollution control body (the TNPCB) for about 16 years (as it had relied routinely on court orders to continue operations rather than obtaining the requisite regulatory permissions);²⁸ (ii) operating the plant without appropriate authorization and systems for the management and disposal of hazardous waste; and (iii) failure to maintain an area with tree and plant cover (*inter alia*, for mitigating the effects of pollution) known as a 'green belt', as required by the terms of the consent granted by the TNPCB for Vedanta to operate.²⁹

3. Two Prominent Themes in the Supreme Court Judgment of February 2024

The *Vedanta* judgment reflects the application of legal rights and principles anchored in India's extensive environmental jurisprudence. In applying these principles, the Supreme Court also had to navigate how the economic significance of the Vedanta copper plant in a developing economy should be weighed against the environmental and social costs posed by its operation. This section provides an overview of the Court's findings in respect of these two themes, before proceeding to a more contextual analysis of the judgment in Section 4.

3.1. Reliance on Established Jurisprudence on Environmental Rights and Legal Principles

The Supreme Court applied four broad legal principles in support of its conclusion to dismiss Vedanta's petition: (i) the polluter pays principle, (ii) the doctrine of public trust, (iii) the right to a clean environment, and (iv) intergenerational equity.

Firstly, the Court cited the polluter pays principle as a well-established norm in domestic and international law, whereby the entity responsible for environmental pollution and degradation should also bear the costs of mitigation and restoration.³⁰ The justices also emphasized that economic activities (in this context, those carried out by Vedanta in Tuticorin) should not be carried out at the cost of environmental degradation and the health of the residents of the region.³¹

²⁶ *Vedanta* (2024), n. 1 above.

²⁷ *Ibid.*, para. 11.

²⁸ For a detailed discussion on this point see *Vedanta* (2020), n. 3 above, para. 563.

²⁹ *Vedanta* (2024), n. 1 above, para. 11. For a detailed discussion on this point see *Vedanta* (2020), n. 3 above, paras 496–511.

³⁰ *Vedanta* (2024), n. 1 above, para. 24.

³¹ *Ibid.*

Secondly, the Court invoked the state's responsibility as 'a steward of the environment' by virtue of holding natural resources in trust for the benefit of the public.³² The importance of ensuring the protection of common resources against exploitation or degradation, and thereby balancing economic interests with environmental and public welfare concerns, were identified as important facets of the public trust doctrine.³³

Thirdly, the Court turned to the well-established right to a clean environment,³⁴ relying on its own long-standing jurisprudence in interpreting the right to life under Article 21 of the Indian Constitution to include the right of enjoyment of pollution-free water and air, as well as past pronouncements that considered the polluter pays principle and the precautionary principle to be part of India's environmental law.³⁵ The Court also invoked international treaties and agreements – such as the United Nations (UN) Universal Declaration of Human Rights,³⁶ the Convention on Biological Diversity,³⁷ and the Paris Agreement³⁸ – contending that they recognize 'the right to breathe clean air, drink clean water, live a life free from disease and sickness, and for those who till the earth, have access to uncontaminated soil'.³⁹ This right to a clean environment was delineated in the specific context of air pollution and water pollution – for both of which the Vedanta plant was responsible, and were among the grounds for its closure – as well as the exacerbated impact of such pollution on communities already suffering from poverty and marginalization.⁴⁰

Lastly, the Supreme Court stressed the concept of intergenerational equity, as pronounced in its previous judgments,⁴¹ noting that '[t]he planet and its invaluable resources must be conscientiously conserved and responsibly managed for the use and enjoyment of future generations, emphasizing the enduring obligation to safeguard the environmental heritage for the well-being of all'.⁴²

3.2. *Balancing Economic Development Needs against Environmental and Social Protection*

The Supreme Court stressed that the repeated nature and severity of Vedanta's violations made closure of the unit inevitable – even though such a measure should not be

³² *Ibid.*, para. 25.

³³ *Ibid.*

³⁴ *Ibid.*, para. 26.

³⁵ *Subhash Kumar v. State of Bihar* (1991) 1 SCC 598; *Vellore Citizens' Welfare Forum v. Union of India* (1996) 5 SCC 647.

³⁶ Paris (France), 10 Dec. 1948, UN General Assembly Resolution 217A (III), UN Doc. A/810, 10 Dec. 1948, available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

³⁷ Rio de Janeiro (Brazil), 5 June 1992, in force 29 Dec. 1993, available at: <http://www.cbd.int/convention>.

³⁸ Paris Agreement to the United Nations Framework Convention on Climate Change (UNFCCC), Paris (France), 12 Dec. 2015, in force 4 Nov. 2016, available at: https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

³⁹ *Vedanta* (2024), n. 1 above, para. 28.

⁴⁰ *Ibid.*, para. 26.

⁴¹ *G. Sundarajan v. Union of India* (2013) 6 SCC 620; *D. Swamy v. Karnataka State Pollution Control Board* 2022 SCC OnLine SC 1278.

⁴² *Vedanta* (2024), n. 1 above, para. 27.

a preferred option.⁴³ In arriving at its conclusion, the Supreme Court was mindful of the economic contribution of the copper smelting unit, particularly through the generation of employment and revenues, but noted that these factors would necessarily need to be weighed against other well-settled legal principles, such as the principle of sustainable development, the polluter pays principle, and the public trust doctrine, such that ‘economic activities should not come at the expense of environmental degradation or the health of the population’.⁴⁴

In particular, the Court observed:

The ultimate aim of all our endeavours is for all people to be able to live ‘the good life.’ Without these basic rights, increased revenue and employment cease to have any real meaning. It is not merely about economic growth but about ensuring the well-being and dignity of every individual. As we pursue development, we must prioritize the protection of these rights, recognizing that they are essential for sustainable progress. Only by safeguarding these fundamental rights can we truly create a world where everyone has the opportunity to thrive and prosper.⁴⁵

These findings provide a remarkable contrast to the Supreme Court’s observations in 2013 in an earlier round of litigation concerning the same copper smelting plant, in which the Supreme Court had overturned the plant’s mandated closure (see Section 2.2). In that ruling, the Court particularly stressed the plant’s contribution to India’s economy.⁴⁶ This included its prominent role as a copper supplier for domestic sectors such as defence, electricity, automobile, construction, and infrastructure, the employment provided for its 1,300 employees, the generation of revenues for the central and state government in the form of various taxes and excise duties, as well as its contribution to 10% of the total cargo volume at Tuticorin port.⁴⁷

The Supreme Court, in 2013, was mindful of the company’s operations contributing to environmental degradation in the period 1997 to 2012 but preferred to make the company liable for compensation in the form of damages in the amount of rupees 100 crore (approximately US\$12 million, per the currency conversion rate in April 2024) rather than shut down the plant.

The long-term efficacy of a ‘pay and play’ strategy to discipline polluting industry players with large fines is questionable.⁴⁸ Indeed, as the developments following the Supreme Court’s 2013 judgment demonstrate, the repeated violations of environmental norms continued and led ultimately to the orders of the TNPCB and the Tamil Nadu state government mandating the plant’s closure. A further point of criticism concerned the Supreme Court’s decision to allow the plant to function while the case was *sub judice* between 2010 and 2013, as this period witnessed eight hazardous incidents

⁴³ Ibid., para. 24.

⁴⁴ Ibid.

⁴⁵ Ibid., para. 28.

⁴⁶ *Sterlite Industries*, n. 9 above, para. 48.

⁴⁷ Ibid.

⁴⁸ S. Divan & A. Rosencranz, *Environmental Law and Policy in India: Cases and Materials* (Oxford University Press, 2022), p. 661.

with three casualties, four injured workers, and the gassing of several hundred residents living close to the plant.⁴⁹ In its submission to the Court in 2024 in the most recent litigation, the Tamil Nadu state government characterized Vedanta as a repeat offender and argued that the plant should not be considered a national asset that was required to reopen to meet India's copper demand.⁵⁰ The 2024 *Vedanta* judgment is thus significant for recognizing and prioritizing the environmental degradation and human hardship caused by the plant over economic concerns.

4. Zooming in on Key Elements of the Judgment and their Significance for Climate Litigation in the Global South

Is the judgment in *Vedanta Ltd v. State of Tamil Nadu and Others* an example of climate litigation? At first glance, neither the litigants nor the judiciary engaged openly with the topic of climate change. Yet, the ruling not only provides relief for the residents of Tuticorin, who had suffered the consequences of Vedanta's flagrant environmental violations, but also contributes indirectly to climate change mitigation by halting environmentally detrimental activities undertaken by a large corporate emitter.

The affirmation of the closure of an industrial plant by India's highest court, as well as the constituent elements of its judgment, provide an important opportunity to reflect on the nature of climate litigation in India, specifically in contrast with climate litigation in the global north.

4.1. Rights, Pollution, and Environmental Jurisprudence: Contrasting India's Judicial Narrative with Climate Litigation in the Global North

The 2024 LSE Grantham Centre Report on global trends in climate change litigation notes over 200 climate cases from global south jurisdictions, accounting for 8% of all cases in the global climate litigation database run by the Sabin Center.⁵¹ The low number of recognized cases in global south countries like India stems in part from the tendency of litigants and courts to avoid an explicit climate framing, with such litigation consequently falling outside the narrow definition of the term 'climate litigation' adopted by many academic observers.⁵² Of course, this is not to suggest that the emissions profiles of global south countries like India are not relevant. For example, India's

⁴⁹ N. Jayaraman, 'Vedanta-Sterlite: Dangerous by Design', *Kafila*, 28 Mar. 2013, available at: <https://kafila.online/2013/03/28/vedanta-sterlite-dangerous-by-design-nityanand-jayaraman>.

⁵⁰ K. Yadav, 'Tamil Nadu to SC: Vedanta's Sterlite Copper not a National Asset', *Mint*, 21 Feb. 2024, available at: <https://www.livemint.com/companies/tamil-nadu-to-sc-vedanta-s-sterlite-copper-not-a-national-asset-11708521680490.html>.

⁵¹ J. Setzer & C. Higham, 'Global Trends in Climate Change Litigation: 2024 Snapshot', Grantham Research Institute on Climate Change and the Environment & London School of Economics and Political Science, June 2024, pp. 13–4, available at: <https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2024-snapshot>; Columbia Law School, Columbia Climate School, Sabin Center for Climate Change Law, 'Climate Change Litigation Databases', available at: <https://climatecasechart.com>.

⁵² See P. Kumar, 'Of Comparative Constitutionalism and Definitional Inclusivity: Rights-Based Climate Litigation in India and the European Union' (2023) 17(3) *Carbon & Climate Law Review*, pp. 136–48. See also Setzer & Higham, n. 51 above, p. 14.

energy-related carbon dioxide (CO₂) emissions alone have increased by 156% since 2021, now accounting for 6.79% of global emissions,⁵³ but these issues had not found a place in the judicial narrative until very recently. It is, therefore, all the more important that cases such as *Vedanta* be assessed not just for their obvious outcome but also for their significance in the climate litigation landscape.

Although climate change does not figure directly in the *Vedanta* litigation, it aligns with similar cases from the global south that are trying to address the fundamental drivers of climate change instead of adopting an explicit climate change framing.⁵⁴ Using tried-and-tested arguments and established legal precedents, litigants in global south jurisdictions commonly rely on ‘broader environmental, or other non-specific climate, laws’ to address climate change by analogy or indirectly.⁵⁵ This is characterized as a ‘stealthy’ strategy – one that ‘dilutes the political potency of climate issues by packaging them with less controversial claims’.⁵⁶

The *Vedanta* judgment provides an opportunity to reflect on the intersection of environmental degradation and climate change mitigation. Given the focus on emissions reduction in many of the recent prominent climate litigation cases in the global north (particularly in recent examples from the UK, Switzerland, Germany, and the Netherlands⁵⁷), it is possible that a case similar to *Vedanta* in an industrialized economy in the global north might include the vocabulary of industrial emissions, and the urgency of mitigating these to meet legally binding climate goals. In fact, there are already instances of climate litigation in the global north aimed at making large polluting corporates accountable for their emissions. In *Milieudefensie et al. v. Royal Dutch Shell Plc*, a District Court in the Netherlands directed the Shell group to reduce its emissions by 45% by 2030, relative to 2019 levels.⁵⁸

In contrast, the Indian *Vedanta* judgment frames the harmful repercussions of the copper smelting unit by using the vocabulary of air and water pollution, among others. In so doing, it follows a trajectory of similar cases in which the adverse impacts of environmental pollution have warranted judicial intervention through statutory law, constitutional law, and tort law remedies.⁵⁹ In its immediate factual context, the *Vedanta* case

⁵³ International Energy Agency (IEA), ‘Energy System of India’, updated 21 Dec. 2023, available at: <https://www.iea.org/countries/india>.

⁵⁴ See J. Peel & J. Lin, ‘Transnational Climate Litigation: The Contribution of the Global South’ (2019) 113(4) *American Journal of International Law*, pp. 679–726, at 715.

⁵⁵ Ibid. See also J. Lin & J. Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024), p. 98.

⁵⁶ Peel & Lin, n. 54 above, p. 716.

⁵⁷ See *R (on the application of Finch on behalf of the Weald Action Group) v. Surrey County Council and Others* [2024] UKSC 20, UK Supreme Court; *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, European Court of Human Rights, App. No. 53600/20, Judgment, 9 Apr. 2024 (*Verein KlimaSeniorinnen Schweiz*); *VZW Klimaatzaak v. Kingdom of Belgium and Others*, Court of Appeal Brussels, 2021/AR/15gs 2022/AR/737 2022/AR/891, Judgment, 30 Nov. 2023 (*VZW Klimaatzaak*); *State of the Netherlands v. Urgenda Foundation*, Supreme Court of the Netherlands, 20 Dec. 2019, ECLI:NL:HR:2019:2007; *Luisa Neubauer et al. v. Germany*, Bundesverfassungsgericht, Order of the First Senate of 24 Mar. 2021, 1 BvR 2656/18 (*Neubauer*).

⁵⁸ *Milieudefensie et al. v. Royal Dutch Shell Plc*, The Hague District Court (The Netherlands), C/09/571932/HA ZA 19-379, 26 May 2021.

⁵⁹ See Divan & Rosencranz, n. 48 above, Ch. 6 ‘Judicial Remedies and Procedures’, pp. 152–98.

was about the violation of environmental norms but, seen in a broader light, it does offer conclusions about corporate accountability in the face of the tangible impacts of the violations, and indirectly serves to reduce the emissions generated by the plant.

In the case of many industrial activities, there may indeed be a coincidence of environmental degradation through pollution as well as a contribution to climate change through industrial emissions. In India, the industrial sector accounts for 24.1% of total CO₂ emissions, second only to the electricity and heat producers, which jointly account for 53% of the CO₂ emissions.⁶⁰ In other words, the contribution of India's industrial sector to climate change is not insignificant, and reductions in these emissions (and indeed the consequent pollution) undoubtedly offer potential for climate change mitigation. Therefore, even though litigants' arguments and the judiciary's findings are not contextualized with regard to emissions, the outcomes in cases such as *Vedanta* also have a positive effect for climate change mitigation through greenhouse gas (GHG) emissions reduction, and should therefore be viewed as important contributors to climate litigation.⁶¹

This dynamic is not only visible in the Indian context. For instance, Van Wyk compares judgments in a GHG-reduction case in the Netherlands (*Urgenda*⁶²) and an air pollution case in South Africa (the so-called *Deadly Air* case),⁶³ observing that even though the legal basis for the prevention of air pollution and climate change may differ, 'judicial action to mitigate either air pollution or climate change can be considered to be a valuable interconnected action that ultimately serves to mitigate both'.⁶⁴ More broadly, the circumstances and priorities of global north countries have dominated the understanding of climate litigation, as well as its scholarly treatment.⁶⁵ Only recently have some scholars advocated a broader definition of the term 'climate litigation' to include those cases the connection of which to climate change may be indirect or peripheral,⁶⁶ as well as more routine and mundane cases – for example, in tort law and administrative law – that could be illuminating in their treatment of issues relevant to climate change.⁶⁷

⁶⁰ IEA, 'India: CO₂ Emissions by Sector', updated July 2024, available at: <https://www.iea.org/countries/india/emissions#what-are-the-main-sources-of-co2-emissions-in-india>.

⁶¹ Kumar, n. 52 above, pp. 145–6.

⁶² N. 57 above.

⁶³ *Trustees for the Time Being of Groundwork Trust & Vukani Environmental Justice Alliance Movement in Action v. Minister of Environmental Affairs et al., and United Nations Special Rapporteur on Human Rights and the Environment (as amicus curiae)*, High Court of South Africa (Gauteng Division Pretoria), Case No. 39724/2019, 18 Mar. 2022, available at: <https://cer.org.za/wp-content/uploads/2022/03/DeadlyAir-High-court-judgment-18-March-2022.pdf>.

⁶⁴ S. van Wyk, 'Different Roads to the Same Destination: Climate Change Litigation in South Africa and the Netherlands and the Role of Human Rights in the Mitigation of Climate Change', in K. Bouwer et al. (eds), *Climate Litigation and Justice in Africa* (Bristol University Press, 2024), pp. 219–44, at 241.

⁶⁵ K. Bouwer et al., 'Africa, Climate Justice and the Role of the Courts', in Bouwer et al., *ibid.*, pp. 1–14, at 2.

⁶⁶ J. Peel & H.M. Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press, 2015), p. 8.

⁶⁷ See K. Bouwer, 'The Unsexy Future of Climate Change Litigation' (2018) 30(3) *Journal of Environmental Law*, pp. 483–506; C.V. Piedrahita & S. Gloppen, 'The Quest for Butterfly Climate Adjudication', in C. Rodríguez-Garavito (ed.), *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action* (Cambridge University Press, 2022), pp. 117–31.

Avoiding addressing climate change directly and instead deploying tried-and-tested arguments from environmental jurisprudence is often a strategic choice by litigants in global south jurisdictions.⁶⁸ Litigants in India often also prefer to use multiple strands of legal argument rather than relying on a single argument.⁶⁹ This approach, in turn, is reflected in the resulting judgments – in *Vedanta*, for example, the Supreme Court upholds the plant closure, citing constitutional law jurisprudence, the doctrine of public trust, the polluter pays principle, and international instruments.

It is also notable that the two Supreme Court judgments reversing and upholding the closure of the Vedanta copper smelting plant in 2013 and 2024, respectively, are interspersed by a decade that witnessed prominent developments in the field of climate change mitigation. These include the adoption of the Paris Agreement by 196 countries in 2015,⁷⁰ and thereafter a wave of strategic climate litigation relying on human rights and constitutional law to hold governments accountable to their commitments.⁷¹ To contend that the Indian Supreme Court bench, in pronouncing its decision in 2024, was influenced by the proliferating influence of said climate litigation would be a speculative endeavour. However, the express reference to the Paris Agreement, while holding that economic growth could not come at the expense of ‘the right to breathe clean air, drink clean water, live a life free from disease and sickness, and for those who till the earth, have access to uncontaminated soil’,⁷² is significant – especially in acknowledging India’s obligations towards meeting the goals of sustainable development and climate change mitigation at the international level.⁷³ Considering the legacy of judicial activism through constitutional rights and socio-economic rights in many global south countries, it is unsurprising that the most natural form of engagement with climate litigation in these jurisdictions is also through these avenues⁷⁴ – as also witnessed in a subsequent judgment providing a firm foundational basis for a climate right derived from fundamental rights guaranteed by the Indian Constitution.⁷⁵

In a significant development, only a few weeks after the Indian Supreme Court pronounced its judgment in the *Vedanta* case, the same bench delivered a ruling in another

⁶⁸ Peel & Lin, n. 54 above, p. 715.

⁶⁹ Kumar, n. 52 above, p. 145.

⁷⁰ Paris Agreement, n. 38 above.

⁷¹ J. Setzer et al., ‘Climate Litigation in Europe: A Summary Report for the European Union Forum of Judges for the Environment’, Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science & European Union Forum of Judges for the Environment, Dec. 2022, p. 9, available at: https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/12/Climate-litigation-in-Europe_A-summary-report-for-the-EU-Forum-of-Judges-for-the-Environment.pdf; J. Peel & H.M. Osofsky, ‘A Rights Turn in Climate Change Litigation?’ (2017) 7(1) *Transnational Environmental Law*, pp. 37–67, at 39–40.

⁷² *Vedanta* (2024), n. 1 above, para. 28.

⁷³ Paris Agreement, n. 38 above, Arts 2–4.

⁷⁴ C. Rodríguez-Garavito, ‘Human Rights: The Global South’s Route to Climate Litigation’ (2020) 114 *AJIL Unbound*, pp. 40–4, at 40–1.

⁷⁵ P. Kumar & A. Naik, ‘India’s New Constitutional Climate Right: Examining the Significance of *M.K. Ranjitsinh and Others v. Union of India and Others* for Climate Litigation in India’, *Verfassungsblog*, 25 Apr. 2024, available at: <https://verfassungsblog.de/indias-new-constitutional-climate-right>.

case, *M.K. Ranjitsinh and Others v. Union of India and Others*,⁷⁶ laying down a constitutional right against the adverse effects of climate change based on two fundamental rights in the Indian Constitution: the right to equality under Article 14, and the right to life and personal liberty under Article 21.⁷⁷ The Supreme Court founded this climate right on the well-established Indian jurisprudence on the right to a clean environment, holding that the right against the adverse effects of climate change and the right to a clean environment ‘are two sides of the same coin’.⁷⁸ Although a detailed commentary on this judgment is beyond the scope of this article, its comprehensive engagement with climate change – including its exacerbated impact on vulnerable communities, as well as India’s obligations towards climate change mitigation at the international level – is unprecedented and signals the fast pace of judicial change in this area.⁷⁹ Indeed, only a few years ago, a young girl’s attempt to seek the inclusion of climate change impacts in India’s environmental impact assessment framework was dismissed by the National Green Tribunal in India with a two-page order,⁸⁰ indicating a reluctance to engage with a direct climate change framing in a court case.

Even when the Supreme Court in *M.K. Ranjitsinh* set out to engage with climate change in more comprehensive terms, it did so by relying on India’s general environmental law framework⁸¹ and the familiar vocabulary of environmental pollution in several instances.⁸² It notes, for example, that ‘rampant air pollution emphasizes the need for cleaner energy sources like solar to combat pollution caused by fossil fuels’.⁸³ In the light of this judgment placing climate change prominently in the judicial discourse in India, it is possible that future litigation with a background similar to *Vedanta* may also choose to engage more directly with the climate change repercussions of environmentally degrading industrial activities. Litigants would certainly be less hesitant in bringing up climate change in express terms after the landmark ruling in *M.K. Ranjitsinh*, which offers very concrete hooks for engaging with climate change, and could alter the ‘stealthy’ litigation strategy described above.

4.2. Sustainable Development in the Era of Climate Litigation

A final element that stands out in comparative perspective is the judiciary’s treatment of sustainable development in *Vedanta*. The contest between economic development and environmental protection remains a key theme underpinning the judicial engagement

⁷⁶ *M.K. Ranjitsinh and Others v. Union of India and Others*, Supreme Court of India, Writ Petition (Civil) No. 838 of 2019 and Civil Appeal No. 3570 of 2022, Judgment, 21 Mar. 2024, available at: https://webapi.sci.gov.in/supremecourt/2019/20754/20754_2019_1_25_51677_Judgement_21-Mar-2024.pdf (*M.K. Ranjitsinh*).

⁷⁷ *Ibid.*, para. 24.

⁷⁸ *Ibid.*

⁷⁹ Kumar & Naik, n. 75 above.

⁸⁰ *Ridhima Pandey v. Union of India and Others*, Principal Bench of the National Green Tribunal in New Delhi, Original Application No. 187/2017, Judgment, 15 Jan. 2019, available at: https://climatecase-chart.com/wp-content/uploads/non-us-case-documents/2019/20190115_Original-Application-No.-187-of-2017_order.pdf.

⁸¹ *M.K. Ranjitsinh*, n. 76 above, para. 19.

⁸² See, e.g., *M.K. Ranjitsinh*, n. 76 above, paras 17, 19, 36, 42, 45, 47, 48.

⁸³ *Ibid.*, para. 42.

with Vedanta's responsibility and liability. As a 'vague and subjective' judicial standard, sustainable development lends itself to a great degree of discretion and vastly differing judicial outcomes.⁸⁴ Writing about judicial reliance on this principle, Divan and Rosencranz provide the following critique:

When it comes to legal contests, 'sustainable development' is too vague and flexible a notion to promote certainty and predictability. It provides a poor foundation when made the sole support for a judicial verdict. Judges usually decide the dispute on the facts, independent of this vague construct and then hang their conclusion on this convenient peg.⁸⁵

This inconsistency is also reflected in the contrasting approaches to the closure of the plant by the Supreme Court in its judgment in 2013 (in which it held that 'public interest' in the form of the plant's economic contribution would override the misrepresentation and suppression of information by the plant in relation to its environmental violations),⁸⁶ and in 2024 (in which it declared that '*the well-being and dignity of every individual*' would trump economic growth).⁸⁷

In *M.K. Ranjitsinh*, the Court appears to practically use climate change mitigation as a proxy for sustainable development, when it states:

By recognizing the right to a healthy environment and the right to be free from the adverse effects of climate change, states are compelled to prioritize environmental protection and sustainable development, thereby addressing the root causes of climate change and safeguarding the well-being of present and future generations.⁸⁸

Even though the outcomes in the tussle between economic development and individual rights may vary across judgments (as the series of judgments in the litigation surrounding the Vedanta plant clearly demonstrate), it is important to highlight that this recurring theme is one of tremendous significance for global south jurisdictions such as India, and one that repeatedly finds a place in the judicial narrative, in contrast to the vocabulary of climate change and emissions more conventionally associated with climate litigation in global north jurisdictions. Particularly in the aftermath of the *M.K. Ranjitsinh* judgment, it may be expected that the articulation of climate change concerns in Indian courts may find a stronger nexus to the vocabulary of sustainable development.

4.3. Rights-Based Litigation with a Local Focus

Some of the prominent rights-based climate litigation in the global north has been driven by the goal of challenging a government's overall policy response to climate change ('government framework litigation'), with the pleadings and outcomes often linked to

⁸⁴ Divan & Rosencranz, n. 48 above, p. 55.

⁸⁵ *Ibid.*, p. 54.

⁸⁶ *Sterlite Industries*, n. 9 above, para. 48.

⁸⁷ *Vedanta* (2024), n. 1 above, para. 28 (emphasis added).

⁸⁸ *M.K. Ranjitsinh*, n. 76 above, para. 35.

overarching climate laws ('framework legislation').⁸⁹ Recent years have witnessed successful rights-based climate litigation in Europe relying on the European Convention on Human Rights to seek more ambitious national climate policy frameworks (for example, *Verein KlimaSeniorinnen Schweiz*,⁹⁰ *VZW Klimaatzaak*,⁹¹ and *Urgenda*⁹²), as well as a similar reliance on constitutional rights at the national level (*Neubauer*⁹³). Arguably, the very existence of such framework legislation or overarching climate policy espousing temporal and/or sectoral emissions reduction targets for a geographical region (for example, a city, country, or block of countries such as the EU) allows for the targets contained therein to be challenged.

The Paris Agreement itself makes a distinction between the differing responsibilities of its signatories in respect of setting emissions reduction targets. It provides that:

[d]eveloped country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets ... [while] [d]eveloping country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.⁹⁴

The existence of national climate change legislation has been correlated to the reduction of CO₂ emissions⁹⁵ and, further, the existence of sectoral climate change mitigation goals can be said to perform an important governance function.⁹⁶ While India has now announced a target of net zero emissions by 2070,⁹⁷ it currently does not have framework climate change legislation in place.⁹⁸ Contrasted with the framework litigation in certain global north jurisdictions, which deploy a macro whole-of-economy lens in seeking higher ambition by referring to statutorily mandated climate targets, climate litigation in India instead has utilized a micro approach, focusing on specific issues arising in a certain region.⁹⁹

⁸⁹ See C. Higham, J. Setzer & E. Bradeen, *Challenging Government Responses to Climate Change through Framework Litigation* (Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science, 2022), p. 3, available at: <https://www.lse.ac.uk/granthaminstitute/publication/challenging-government-responses-to-climate-change-through-framework-litigation>.

⁹⁰ N. 57 above.

⁹¹ N. 57 above.

⁹² N. 57 above.

⁹³ N. 57 above.

⁹⁴ Paris Agreement, n. 38 above, Art. 4(4).

⁹⁵ S.M.S.U. Eskander & S. Fankhauser, 'Reduction in Greenhouse Gas Emissions from National Climate Legislation' (2020) 10 *Nature Climate Change*, pp. 750–6.

⁹⁶ P. Kumar, 'Warum die Sektorziele beibehalten werden sollten: Eine Analyse des Klimaschutzgesetzes', *JuWiss Blog*, 13 June 2023, available at: <https://www.juwiss.de/35-2023>.

⁹⁷ Ministry of External Affairs, Government of India, 'National Statement by Prime Minister Shri Narendra Modi at COP26 Summit in Glasgow', 2 Nov. 2021, available at: <https://www.mea.gov.in/Speeches-Statements.htm?dtl/34466/National+Statement+by+Prime+Minister+Shri+Narendra+Modi+at+COP26+Summit+in+Glasgow>.

⁹⁸ See P. Kumar & A. Naik, 'India's Domestic Climate Policy Is Fragmented and Lacks Clarity' (2019) 54(7) *Economic and Political Weekly*, available at: <https://www.epw.in/engage/article/indias-domestic-climate-policy-fragmented-lacks-clarity>.

⁹⁹ Kumar, n. 52 above, p. 145.

The value of engaging with cases with a smaller or local focus – whether in India, or elsewhere – should not be understated. This engagement entails a deeper understanding of local actors and agencies that can make decisions with an impact on the environment. In *Vedanta*, for example, the role of the TNPCB was instrumental as an executive body which at first allowed the copper smelting plant in Tuticorin to continue operations despite its adverse impact on the environment and Tuticorin residents, and at a subsequent stage revisited its earlier assessments and ordered the plant's closure.

Bouwer asserts that 'small cases matter' and argues that '[t]he heroism of large-scale group actions does not justify overlooking the impact of adjudication taking place at smaller scales of governance that have potential to contribute to or undermine a good climate response, or, indeed to do both'.¹⁰⁰ The scope of the *Vedanta* case and similar cases in India appears to have analogous counterparts in other parts of the global south. For example, courts in South Africa have also tended to focus on a 'specific project or initiative' with implications for GHG emissions, rather than favouring the systemic climate change mitigation approach in global north jurisdictions.¹⁰¹

In the absence of legislative formulation of India's annual or decadal targets for emissions reduction leading up to 2070 for the entire economy or its constituent sectors, judgments such as *Vedanta* are important for subjecting emissions-heavy industrial units to scrutiny, albeit without referring to emissions reduction or climate change mitigation, and even though they reflect adjudication using a micro approach as opposed to an economy-wide approach. This is not to claim that such judicial pronouncements can substitute strong climate legislation and policy, or that such cases in isolation will be sufficient to lead to the large-scale transformations required to achieve the goals of the Paris Agreement. However, their value in a multi-pronged approach to tackle climate change should not be disregarded.

5. Conclusion

Through its judgment on 29 February 2024, the Supreme Court of India has closed a devastating chapter for the residents of Tuticorin, who have suffered tremendous tragedy at the behest of the Vedanta copper smelting plant, which recurrently violated environmental norms over more than two decades. While this is a positive outcome, earlier lapses on the part of government bodies such as the TNPCB to curtail the violations of environmental laws and the chronic delays that characterize the process of adjudication in courts in India also serve to highlight the limitations of litigation in giving effect to the polluter pays principle and mitigating climate change.

The judgment exhibits many of the characteristics attributed to climate litigation in the global south, not least for its reliance on established rights-based arguments. Like many other similarly placed cases in the global south, and against the narrow conceptualization prevailing in global discourse, the ruling can be considered an important

¹⁰⁰ Bouwer, n. 67 above, p. 496.

¹⁰¹ Van Wyk, n. 64 above, p. 220; L. Maxwell, S. Mead & D. van Berkel, 'Standards for Adjudicating the Next Generation of Urgenda-style Climate Cases' (2022) 13(1) *Journal of Human Rights and the Environment*, pp. 35–63, at 62.

part of the climate litigation landscape – even though it differs in many significant aspects (such as scope, framing, and outcomes) from climate litigation experiences in the global north. Further, the judgment highlights how the tussle between environmental norms and the pressures of a developing economy are accorded primacy over more abstract climate change mitigation and emissions reduction.

Some legal experts in India have argued that this judgment signals a push towards stronger environmental, social, and governance norms in India.¹⁰² Whether this claim is a tenable one will be established only through the test of time, based on how lawmakers, government authorities, and the judiciary treat similar trade-offs between economic development, environmental and social devastation, and corporate responsibility in the future.

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¹⁰² K. Yadav, 'SC Junks Vedanta's Plea to Reopen Sterlite Copper's Thoothukudi Plant', *LiveMint*, 29 Feb. 2024, available at: <https://www.livemint.com/companies/news/setback-for-vedanta-as-sc-dismisses-plea-to-reopen-sterlite-copper-plant-in-tamil-nadus-thoothukudi-11709205833536.html>.

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