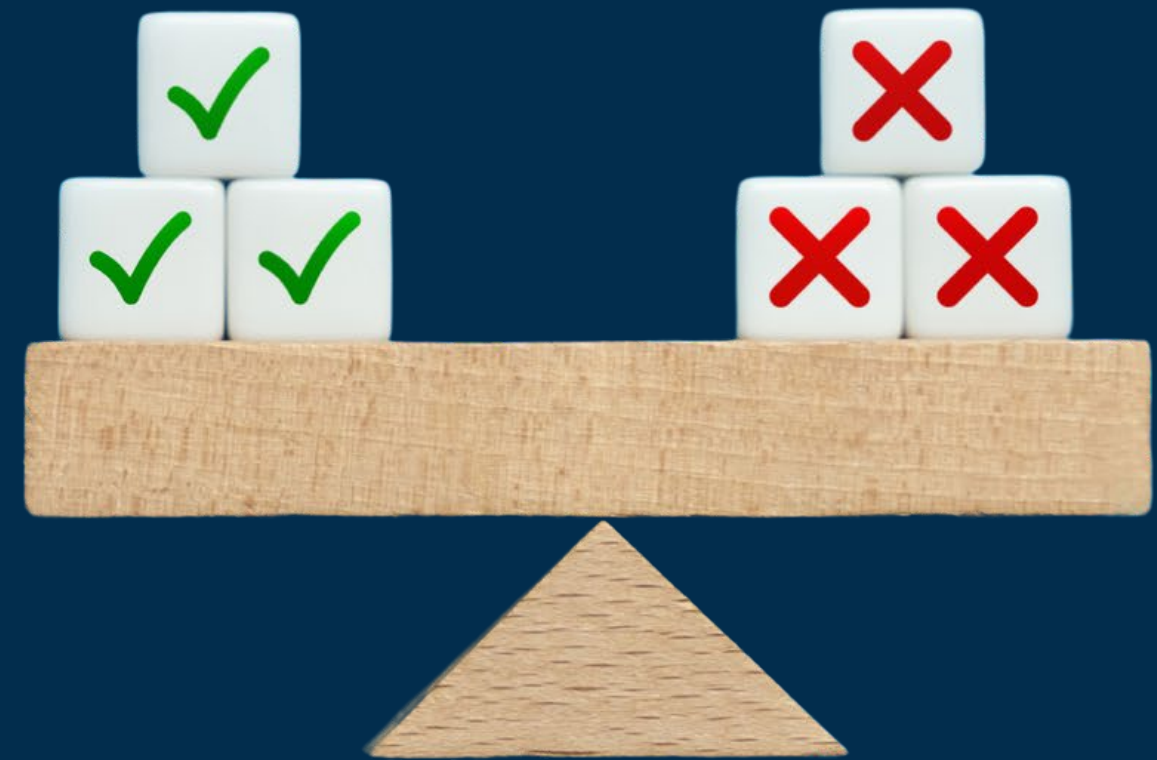


Climate Litigation in India

Perspectives on
constitutional rights and
corporate responsibility

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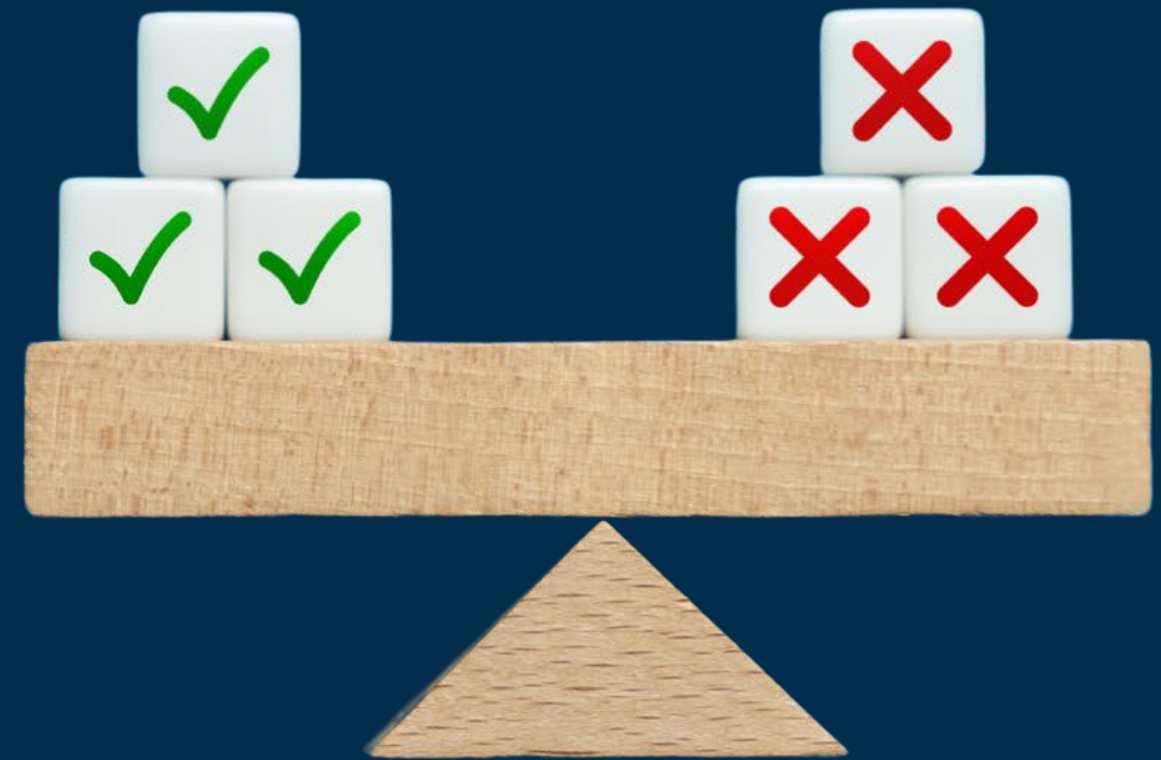
Outline

I. Constitutional rights-based climate litigation

II. Climate Litigation in India (Two case studies)

III. Comparing rights-based litigation in the EU
and India

I. Constitutional Rights-based Climate Litigation



The Role of Constitutions in Climate Litigation

The climate crisis impacts all aspects of human life, affecting social, economic, and cultural rights

Constitutions guarantee rights to citizens

Constitutions provide access to justice through courts

Environmental constitutionalism integrates environmental norms in the constitution

Fundamental Rights under the Indian Constitution

Article 21: Right to life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

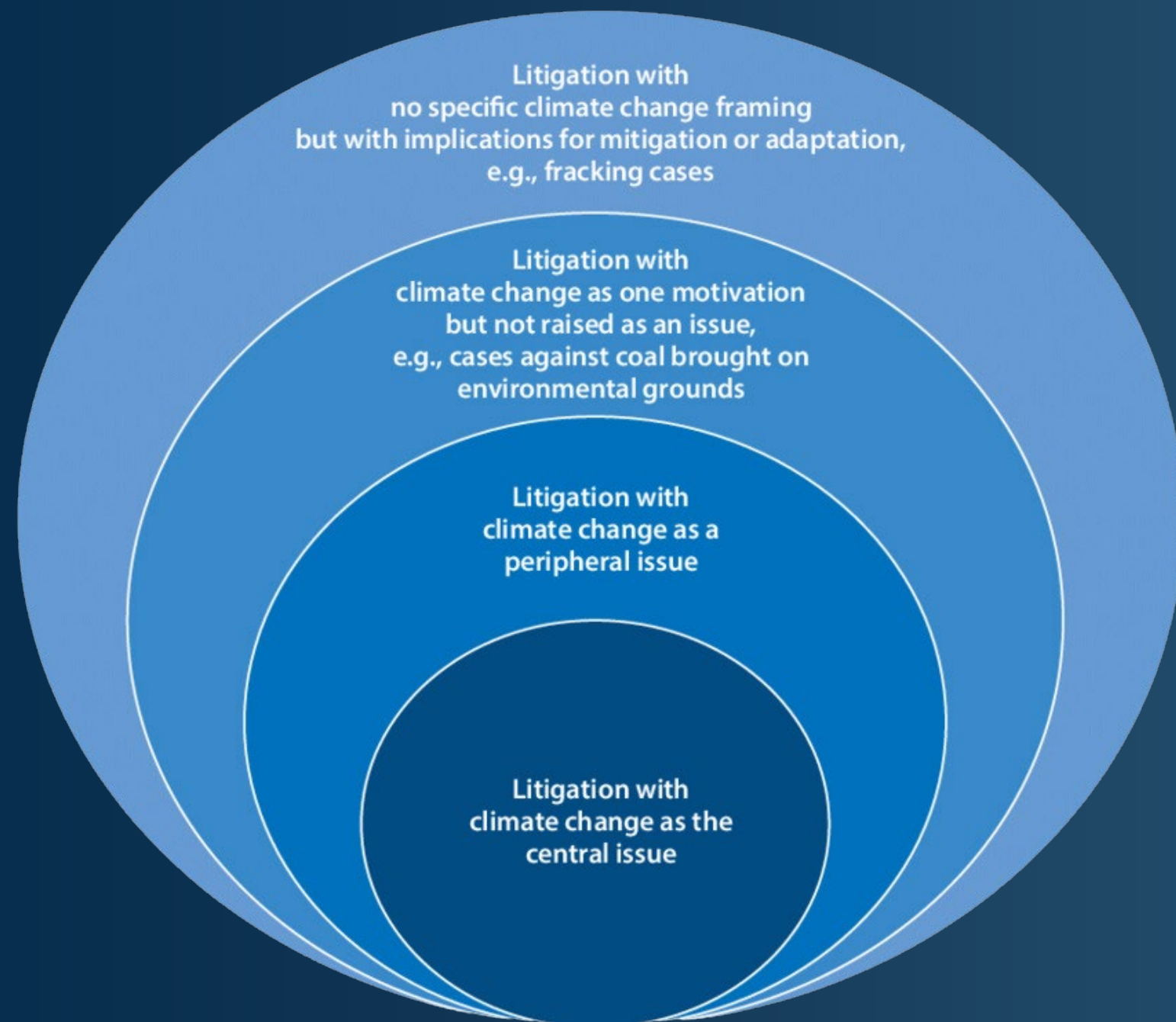
Article 14: Right to equality

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Right to a clean and healthy environment

- Right to pollution - free air and water
- Right to a “decent environment”
- Right to environmental protection and conservation of natural resources

India's environmental jurisprudence as climate litigation



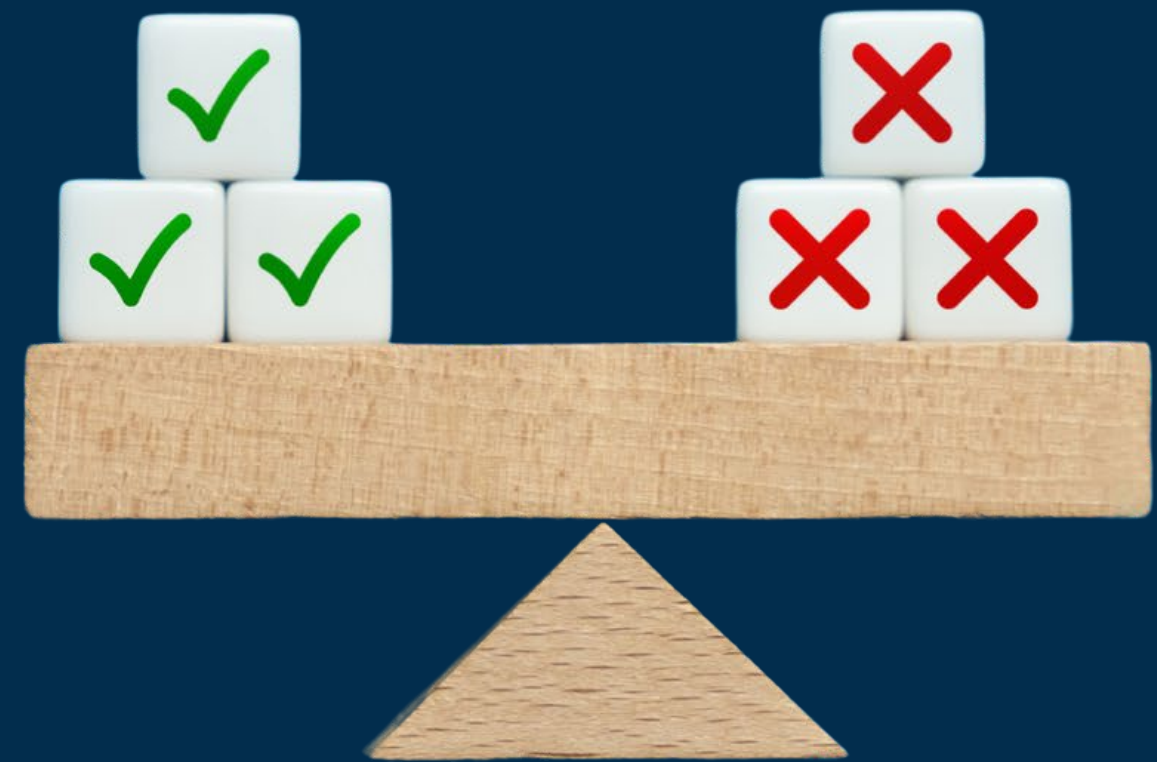
“Many climate cases in the Global South evince what might be termed a “stealthy” strategy, which dilutes the political potency of climate issues by packaging them together with less controversial claims. One manifestation of this is the significant proportion of cases in the Global South that have climate change at their periphery rather than their core.”

Peel and Lin, “Transnational Climate Litigation: The Contribution of the Global South” (2019)

Peel and Ofofsky, “Why Climate Change Litigation Matters” (2015)

II. Climate Litigation in India

Two case studies



India's Constitutional Climate Right:

M.K. Ranjitsinh and Others v. Union of India and Others

- Case filed by conservationist M.K. Ranjitsinh for measures to protect two endangered birds: Great Indian Bustard (GIB) and Lesser Florican affected by overhead power transmission lines.
- Order of the Supreme Court of India (2021) to restrict the installation of overhead transmission lines in an area spanning about 99,000 sq. km. and conversion to underground lines.
- Ministries moved court to seek modification of direction.



- Supreme Court judgment (March 21, 2024)
 - Establishing a “right against the adverse effects of climate change” (**Article 21, Article 14**)
 - Emphasising the importance of solar energy for climate change mitigation
 - Creating a committee for further assessment

India's Constitutional Climate Right:

M.K. Ranjitsinh and Others v. Union of India and Others



“Despite a plethora of decisions on the right to a clean environment, some decisions which recognise climate change as a serious threat, and national policies which seek to combat climate change, it is yet to be articulated that **the people have a right against the adverse effects of climate change**. This is perhaps because this right and the right to a clean environment are two sides of the same coin. As the havoc caused by climate change increases year by year, it becomes necessary to articulate this as a distinct right. It is recognised by Articles 14 and 21.”

- Justice D.Y. Chandrachud in *M.K. Ranjitsinh and Others v. Union of India and Others*

India's Constitutional Climate Right:

M.K. Ranjitsinh and Others v. Union of India and Others

How Supreme Court's verdict on climate change can push climate litigation in India

How a Critically Endangered Bird Helped Further the Cause of Climate Justice in India

Supreme Court's simplistic view on energy production undercuts its ruling on climate justice

Why SC's recognition of right to be free from climate change impact is cause for cautious optimism

MK Ranjitsinh v. Union of India: The Supreme Court's very own Sophie's Choice moment

India's Constitutional Climate Right:

M.K. Ranjitsinh and Others v. Union of India and Others

Boost for rights-based climate litigation for greater accountability (including from industry)

Express recognition of India's climate obligations at the international level

Favouring renewable energy industry over biodiversity

How will this right be utilised and enforced in future cases?

Climate litigation v. Climate legislation

Constitutional Rights in Environmental Litigation: Vedanta Ltd. v. State of Tamil Nadu and Others

- Prolonged litigation concerning Vedanta (formerly Sterlite Copper)'s copper smelting plant in Tuticorin
- Supreme Court judgment in February 2024 confirming the closure of the plant on grounds of repeated environmental violations
- Contestation between pollution and health concerns versus development and self-sufficiency concerns



Constitutional Rights in Environmental Litigation: Vedanta Ltd. v. State of Tamil Nadu and Others

Polluter pays
principle

Public trust
doctrine

Right to
clean
environment
(Article 21)

International
commitments

Intergenerational
equity

Implications of judgment: revenue losses, stranded assets,
reputational damage

Constitutional Rights in Environmental Litigation: *Vedanta Ltd. v. State of Tamil Nadu and Others*

“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.”

- Justice D.Y. Chandrachud in *Vedanta Ltd. v. State of Tamil Nadu and Others*

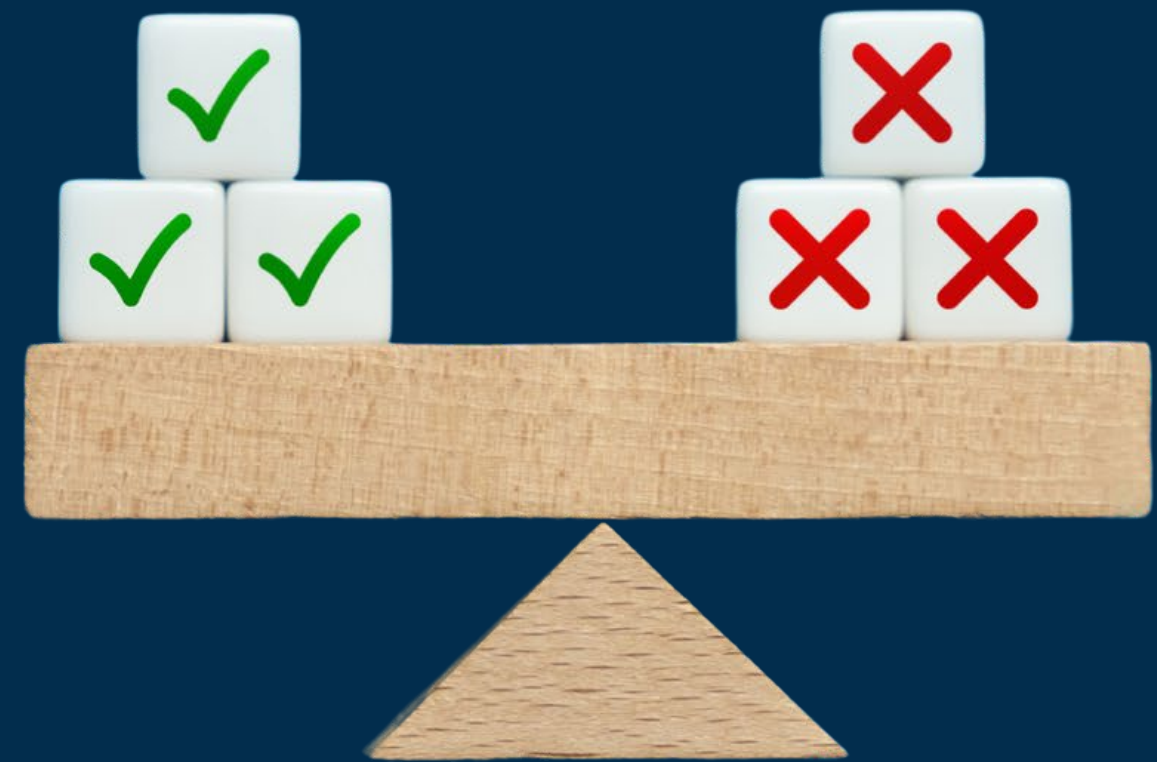
Climate Litigation and Corporate Accountability: Relevance for the Steel Sector

- Rights-based litigation as a tool for corporate accountability
- Right to environment jurisprudence further boosted by the *M.L. Ranjitsinh* decision with express climate change framing
- Absence of ESG legislation: reliance on statutory framework and rights-based jurisprudence
- Focus on fundamental issues like pollution and health (climate change and emissions may not be addressed directly)
- Impact on businesses through plant closures



The Supreme Court of India in New Delhi

III. Rights-based Climate Litigation in the EU and India A comparative perspective



Litigation against the Steel Industry in the EU

- Criminal Complaint filed against Tata Steel in the Netherlands by criminal lawyer Bénédicte Ficq (2021)
- Greenpeace joined as complainant (2024)
- Allegation of intentional release of harmful substances into the air, soil, and surface water
- Reliance on Article 173a, Criminal Code: Imprisonment for “*any person who intentionally and unlawfully releases a substance onto or into the soil, into the air or into the surface water*”
- Criminal investigation currently underway

Greenpeace Netherlands Joins Criminal Complaints Against Tata Steel, Harsco, DuPont, and Chemours

Source: [Climate Court](#) (2024)

Rights-based Framework Litigation in the EU

State of Netherlands v.
Urgenda Foundation

(Supreme Court of
Netherlands, 2019)

Articles 2 and 8, ECHR

Louisa Neubauer et al.
v. Germany

(German Constitutional Court,
2021)

Article 20 a, Grundgesetz
(German Constitution)

Klima Seniorinnen v.
Switzerland

(ECtHR, 2024)

Articles 8 and 6 §1, ECHR

Framework Litigation invoking human rights to seek greater ambition in
overarching climate policy

Contrasting Rights-Based Climate Litigation Strategies

The EU

Emphasis on framework litigation (Macro approach)

Climate change directly addressed

Reliance on climate law

Using emission reduction framing

Claims based on future impact of climate change

India

Emphasis on environmental issues (Micro approach)

Climate change not / indirectly addressed

Absence of climate law

Avoiding emission reduction framing

Experiential proximity to climate change

Thank you!

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