

Climate Change Litigation and Its Impact on Policy in India

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Abstract: *Climate change, a global crisis, is increasingly affecting India, a country highly vulnerable to its impacts. To address this issue, climate change litigation has emerged as a powerful tool to hold governments and corporations accountable. This paper examines the current state of climate change litigation in India, analysing the legal frameworks, key cases, and their implications for climate policy. It explores the challenges and opportunities associated with this emerging field, highlighting the potential for climate change litigation to drive transformative change in India's climate policy landscape.*

Keywords: Climate change, litigation, India, environmental law, policy, sustainable development

I. INTRODUCTION

India, with its vast population and diverse ecosystems, is particularly vulnerable to the adverse effects of climate change, including extreme weather events, rising sea levels, and water scarcity. While India has taken significant steps to address climate change through national policies and international commitments, there is a growing recognition of the need for stronger legal frameworks and enforcement mechanisms. Climate change litigation offers a promising avenue to hold accountable those responsible for greenhouse gas emissions and to compel governments to take more ambitious climate action.

Legal Framework for Climate Change Litigation in India

India, as a climate-vulnerable nation, has witnessed a growing trend of climate change litigation. While India lacks specific climate change legislation, a combination of constitutional provisions, statutory laws, and international treaties forms the legal framework for such litigation.

A. Relevant Legal Provisions:

1. The Constitution of India:

- **Article 21:** Guarantees the right to life and personal liberty, which has been interpreted to include the right to a healthy environment.
- **Article 48A:** Directs the State to protect and improve the environment and to safeguard forests and wildlife.

2. Environment Protection Act, 1986:

- This Act provides a comprehensive framework for environmental protection, including provisions for pollution control and environmental impact assessment.
- Empowers the central government to take measures to protect and improve the environment. Provides for the establishment of the Central Pollution Control Board and State Pollution Control Boards.
- Enables public interest litigation to be filed for environmental protection.

3. Public Liability Insurance Act, 1991:

- Provides for insurance coverage for damage caused by hazardous substances.
- Can be relevant in cases involving industrial pollution contributing to climate change.

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

- Regulates the quality of water in India.
- Can be used to address issues related to water pollution and water scarcity, both of which are exacerbated by climate change.

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

- Regulates air quality in India.
- Can be used to address issues related to air pollution, which contributes to climate change.

1. International Treaties and Conventions:

- **United Nations Framework Convention on Climate Change (UNFCCC):** India is a signatory to the UNFCCC and its Paris Agreement, which commits countries to reduce greenhouse gas emissions.
- **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal:** India is a signatory to this convention, which regulates the movement of hazardous waste.

National Green Tribunal (NGT) role in Climate Change Litigation -

The National Green Tribunal (NGT) has emerged as a crucial institution in India's efforts to address environmental concerns, including climate change. Established in 2010, the NGT is a specialised tribunal with the mandate to handle cases related to environmental protection and conservation of forests and other natural resources. Its role in climate change litigation has been significant, shaping policy and driving environmental accountability.

Key Roles of the NGT in Climate Change Litigation

- **Speedy Disposal of Cases:** The NGT is designed to provide expeditious disposal of cases, ensuring timely justice for environmental concerns. This is particularly important for climate change cases, where delays can have far-reaching consequences.
- **Expert Adjudication:** The NGT comprises experts in various fields, including ecology, environment, and law. This expertise enables it to understand complex environmental issues and make informed decisions.
- **Public Interest Litigation:** The NGT actively encourages public interest litigation, allowing individuals and organisations to bring cases on behalf of the public interest. This has led to increased public participation in environmental decision-making.
- **Enforcement of Environmental Laws:** The NGT has the power to enforce environmental laws and regulations, including those related to climate change. It can impose penalties on polluters and order remedial action.
- **Policy Recommendations:** The NGT can make recommendations to the government on environmental policies, including those related to climate change mitigation and adaptation. These recommendations can influence policy decisions and drive systemic change.

Impact of NGT on Climate Change Policy

The NGT's decisions and orders have had a significant impact on climate change policy in India. Some of the key impacts include:

- **Promoting Clean Energy:** The NGT has ordered the closure of polluting industries and promoted the adoption of cleaner technologies. This has indirectly encouraged the shift towards renewable energy sources.
- **Enforcing Environmental Regulations:** The NGT has played a crucial role in enforcing environmental regulations, ensuring compliance with emission standards and other environmental norms.
- **Addressing Air Pollution:** The NGT has taken several steps to address air pollution, a major contributor to climate change. It has ordered the closure of polluting industries, imposed restrictions on vehicular emissions, and implemented measures to improve air quality.

Protecting Water Bodies: The NGT has intervened in cases of water pollution and water scarcity, both of which are exacerbated by climate change. It has ordered the restoration of water bodies and the implementation of water conservation measures.

Promoting Sustainable Development: The NGT has emphasised the need for sustainable development and has taken steps to balance economic growth with environmental protection.

Emerging Trends in Climate Change Litigation in India

- **Public Interest Litigation (PIL):** PILs have been a powerful tool for environmental protection in India, including climate change issues.
- **Nuisance Lawsuits:** These lawsuits can be used to address specific instances of pollution or environmental damage caused by industries or other entities.
- **Fundamental Rights Litigation:** Cases can be filed under Article 21 of the Constitution, arguing that climate change violates the right to life and a healthy environment.
- **International Law-Based Claims:** While still in its nascent stages, there is potential to use international law to hold governments and corporations accountable for climate change impacts.

Challenges and Opportunities

While India has a strong legal framework for environmental protection, several challenges hinder effective climate change litigation:

- **Burden of Proof:** Proving a direct causal link between specific actions and climate change impacts can be difficult.
- **Judicial Capacity:** The Indian judiciary may lack the specialized expertise to handle complex climate change cases.
- **Political Interference:** Political interference can hinder the progress of climate change litigation.
- However, there are also significant opportunities:
- **Public Awareness and Engagement:** Climate change litigation can raise public awareness and mobilise support for climate action.
- **Policy Innovation:** Courts can play a role in shaping climate policy by issuing innovative judgments and orders.
- **International Collaboration:** India can learn from international experiences and collaborate with other countries to strengthen its climate change legal framework.

By addressing these challenges and capitalising on the opportunities, India can harness the power of the law to protect its environment and ensure a sustainable future.

Key Climate Change Litigation Cases in India

Several significant climate change cases have been filed in India, highlighting the growing importance of this field:

- **Narmada Bachao Andolan v. Union of India:** While primarily an environmental case, this landmark case has implications for climate change litigation, as it involved the protection of rivers and the rights of affected communities.
- **Varun Gopal v. Union of India:** This case challenged the government's inaction on climate change, arguing that it violated the fundamental rights of citizens.
- **Urgenda Foundation v. State of the Netherlands:** In this landmark case, the Dutch court ordered the government to reduce its greenhouse gas emissions, setting a precedent for climate litigation globally.
- **Juliana v. United States:** A group of young climate activists sued the U.S. government, alleging that its failure to address climate change violated their constitutional rights.
- **Cases related to Air Pollution:** Various cases have been filed against governments and industries for air pollution, which is a major contributor to climate change.

- **Cases related to Coastal Zone Management:** Cases challenging coastal zone management plans and coastal erosion have been filed, highlighting the impact of climate change on coastal areas.
- **Cases related to Forest Conservation:** Cases involving the protection of forests and their role in carbon sequestration have been filed, recognising the importance of forests in mitigating climate change.

Impact of Climate Change Litigation on Policy

Climate change litigation has the potential to significantly impact climate policy in India:

- **Strengthening Environmental Laws:** By highlighting the shortcomings of existing laws, climate change litigation can drive the development of more robust and effective environmental regulations.
- **Promoting Accountability:** Climate change litigation can hold governments and corporations accountable for their contributions to climate change, leading to increased transparency and responsible behavior.
- **Accelerating Climate Action:** By forcing governments to take immediate action, climate change litigation can accelerate the implementation of climate mitigation and adaptation measures.
- **Public Awareness and Engagement:** Climate change litigation can raise public awareness about the issue and mobilise support for climate action.
- **International Cooperation:** By showcasing India's commitment to climate action, climate change litigation can strengthen India's position in international climate negotiations.

Challenges and Opportunities for Climate Change Litigation in India

While climate change litigation holds significant promise, several challenges hinder its progress:

- **Lack of Specific Climate Change Legislation:** The absence of dedicated climate change legislation can limit the scope of legal action.
- **Burden of Proof:** Plaintiffs often face the burden of proving a direct causal link between specific actions and climate change impacts.
- **Judicial Capacity:** The Indian judiciary may lack the specialised expertise to handle complex climate change cases.
- **Political Interference:** Political interference can hinder the progress of climate change litigation.
- However, there are also opportunities for climate change litigation to drive positive change:
- **Public Interest Litigation:** Public interest litigation can be used to challenge government policies and corporate practices that contribute to climate change.
- **International Cooperation:** India can learn from international experiences and collaborate with other countries to strengthen its climate change legal framework.
- **Capacity Building:** Investing in legal education and training can enhance the capacity of lawyers and judges to handle climate change cases.
- **Advocacy and Lobbying:** Advocacy and lobbying efforts can influence policymakers and public opinion to support climate action.

II. CONCLUSION

Climate change litigation in India is still in its nascent stages, but it has the potential to become a powerful tool for driving climate action. By addressing the challenges and capitalising on the opportunities, India can harness the power of the law to protect its environment and ensure a sustainable future. As climate change continues to intensify, climate change litigation will play an increasingly important role in shaping India's climate policy landscape.

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