

Judicial Activism for Addressing Climate Change: Need of the Hour

Parth Verma*

Abstract

Climate change has been at the helm of discussions globally and is agreed to have the effect of posing an existential threat to humankind. While the objective of the Paris Agreement (COP 21) was to achieve Carbon Neutrality by 2050, India is still far from achieving it. There are several initiatives taken up by the Government for promoting people's Right to Environment by addressing climate change issues but these are better said than done. The primary issue is lack of participation of all concerned stakeholders in achieving the climate change objectives or even being sensitive towards climate change. While the legislatures and the executives have had their contributions in addressing climate change, there is a need for the Judiciary to create 'Climate Consciousness' and focus on an urgent system change. Another major issue is the diversity in geographical features across different regions including climatic zones, topography, economic conditions, and social ecosystems. As a result, it imposes unique set of challenges calling for different approaches to be employed for addressing them. This study aims to delve deeper into the role which the Indian Judiciary can play in addressing the issue of climate change and developing 'Climate Consciousness' among members of general society. India is certainly moving in the right direction to achieve its objectives by 2050 but there is certainly a need for improved participation of the Judiciary in achieving the same. From fast-track courts to specifically deal with climate change issues to Judicial Activism for a clean and pollution-free environment, there is still a very long way to go in achieving climate conservation.

Keywords: Climate change, climate consciousness, judicial activism, Paris agreement, right to environment

INTRODUCTION

Judiciary is one of the most significant organs of the Government and has been an instrument of social change over the centuries. It is aimed at protecting and promoting the Fundamental Rights of citizens [1]. However, its scope in respect of climate change and protecting the Fundamental Right to Environment has been quite limited and not much has been discussed about it. There have been a few landmark judgements regarding environmental protection, yet the absence of major statutory provisions concerned with climate change has thwarted their course of development in addressing climate change issues. The National Green Tribunal (NGT) had been established with the objective of protecting and promoting a cleaner and greener environment but it has constantly suffered due to a lack of resources

along with no autonomy [2]. Apart from the tribunal, there is no other authority to primarily focus on climate change and environment-related issues. This calls for efforts to be made by the Judiciary along with specific independent authorities for addressing the climate change issues which the entire world and specifically India is facing.

HISTORY OF CLIMATE CHANGE LITIGATIONS

Climate Change became a global agenda only during the 1980s despite the problems of Global

*Author for Correspondence

Parth Verma
E-mail: parthverma410@gmail.com

¹Student, Department of Law, Christ University (Deemed to be University), Bengaluru, Karnataka, India

Received Date: June 10, 2023
Accepted Date: August 05, 2023
Published Date: August 28, 2023

Citation: Parth Verma. Judicial Activism for Addressing Climate Change: Need of the Hour. National Journal of Environmental Law. 2023; 6(2): 1–5p.

Warming and Climate Change being prevalent for quite many years. Thereafter in 1992, the UN Convention on Climate Change institutionalized the rules relating to Climate Change at the International Level. However, the Indian Judiciary is still unable to deal with the climate change issues even after 30 years. There have been several judgements over the years in which different aspects of climate change and a clean environment were discussed.

Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh (1985) [3]: It is also known as the Dehradun Quarrying case wherein the limestone quarrying practices in the valley had led to extreme depletion as well as exploitation of natural environment. While the proceedings were going on, the Environment Protection Act, 1986 [4] had also been enacted. Supreme Court, in this case, held that the mining operations were in direct violation of the already existing Forest Conservation Act. [5] and were a threat to ecological integrity and environment conservation. Hence, there is a need to strike a balance between ecological integrity and industrial demands to ensure sustainable development.

MC Mehta v. Union of India (1987) [6]: The Court, in this case, came up with the concept of absolute liability on part of the polluter to compensate for the harm or injury that has been suffered regardless of precautions taken by them. The 'Polluter Pays' Principle [7] was also applied in this judgement under which 'whoever pollutes shall bear the cost of the same'. It was explicitly stated that the Indian government needs to enact more laws to address emerging issues due to a highly industrialized economy. However, the objective is far from being achieved as of now.

Rajiv Dutta v. Union of India (2016) [8]: This was a petition filed before the NGT regarding the forest fires which were taking place in parts of Uttarakhand and Himachal Pradesh. The Tribunal held that forest fires have a tendency to impact climate change and the Governments need to employ appropriate fire management programs for effective control of forest fires.

Ridhima Pandey v. Union of India (2019) [9]: In this case, a petition had been filed in respect of the Government's failure to accommodate the guidelines of the Paris Agreement in its statutory provisions which they are obliged to do. Additionally, the 'Public Trust Doctrine' [10] was also discussed in detail. It was further held that they have failed to consider rules laid down in landmark International Judgements such as *Urgenda Foundation v. Kingdom of Netherlands* [11] (curbing CO₂ emissions), *Leghari v Federation of Pakistan* [12] (Implementation of Climate Change Policies), etc. The NGT held that climate change policies are already covered under the Environment Protection Act, 1986 and hence it is wrong to state that the rules and policies of the Paris Agreement have not been considered.

Hanuman Laxman Aroskar v. Union of India (2019) [13]: The primary issue, in this case, was regarding approval for the construction of a new Airport in Goa after analyzing its environmental impacts. Initially, the clearance was not given on the grounds that Government failed to consider the environmental impacts in conformity with the Paris Agreement. However, the clearance was later given after the concerns had been adequately addressed. Court also reflected upon India's Nationally Determined Contributions (NDCs) in the present case which explicitly state that developmental goals must be balanced with environmental concerns focusing thereby on sustainable development.

CURRENT ISSUES

There are several challenges that lie ahead of the Judiciary while taking Climate Change initiatives due to which their contribution has not been very significant.

Lack of Public Awareness

Majority of the public is not aware of the climate change issues that the entire world is facing and hence does not approach the Courts with any claims. Additionally, not much efforts have been made by Governments all over the world to sensitize regarding climate change [14]. This lack of awareness in approaching the Courts has in turn been a hindrance to Judicial action for climate change as Courts are themselves not motivated to take actions *suo moto*.

Lack of Participation

The Judiciary has had only a minor role in addressing climate change issues as of now and not much efforts have been made by them to look into these issues and exercise Judicial Activism over them. In any given dispute, the judgements have to strike a balance between the consequences on the environment and its impact on the parties to the suit [15]. This shall be sufficient to address climate change issues and for facilitating their participation in the process.

Improper Structuring of the National Green Tribunal (NGT)

The National Green Tribunal (NGT) had been established in 2010 to address environmental disputes and for protecting the Fundamental Right to Environment guaranteed under Article 21 [16] of the Indian Constitution. However, it has suffered because of its improper structure wherein it has no decision-making autonomy along with a shortage of necessary resources [17]. This has had an adverse impact on India's movement towards achieving its environmental objectives, of which, addressing climate change is an important part.

Varying Geographical Conditions

India is a country with diverse topographical and environmental conditions. As a result, any decision passed by the Supreme Court issuing certain guidelines may not achieve the same objective across all regions and might even prove to be counterproductive in certain regions [18]. The High Courts in the present scenario shall have the authority to issue statewide guidelines that will ensure that the interests of the state are specifically met through a bottom-up approach.

Low Clarity

There has effectively been absolutely no introduction or enforcement of any law purely being centered on tackling climate change issues. As a result, there is no clarity either for the citizens to approach the Courts for making justiciable climate change claims or even for the Judiciary regarding the rules or principles that it should follow while enforcing climate change regulations.

METHODOLOGY

The methodology adopted for addressing these issues shall be Doctrinal focusing on the analysis of existing publications discussing the issue of climate change along with the changing role of Judiciary. Additionally, the discussion shall be stressing upon litigations in India along with a detailed analysis of existing institutions and reports concerning climate change over the past few years.

Way Forward

With all challenges that are faced by the entire nation in respect of climate change especially with forest fires, extreme heat, and global warming becoming a common feature, there is a dire need to address these issues.

The primary function of any Court is to enforce the rights of citizens and to meet their climate change claims. The issue of climate change has been snubbed by the Courts and the citizens have struggled to meet their claims due to variety of reasons with the lack of powers of NGT being one of them. Hence there is a need to establish a new set of Courts for tackling climate change issues that can be stated as 'Climate Change Monitoring Tribunals'. These Courts shall have the following features:

- a. At least one such Tribunal should be established in each and every state specifically dealing with the climate change issues prevailing there.
- b. The Tribunal must be headed by former High Court Judges along with three other members who shall include climate change activists, educationists, or even reformists.
- c. It shall be an autonomous tribunal established under a Statutory provision or a new act, with the power to give awards that shall be binding.
- d. The Court shall work in tandem with the National Green Tribunal with the latter dealing with other environment-related matters with its powers enhanced for ensuring its autonomy.

- e. All the cases shall be disposed of within a period of 30 days from the date of their filing.
- f. An appeal shall only be allowed before the Supreme Court, within 30 days from the date of the order, by the aggrieved party.
- g. Apart from adjudication, the Climate Change Monitoring Tribunals shall also take initiatives to spread awareness among citizens regarding preventive measures and monitor the progress made in tackling climate change through monthly reports.

This Tribunal shall solely focus on monitoring and thereby addressing climate change and enforcing climate change claims of citizens thereby helping India realize its goals much before 2050.

Additionally, there has to be greater use of Artificial Intelligence in resolving climate change issues. The use shall not only be restricted to the judiciary but shall be put to use by the other organs of the Government and institutions concerned with combating climate change. Though AI cannot be used for adjudication, yet it can be put to effective use for smoothening the very process of adjudication of climate change cases.

An example of the same is 'Global Climate Change Litigation Database' which contains information about the pleadings, briefs, and decisions relating to climate change worldwide [19]. AI can make the process of filing complaints fully electronic. It also possesses the discretion to determine which petitions are actually genuine and which are frivolous [20]. This will reduce the workload of Courts and could allow them to deal with more cases in the same time period.

Further, Artificial Intelligence can be used in a variety of ways by the Government taking into consideration its social implications and its impact both positive and negative on society [21]. Climate change as an issue shall take time to be resolved substantially but such measures on part of Judiciary can be adopted from now onwards to supplement the Government's efforts to achieve a clean environment and to take effective measures for addressing climate change issues.

CONCLUSION

Over the years, the threat posed by Climate Change over mankind has been on a constant rise. As a result, several measures are required to be taken under which Judiciary can also contribute. Since the Courts in India are already overburdened with several litigations, the establishment of 'Climate Change Monitoring Tribunals' shall become an effective mechanism for enforcing citizens' rights, upholding the rule of law, and eventually reducing the burden of Courts. This can be supplemented by an increase in cost of committing crimes against the environment to create a deterrent impact.

Therefore, it can be concluded that though India is making progress in achieving its Climate Change objectives, there is a need for newer policies and increased participation of the Judiciary for its effective resolution.

REFERENCES

1. World Resources Institute Issue Brief: Climate Science 2008: Major New Discoveries, <https://www.wri.org/> accessed 24th May 2023
2. Patra S, Krishna VV. National Green Tribunal and Environmental Justice in India. *Indian J Geo-Mar Sci.* 2015; 44(4): 445–453. researchgate. ResearchGate.net. https://www.researchgate.net/publication/266676371_National_Green_Tribunal_and_Environmental_Justice_in_India accessed 23rd May 2023
3. *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh* 1985 SCR (3) 169 (India).
4. *Environment Protection Act*, No 29 of 1986.
5. *Forest Conservation Act*, 1980.
6. *MC Mehta v. Union of India* (1997) 2 SCC 353 (India).
7. Development Asia. Polluter Pays. [Online]. <https://events.development.asia/system/files/materials/2016/12/201612-environmental-law-principles-polluter-pays.pdf> accessed 23 May 2023

8. Rajiv Dutta v. Union of India. 2017. casemine.com <https://www.casemine.com/judgement/in/5fffbe8c9fca1917ab0f326c> accessed 23rd May, 2023
9. Ridhima Pandey v. Union of India, 2019. casemine.com <https://www.casemine.com/judgement/in/5de5cb7146571b2fd68a3f39> accessed on 23rd May, 2023
10. LII/Legal Information Institute. Public trust doctrine. [Online]. www.law.cornell.edu/wex/public_trust_doctrine accessed 25 May 2023.
11. Urgenda Foundation v. Kingdom of Netherlands, [2015] HAZA C/09/00456689 (Netherlands).
12. Leghari v. Federation of Pakistan (2015) W.P. No. 25501/201 (Pakistan).
13. Hanuman Laxman Aroskar v. Union of India (2019) 15 SCC 401 (India).
14. Peel J, Osofsky HM, Foerster A. A “Next Generation” of Climate Change Litigation: An Australian Perspective. SSRN. 2018 Oct 25. Accessed 22 May 2023
15. Grantham Research Institute on climate change and the environment. (2022 Jan 19). Climate-Conscious Courts: Reflections on the Role of the Judge in Addressing Climate Change. [Online]. accessed 23 May 2023
16. Article 21, Constitution of India.
17. Supra Note 1.
18. Preston Brian J. The Contribution of the Courts in Tackling Climate Change. J Environ Law. 2016 Mar; 28(1): 11. <https://www.jstor.org/stable/26168904>
19. Grantham Research Institute on climate change and the environment. (2022 Nov 11). New Partnership Launches AI-Powered Global Climate Law and Policy Database. [Online]. Accessed 24 May 2023
20. Lozo O, Onishchenko O. The Potential Role of Artificial Intelligence in Combating Climate Change and Natural Resources Management: Political, Legal and Ethical Challenges. Grassroots J Natural Resources. 2021; 4(3): 111–131. Doi: <https://doi.org/10.33002/nr2581.6853.040310>
21. Nordgren A. Artificial intelligence and climate change: ethical issues. J Inf Commun Ethics Soc. 2023; 21(1): 1–15. <https://doi.org/10.1108/JICES-11-2021-0106>