Climate Change Litigation: Criticizing The Past, Perspectives Of The Present and Denouements Of The Future

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INTRODUCTION AND NEED OF CLIMATE LITIGATION

Climate change is a phenomenon witnessed by the world, at a drastic rate in the recent past. Contrary to a rather popular belief, climate change is indeed real and is taking shape to be a dangerous/harmful problem. The crux of the matter is twofold; people not realizing the consequences of their actions and the rate at which the doom is approaching towards us. Climate change, as a concept, is not foreign. Among other risks to human life, Climate Change holds a rank in the top 3 major threats to humanity.[1] Since climate change is a huge umbrella covering multitude of environmental problems contributing to the global issue, a common misinterpretation arises, mainly due to lack of awareness, with regards to the subject of global warming and climate change. Global warming is one of the several aspects of climate change and the effect is excruciating in nature to the population all over the planet. What is dicey is the degree of the extremity of the footprint on the population all across the planet and this will soar as the temperature is rising too. In Canada, the average land temperatures have increased by 1.5°C, only within the span of six decades (1950 – 2010)[2]. To mitigate climate change is to curb the greenhouse gases emissions from several manufacturing plants. The presence of Green House Gases in the air have surpassed the substandard and safe levels considered for humans. This alarming increase in the rate of temperature and greenhouse gases is not a good sign for the years to come for the future generations, if proper measures are not taken.

People and countries with minimal resources or scarce measures of education are less capable than others to obtain advantages of industrial activities and less ready to get ready for and recuperate from the worst situations.[3] They do not have access to resources to prevent them from bearing the brunt the severity of this issue. It is anticipated that, in the following decades to come, billions of individuals, especially those in developing and underdeveloped nations, will end up facing water shortage and lack of food and water and more serious dangers to life because of environmental change[4].There is an undying need for these countries to adapt to an appropriate yet urgent solution before it is too late. Part of the population, facing the consequences of climate change, do not resort to legal means to achieve justice, simply because they are not aware of it. Climate change litigation awareness needed a major upliftment in certain societies. Since 2010s, there has been several reformations in laws governing environmental issues and climate change all around the world,

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[1] Global Risks 2012 Seventh Edition, *World Economic Forum*, 2019, https://www.weforum.org/reports/global-risks-2012-seventh-edition.

[2] Canada In A Changing Climate: Sector Perspectives On Impacts And Adaptation | Natural Resources Canada", *Nrcan.Gc.Ca*, 2019, https://www.nrcan.gc.ca/environment/resources/publications/impacts-adaptation/reports/assessments/2014/16309.

[3] Cheryl Cox Macpherson, *Climate Change Matters*, (April 2014), pp. 288-290

[4] *CLIMATE CHANGE: IMPACTS, VULNERABILITIES AND ADAPTATION IN DEVELOPING COUNTRIES*(United Nations Framework Convention on Climate Change, 2010), https://unfccc.int/resource/docs/publications/impacts.pdf.

making it a concern on a global scale. It includes any legal action or reformation taken towards the preservation of life from the harmful effects of climate change, looking at it from various angles including the Scientific reasoning, adaptation and mitigation endeavors. Legal proceeding has never been a more significant instrument, to push policymakers and legislative bodies to create and actualize viable methods for climate change moderation and adaption, than it is today.

THE DEBATE BETWEEN MITIGATION AND ADAPTATION

Climate Change Advocates usually confer to two processes of warding off the issues caused due to Climate Change. The first process, known as mitigation, aims at solving the issue of Climate Change by imposing Regulations and deals with Climate Change on an international platform through Conventions, treatises etc. This Section of the Paper essentially lifts the veil of competency surrounding the process of Mitigation through a criticism of the Kyoto and Paris Convention, and establishes the need to move onto the second process, i.e. Adaptation; a procedure that Climate Change Litigation belongs to.

Climate Conventions: A Case Study (Kyoto Protocol):

With its main objective being to fight climate change, Kyoto Protocol was one among the few treaties to prescribe restrictions on emissions of greenhouse gases binding on countries. The treaty lays down legal rules for the countries to ensure that there is uniformity in meeting worldly standards. These countries are to be listed in the Annexure 1 of this convention. Kyoto protocol was put into effect in the year 2005, before being primarily adopted in 1997 in Kyoto, Japan as an extension of the United Nations Framework Convention on Climate Change ("**UNFCCC**"). Its method of fighting Climate Change was by reducing the concentrations of Greenhouse to *"a level that would prevent dangerous anthropogenic interference with the climate system"*[5] in the atmosphere. The Kyoto Protocol consisted of two commitment periods: the first commitment was brought to life in 2008, and expired in 2012; after the Doha amendment was made in 2012, the second commitment was initiated.

Multitudes of significant factors present in the Kyoto Protocol enhanced the mechanism of the UNFCCC in several ways[6], once it was incorporated into the latter. Some of them are:

1) Elevating the salience of the commitments being legally viable;
2) Increasing the quality and the reports on the implementation of the commitments and the presence of Greenhouse Gases in the atmosphere;
3) Enhancing the need for a versatile and meticulous review process;
4) Upon violation of any standards and rules of the Protocol by any of the parties, there are effective methods and procedure to be followed to look into the issue.

One of the highly distinctive features that differentiated UNFCCC from Kyoto Protocol is the nature of the commitments of reducing the emissions are highlighted. Under UNFCCC, the parties mentioned in Annexure I need to create new procedure and mechanisms to contribute to the reduction of Greenhouse Gases in the atmosphere, contrive policies and reports for mitigating the phenomenon of Climate Change and more importantly. It is also essential to note that the parties in the former convention did not have to face any repercussions if they are in violation for any terms.

Meanwhile, there are lesser ambiguities and lucid targets compiled in the Kyoto Protocol. This is because, as per Article 3 of the Protocol, there are perspicuous set of sanctions described if the parties do not comply with the targets. It is also elucidated under Article 1, multiple

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[5] *Kyoto Protocol To The United Nations Framework Convention On Climate Change*, Article 3 (Kyoto, Japan: United Nations Framework Convention on Climate Change, 1997).

[6] Clare Breidenich et al., "The Kyoto Protocol To The United Nations Framework Convention On Climate Change", *The American Journal Of International Law* 92, no. 2 (1998): 315, doi:10.2307/2998044.

approaches to battle the problem of Climate Change, much like Article 3(4) which states that the parties to the convention must supply data to the Subsidiary Body for Scientific and Technological Advice to evaluate the amount of carbon stocks in a country and further determine the situation for the future. The Protocol also removes the opacity and establishes appropriate enforcement of the policies in the country.[7]

Even though the Protocol seems to be one of a very stringent and hard to comply with the protocol, it allows for some flexibility in implementation at a national and international level.[8] At the internal national level, policies, frameworks, and implementations are left to the individual countries to handle Even though the Protocol seems to be very stringent and hard to comply with, it allows for some flexibility in implementation at a national and international level. At a national level, the administration of the policies falls well within the ambit of the country. However, due to the adoption of market-based approach, there are multiple standards enforced for international setting. One of the main objectives of the Protocol is to enable fair cooperation amongst the parties with regard to meeting all the standards and also the freedom to create immaculate strategies and policies, suitable for their social, political and economic background. It also lays down the procedure and methods to determine their contribution of Greenhouse Gases.

There have been, ever since, various treaties and conventions that has been put into effect such as Copenhagen Accords, Bali Roadmap in 2007, Durban Agreement in 2011, etc. The main goal of these treaties and agreements were to tackle Climate Change with the help of proper implementation of the laws, standards, policies between the parties. From all of the above -mentioned treaties, conventions, agreements, there has been a perceptible decline in the implementation and execution of them in order to reduce the impact of Climate Change [9]

Climate Conventions: A Case Study (Paris Convention):

On the 25th Year of the Climate Policy of the United Nations, for the first time in the History of the fight against Climate Change, the Paris Treaty envisaged a policy that asked for action by all member nations. Even though, it brought some temperamental changes into Climate Policy, the Climate Treaty is plagued by some issues that leave it open to some grave effects. One of the major messages that was sent out by the Paris Treaty was that the age of fossil fuels and its uses thereof was coming to a fast end. Another major issue that will be faced in the implementation of this treaty is the problem of how binding the treaty itself can be. Even though the original outlook was to peak the increase in temperature at 1.5ºC, the rise that is predicted by global submissions can be quantified to be anywhere between the range of 2.7ºC to 3.5ºC[10]. This shortcoming is a major one and can prove to be extremely harmful, especially if the large polluters do not find a way to curb their emission. Another important point to be noted is the fact that there can hardly be any decisions taken at an international level if national level decisions are not taken prior. Therefore, the question to be raised is not whether the Paris Treaty would lead to changes in the emission percentage in the world, but if the Paris Treaty was in fact, powerful enough and binding enough to actually catalyse further changes in national policies so as to effectuate the international decision. One of the major issues with

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[7] *Kyoto Protocol To The United Nations Framework Convention On Climate Change*, Article 3 (Kyoto, Japan: United Nations Framework Convention on Climate Change, 1997).

[8] Clare Breidenich et al., "The Kyoto Protocol To The United Nations Framework Convention On Climate Change", *The American Journal Of International Law* 92, no. 2 (1998): 315, doi:10.2307/2998044.

[9] Chandra Lal Pandey, "The Limits Of Climate Change Agreements: From Past To Present", *International Journal Of Climate Change Strategies And Management* 6, no. 4 (2014): 376-390, doi:10.1108/ijccsm-03-2013-0026

[10] Wolfgang Obergassel et al., "Phoenix From The Ashes: An Analysis Of The Paris Agreement To The United Nations Framework Convention On Climate Change – Part I", *Wuppertal Institute For Climate Environment And Energy Journal*, 2019.

the Paris Convention is the means it chooses for the implementation of the measures. Instead of making the procedure a binding one, all the Paris Convention does is create a risk in the reputation of the State in the instance that its implementational mechanisms are not met with i.e. the mandatory disclosure clauses and review provisions once every five years.

Once in five years, this disclosure process known as a "Stocktake" would create concentrated attention for a small period of time, and then there would again be a trough in any discourse with relation to the same.[11] Moreover, the process of Stocktaking transfers the onus of providing true and correct information about the implementation of a policy, on the country itself, and does not provide any such mechanism to verify or mandate that the information be true. One of the major reasons why developing countries supported the Paris Convention was because of the two-decade long procedure that it demands, and therefore for developing countries, it offers a more acceptable timeline. Furthermore, the inclusion of the "loss and damage" within the purview of the standards implies that there exists some level of control over the liability of the North, considered to be the major pollution contributing part of the world.

Moreover, the chinks in the Paris Convention are truly the financial sections of the Convention. It does not lay down any mandate to increase the level of climate finance. Climate financing today is viewed as one of the most important means of tackling and adapting to the path ahead in terms of what the world is going to evolve into post the climate change effects set in onto the entire human environment. When the final text with relation to climate financing was released, it did not contain any qualifiers to the provision of Climate Finance in its first paragraph. In its current state, it only stipulates that the Developed Countries that are a party to the Convention shall provide financial assistance to the Developing Countries in order to assist their mitigation and adaptation measures.[12] Another issue that arises with relation to financing is the fact that it calls for voluntary support.[13] This imposes no other binding obligation on developing countries to contribute, but simply recognizes the increasing level of South-South financing, and yet offers no regulatory measure. Furthermore, the Convention has also not made any reference to and has in fact lost all connections to the goal of mobilising $100 Billion. As one can note, developed countries have not mandated any binding financial goal, and has simply created yet another goal that has no accountability whatsoever.[14]

THE STATUS OF CLIMATE LITIGATION- CASE STUDIES

The Nation of Bangladesh

Environmental Law in Bangladesh has been majorly derived from the Constitution of Bangladesh, customs, statutes and other by-laws governing the traditional insights, practices, and maintaining Bangladesh's obligations toward international treatises, conventions and protocols.[15] In Bangladesh, there exist a sum total of one-hundred-eighty-seven institutions dealing with climate change and its effects in one way or the other. There are three major forums dealing with the issues caused due to climate change, the Environment Court; approaching other Courts with a Writ or a PIL, and the third means is to file a suit in international bodies that Bangladesh is party to.

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[11] *The Paris Agreement*, Article 14 (New York City, United States: The United Framework Convention on Climate Change, 2016).
[12] *The Paris Agreement*, Article 9.1 (New York City, United States: The United Framework Convention on Climate Change, 2016).
[13] Ibid. art 9.2.
[14] *Decision 1/ CP. 21* (The Paris Agreement), accessed 23 July 2019...
[15] Justice Mainur Reza Chowdhury, *'Legal and Institutional Framework: Promoting Environmental Management in Bangladesh'*, 13(3)

The Environment Courts, giving the people the best means of getting justice in climate change related issues, were established in the year 2000, under provisions of the *Poribesh Adalat Ain, 2000.*

One of the first steps adopted by Bangladesh was to enact the *Poribesh Songrokkon Ain* in the year 1995, which served as the legal statute providing for environmental conservation in Bangladesh. One of the major needs called upon by the Rio Declaration was to improve the judicial activism[16]. Even though the *Poribesh Adalat Ain, 2000* allows for there to be the practice of principles on par with international standards, various lacunas still exist in the laws dealing with environmental issues. One of the major issues in providing justice in cases of climate change, is the existence of only two Environment Courts for the entire country of Bangladesh,[17] when the legislation clearly provides for the existence of seven of these Courts, i.e. one for each division.[18] Moreover, the qualifications of the judges in these Courts should be that of a *Joint District Judge*[19], when in reality, they only have the qualification of an Assistant Judge.[20]

Another major issue has its roots in the Legislation itself. As per Section 5(3)[21], the Environment Courts in the country has jurisdiction to entertain a complaint only after the *"Inspector"*[22] submits his "Report" to the Court. This means that the Court's Action can only be triggered by and subsequent to Executive Action; giving way to the demise of Rule of Law. Practices of corruption and *mala fide* can easily creep into the system. More importantly, the concept of accountability is lost *ab initio*, since more often than not, in cases that arise against the Government or Projects thereof, the Executive has the liberty to escape litigation by merely refusing to file the written statement in the Court. However, in more recent times, the case can only be postponed for 60 days wherein, if the Inspector does not submit the report, the Court can acknowledge the case, and admit the same. The issue in this process is that, within the time-frame of 60 days therein, there can be caused, irreversible damage, making the litigation a simple waste of time and resources.[23] While there exist provisions and power to grant damages, there exists no specific procedure in the calculation of the same, making this process arbitrary too.[24] While, the procedure asks for the grant of an Environmental Clearance Certificate from the local government to prevent any environmental damage, and strike them at the root, there exists no checking measure, nor is there any procedure prescribed for the same, making the very existence of such a provision unworthwhile.[25] Lastly, the very jurisdiction of the Environment Courts is unclear. The legislations that the courts can apply, the parties that can make representation and the extent to which these courts have a binding effect on international players is uncertain.

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[16] *Rio Declaration On Environment And Development*, Principle 11 (Rio de Janeiro: United Nations Educational, Scientific and Cultural Organization, 1992). 1

[17]Ministry of Law, Justice and Parliamentary Affairs, Letter dated 16.10.2001, Memo. No. 1273-bichar-4/5c4/2000, "Regarding the establishment of two Divisional Environmental Courts in two Divisions, i.e., Dhaka and Chittagong and the establishment of one Environmental Appellate Court in Dhaka" (translated by the authors), signed by Senior Assistant Secretary, Law, Justice and Parliamentary affairs.

[18] *Environment Court Act*, Section 4 (Bangladesh: Bangladesh Gazette, 2000).

[19] ibid

[20] ibid

[21] *Environment Court Act*, Section 5(3) (Bangladesh: Bangladesh Gazette, 2000).

[22] *Environment Court Act*, Section 2(kha) (Bangladesh: Bangladesh Gazette, 2000).

[23] *Environment Court Act* (Act No. 10 of 2002)

[24]Salahuddin Aminuzzaman, "Paper Salahuddin Aminuzzaman | Environmental Policy | Environmental Impact Assessment", *Scribd*, 2019, https://www.scribd.com/document/96519328/Paper-Salahuddin-Aminuzzaman.

[25] ibid

The Republic of India

In India, one of the major reasons as to why the process of Climate Litigation takes a standstill is the strict doctrine of *Locus Standi* followed by the Court, i.e. only a person who has faced some form of legal injury can in fact gain standing in a certain case, thus largely destroying the greater philosophy of Climate Change Litigation as a whole. A person who can gain standing before the Courts in India must show that he has suffered a larger claim than the others generally living in society, even though Right to Clean Environment has been seen to be a fundamental right under the Constitution of India under Article 21.[26]

For the lack of an extremely effective legislation preventing the deterioration of climatic conditions, the people of India have to instead choose the criminal offence under the Indian Penal Code providing for Public Nuisance.[27] The term Public Nuisance has been given a wide interpretation in the Indian Legal scenario and it is vide this provision that the Courts have given landmark judgements in the field of Environmental issues. Furthermore, the Indian Courts have been encouraging in their entertainment of Public Interest Litigations after the rules of *Locus Standi* were relaxed in the case of *S.P. Gupta v Union of India.*[28] For instance, the Courts have passed multiple orders for the prevention of corrosion of the Taj Mahal[29] and the regulation of the effluents being dumped in the river Ganga[30]. The reason why Public Interest Litigation is a such a great success in Environment Related Cases in India is the fact that, it is in these cases that the Indian Judiciary provides for some flexibility in terms of application, *locus standi,* and a collaborative approach in dealing with issues. Even though the Supreme Court of India is fairly new to the Concept of Climate Litigation, analysing the interpretations of the Supreme Court and the interventionist and expansionist view that is adopted by it, the Court would either widen the Environmental Right[31] in order to include the claims made due to the changing climatic conditions suffered by the people and the causers of the same. The Indian Courts have interpreted the constitutional right of environment, sometimes to mean lesser wide views, for example Pollution has been categorized to mean "*pollution-free air, and pollution-free water*[32]*, fresh air, and clean water*[33] *and pollution free environment*[34]*".* Similarly, the Court has created another ambit of definitions for the term "sanitation". Since in general discourse, emission of Greenhouse Gases is not considered to be a pollutant, the inclusion and the space that climate change itself would occupy within the Ambit of the Constitutional Right would be arbitrary.

Therefore, the approach to be taken in order to impress upon the Supreme Court the need to Constitutionally vest such a right would be to focus on a Human Rights Approach, and then bring it under the ambits of fundamental rights. One of the major issues with creating a Climate Litigation system in India is the way in which the Courts deal with the cases in the abovementioned manner. In the instance that a right based claim arises before the Supreme Court of India, then the Court would follow the approach that it is most inclined to follow, i.e. set up commissions, create committees that act in an ad-hoc manner, or utilise its popular innovation of a "Continuing Mandamus".

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[26] *Constitution of India*, vol. 21 (India: Government of India, 1950).
[27] *Indian Penal Code,* Section 268, (India: 1860)
[28] S.P. Gupta v. Union of India, 1981 Supp SCC 87, at 233 (Supreme Court of India, 1981)
[29] M.C. Mehta v. Union of India (Taj Trapezium Case), Writ Petition Number 13381 of 1984. (Supreme Court of India, 1984)
[30] M.C. Mehta v. Union of India (Ganga Pollution Case), Writ Petition Number 3727 of 1985. (Supreme Court of India, 1985)
[31] *Constitution Of India*, Article. 21 (Government of India, 1950).
[32] Charan Lal Sahu v. Union of India (1990)1 SCC 613, (Supreme Court of India, 1990) at para 137
[33] Narmada Bachao Andolan v. Union of India (2000) 10 SCC 664, (Supreme Court of India, 2000) at para 244.
[34] Vellore Citizens Forum v. Union of India (1996)5 SCC 647, (Supreme Court of India, 1996) at paras 16 and 17.

Therefore, in a nation such as India it is difficult to encapsulate the policies that would be required to form a uniform climate litigation system due to the institutional incompetence of the Courts in adjudging a matter on its own and reach a judgement based solely on the court's vision. One of the major worries caused by the Court would be the "Jurisprudence of Exasperation" wherein, the courts overburdened by cases, simply assign off the matters to other bodies and ad-hoc committees that are lesser equipped to deal with climate change issues.

The United States of America

USA despite being one of the countries with the highest rate of Greenhouse Gas emissions in the planet, lacks federal laws regulating the emissions of the gases. This acts as a reason for the abundant number of lawsuits pertaining to Climate Change at the local, state, national and international level. Climate Change is and will remain to be one of the most litigated issue in the contemporary world.

The current status of Climate Litigation in USA revolves around a current debate on the utility and outcomes of climate litigation.[35] The courts face a hinderance in awarding the right compensation to the parties involved in a climate change lawsuit simply because there is a discrepancy in finding a link between the cause and effect of the harm caused and the act committed.[36] One of the instances that can be referred to is the claims put forward by the auto-mobile traders against the limit on emission of Greenhouse Gases in Vermont[37]. This case acted as a catalyst in another widely recognized law suit[38] for the Supreme Court to recognize Carbon Dioxide as a pollutant under the US legislation Clean Air Act[39], which paved way to the enforcement of a cap on the Greenhouse Gas emissions for auto-mobiles and power plants running on coal under the Clean Power Plan. Here we can identify a differentiation between the demands of the parties into two subjects: Pro-regulatory and Anti-regulatory.

Most often, Pro-regulatory plaintiffs collaborate with parties who can find a link between the harm caused to the plaintiff and climate change using advanced means of science. This will help in forming a community of people robustly participating in reducing the maliciousness of Climate Change on the people, which strengthens the case for a better and healthy environment to live in. What influences a lot of parties is the differentiation in the state laws. Some parties choose to file in certain states due to the fact that the laws in that state is more flexible and has better implementation. For example, the California Environmental Quality Act[40]. Activists file lawsuits in California under CEQA and this has favoured several pro-regulatory plaintiffs in their claim for compensation. In other states, that have stringent laws, there are lack of chances to pinpoint the loopholes in the state laws. This leads to a lack of uniformity in the implementation of climate change standards in the country, and therefore calls for an immediate need for strengthening the very premises of Climate Change Legislations in various states.

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[35] Sabrina McCormick et al., "Strategies In And Outcomes Of Climate Change Litigation In The United States", *Nature Climate Change* 8, no. 9 (2018): 829-833, doi:10.1038/s41558-018-0240-8.
[36] "What Climate Change Can Do About Tort Law", *Environmental Law Reporter* 42 (2012): 10739.
[37] Haughey, A. Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie, *Sustain. Dev. Law. Pract*. 8, 72–73 (2007).
[38] Massachusetts v. EPA [2007] 549 US 497 (United States Supreme Court, 2007)
[39] United States of America, Clean Air Act, 42 U.S.C. § 7401 (Government of the United States of America)
[40] California Public Resources Code §§ 21000 to 21050: Division 13 Chs. 1–2 (State of California, 1970).

CLIMATE LITIGATION- SUGGESTIONS FOR A SUCCESSFUL POLICY

A Climate Litigation Policy in Least Developed Countries, Developing Countries and Developed Countries, although vastly different considering the varying needs of the population of such countries, every such policy relating to climate change needs to embed in itself certain common philosophies:

Firstly, States and Government Agencies need to be held responsible for any commitments that they have entered into, either based on a legislation or a policy thereof. With the dawn of the Paris Convention of the UNFCCC, there has been swelling support for lawsuits demanding that Nation States keep to their commitments and serve their obligations of maintaining a check on the rise of temperature and the global race to limit the same to 1.5ºC to 2ºC. Reference can be laid down to the Netherlands Case of *Urgenda Foundation v Kingdom of the Netherlands*[41], wherein an NGO along with nine-hundred citizens of the country sued their own government for not cracking down on Greenhouse Gas Emissions and called for various measures through which the issue needed to be tackled.

Secondly, there is a need to establish a concrete causal link between the indiscriminate extraction and mining of resources, and the change in climatic conditions. A known cause for climate change has known to be drastic pollution of the environment and the given reason for the same is the over-exploitation of natural resources. Reference in order to realize the importance of this principle in policy making can be laid down to the case of *Greenpeace Nordic Association and Nature & Youth v. Ministry of Petroleum and Energy*[42] in the jurisdiction of Norway. It was in this case that the citizens of Norway filed a suit against the government for allowing there to be indiscriminate off-shore mining of minerals and oil, and that the same was violative of their rights vested by the Constitution of Norway under Article 112, that gave them a right to a clean natural environment that maintained productivity and diversity.[43]

Thirdly, there needs to be relationship established between specific causes and effects of Climate Change. Even though it is a well-known phenomenon that the emission of greenhouse gases is a direct cause for climate change, and negative effects thereof, the Courts have been helpless in solidifying this connection and laying it down concretely. The same has been noted in the case of *Connecticut v. American Electric Power*[44] wherein while noting the effects of smog, heat related illnesses etc., while documenting the struggle caused due to the melting of snow caps.

Fourthly, it needs to be noted that one of the major justifiers to any climate change policy or legislation would be accountability on the failure of adaptation measures. There are certain conditions wherein adaptive measures taken by the government have in fact caused an amplification of climate change related issues, and various cases filed in various jurisdictions are testimony to the same. One such instance can be noted in the case of *Ralph Lauren 57 v. Byron Shire Council*[45] wherein the government measures to deal with the rise in sea levels in

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[41] Urgenda Foundation v. Kingdom of the Netherlands, [2015] HAZA C/09/00456689, (District Court of the Hague, and The Hague Court of Appeal)

[42] *Greenpeace Nordic Association and Nature & Youth v. Ministry of Petroleum and Energy* Case no. 16-166674TVI-OTIR/06 (Oslo District Court, 2018)

[43] Constitution of Norway, Article 112, (Government of Norway)

[44] Complaint, Connecticut v. Am. Elec. Power Co., 406 F. Supp. 2d 265 (S.D.N.Y. 2005) (No. 04 Civ. 5669(LAP)) (United States Courts of Appeal, Second Circuit, 2005)

[45] Ralph Lauren 57 v. Byron Shire Council [2016] NSWSC 169 (New South Wales, 2014)

fact caused further erosion of the shores and caused the Courts to mandate compensation to the shore-dwellers.

Fifthly, one of the most important doctrines requiring application in Climate Change issues is the doctrine of Public Trust, which is already applied in a large number of jurisdictions such as India. The Indian Judiciary applies the Public Trust Doctrine in a large number of Environmental issues such as groundwater rights (in the Plachimada Case[46]) or in the case of water pollutions such as the well-known *Taj Trapezium Case*[47]. Application of this doctrine ensures that there is enough accountability placed on the State and other Government agencies and bodies that ensure the maintenance and reduction of climate change causing factors within their jurisdictions.

CONCLUSION- THE PROBLEMS AND THE FUTURE

Within the purview of Climate Litigation itself, cases can be divided into two broad criteria based on the kind of parties involved in a case i.e. cases against a private party, and cases against the government. Within the general ambits of Climate Litigation, there just need to be internal bodies that can deal with the disturbances that are caused due to such aforementioned cases arising; international bodies or corporations have little to no role in establishing a solution in the cases that arise at such an instance. However, this is only a case when there exists substantial legislation dealing with climate change. In a jurisdiction wherein there exist hardly any climate change related legislation, different methods need to be employed in finding out what kind of Climate Litigation exists within the jurisdiction and the means that are used to tackle the said issue. One such means of identifying specific cases that are filed before the judiciaries in different countries, is having its *ratio decidendi* on the topic of Climate Change in itself. However, an issue arises in instances wherein the cases, while not having its ratio on climate change, deal extensively with causes or effects of Climate Change itself. Reliance in this instance can be placed on the case of *Ralph Lauren 57 v. Byron Shire Council*[48], which arose in the Australian Jurisdiction, and dealt in great depth with an imminently important topic i.e. sea-level rise. In the judgement or other documents with relation to this instant case, it is meant to be noted that there did not exist any common *"Key-words"* that would have helped associate the case with the ambits of Climate Change Litigation if an in-depth analysis were not made. Such instances only go on to prove that in jurisdictions that do not have a great amount of legislation on Climate Change itself, it becomes increasingly difficult in trying to identify and associate Climate Change related policies to actual, justified Climate Litigation policies.

Another major issue that Climate Change Litigation faces is the Justiciability of the very rights that Climate Litigation aims at providing to the people. Whether a Court is empowered to deal with a certain issue and entertain the claims made by the parties with relation to such an issue is an increasingly important consideration to make, and this issue can be highly noticed in developing countries such as India, as noted above. The conceptual tenets of Justiciability varies according to different jurisdictions; however, one of the more common understandings of the term Justiciability can be obtained from the English House of Lords when they state that a case is non-justiciable in the instance that there exists no specific mandate or standard to adjudicate a particular case.[49] One of the major means of achieving the standard of providing

[46] Perumatty Gram Panchayat v. State of Kerala, 2004 (1) KLT 731, (Kerala High Court, 2003)
[47] M.C. Mehta v. Union of India (Taj Trapezium Case), Writ Petition Number 13381 of 1984. (Supreme Court of India, 1984)
[48] Ralph Lauren 57 Pty Ltd v Bryon Shire Council [2014] NSWCA 107 (New South Wales, 2014)
[49] Buttes Gas and Oil Co. v Hammer (No 3) [1982] AC 888, at 938. (House of Lords, England, 1982)

a justified stance to plaintiffs within various jurisdictions to in fact file cases before the Court, and not just adhere to the age-old standard of legal injury occurring; since in a Climate Change related issue, there may not be a direct causal link between the legal injury and the cause being filed for. Another means can be noticed within the Indian legal framework wherein the National Green Tribunal has been vested with the right to take on a case *Suo moto* under the statute, and such an instance can be noted in cases such as *in re Court on its own motion v. State of Himachal Pradesh and Ors.*[50]

Lastly, while the basic principles in relation to Climate Change Litigation remain uniform around the world, one of the major issues surrounding it, is the very source from which rights and obligations with relation to Climate Change Policies themselves can be traced back to. While the arena of Human Rights Law does not explicitly provide for rights pertaining to a clean environment, it has indeed been noted time and again that the worse-off environmental conditions essentially tend towards worse conditions for human life on the planet. In line with this, various international human rights treatises and other legislations have codified a "Right to Clean Environment".[51] Qualitatively suggesting that Climate Change must fall under reasonable ambits of International Human Rights has been the agenda of a large number of international bodies.[52] Furthermore, there needs to be a recognized definition of climate change under the pillars of refugee law. This is because, one of the direct causes of Climate Change would be the displacement of people due to the increasing non-hospitability of climatic conditions around the globe. The same was noted in the famous Kiribati Citizen case in the Country of New Zealand wherein a citizen of Kiribati Islands was denied asylum due to the arbitrariness surrounding the term "Climate Refugee".[53] Therefore, there needs to be a strong centre sourcing the obligations that would be born in the legal systems around the world once Climate Litigation becomes a mainstream consideration.

[50] Gitanjali Nain Gill, "Environmental Justice In India: The National Green Tribunal And Expert Members", *Transnational Environmental Law* 5, no. 1 (2015): 175-205, doi:10.1017/s2047102515000278..

[51] *Report Of The Office Of The United Nations High Commissioner For Human Rights On The Relationship Between Climate Change And Human Rights*, U.N. Doc. A/ HRC/10/61 (Human Rights Commission, 2009),

[52] *Climate Change and Human Rights,* New York: United Nations Environment P}rogram, 2016

[53] Ioane Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment, [2015] NZSC 107, (New Zealand Supreme Court, 2015)

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