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Courts and Climate Change

- Alaknanda Mishra

The phenomenon of climate change is not something that is novel rather it is the result of activities such as globalisation, trade and development that took place over a few decades. Climate change is a term that pertains to long-term changes in the weather patterns of a given particular region, these changes can be related to changes in rainfall and temperature. Jeff Turrentine, M.D. (2021) *what is climate change? Be a Force for the Future*. Available at: <https://www.nrdc.org/stories/what-climate-change> (Accessed: 23 March 2024).

According to reports made by NASA, global warming is occurring and the past two decades have seen some of the warmest years on record. *What is climate change? NASA*. Available at: <https://climatekids.nasa.gov/climate-change-meaning/> (Accessed: 23 March 2024).

Climate change in International Documents

The Earth's climate has always undergone natural changes, what makes it even more concerning is the unpredictable pace and scale at which these changes are happening. Rise in concentration of green house gases in atmosphere counts as one among the major reasons behind it. Other reason constitutes human activities such as burning of fossil fuel. *UNFCCC, art 1, para 2 (1992)*.

Paris Agreement (adopted in 2015) creates legally binding obligations on the countries, provides for the countries to work together in order to ensure that global temperature rise is below 2°C above pre-industrial levels, and also with the aim of limiting it to 1.5C. All the countries will have to submit their national climate action plan (nationally determined contribution) after every five years.

Principle 21, 1972 Stockholm Declaration on Human and Environment emphasize duty of state to prevent activities causing harm to other states environment or areas beyond

their limits. This responsibility is further reinforced by Principle 2 of the 1992 Rio Declaration .

One of the most serious consequences is its impact on the environment and biodiversity. With the rising temperature it's getting challenging for various species to adapt to this climatic change, thus it forces them to migrate or else they are getting extinct. Marine life is also at threat with marine water getting warmer and also more acidic. We have been witnessing glaciers melting in a rapid manner which as a result has become reason for loss of habitat for animals such as polar bear.

Issue of climate change requires collective actions from governments, international institutions, businesses and not to forget individuals also. Reduction of carbon footprint by adopting a source of energy that is cleaner and renewable is one vital step needed to be addressed in order to tackle climate change. It is important to address here is that this issue is not a future problem, instead it is happening now. Action taken now will decide the future of this planet and the coming generation.

Role of courts

As we know issue of climate change is persistent, pernicious and pervasive problem. Courts might act as mechanism providing equal opportunity to get justice; determining and not deferring claims made on climate change; ensure rule of is being followed.

Courts are forum responsible for ensuring opportunity for hearing on equal terms; it has to discharge its duty in addressing the climate change matters. Now we will look into various circumstances where role of courts in enforcing climate change issues has been highlighted.

International law provides for the states to take action climate change matters as it has recognised. ICJ also known as world court plays significant role in shaping legal framework around climate change. Over the years ICJ has been actively involved in cases related to climate change setting precedents and showing the direction on how countries should address these problems, here are some significant cases on ICJ's role:

Interhandel case (Switzerland v. United States) - 1959:

In this case, Switzerland filed a case against the United States, seeking \$951 million in compensation for damages caused by nuclear weapons testing conducted by the US on their

territory. The ICJ ruled in favour of Switzerland, stating that the United States had an obligation to prevent and minimize damage to other states caused by their actions. This ruling established the concept of 'no harm' in international environmental law, which has been cited in subsequent cases related to climate change.

Corfu Channel case (United Kingdom v. Albania) 1949: U K filed a case against Albania for laying mines in international water, causing damage to British ships. The ICJ ruled in favour of UK, stating that Albania has violated its obligations under international law to protect marine environment. This judgement established the doctrine of environmental protection as a principle of customary international law.

Pulp mills case (Argentina v. Uruguay) 2010 this case involved dispute over construction of Pulp Mill on the Uruguay River, which was causing pollution and affecting local environment. Judgement was rendered in favour of Argentina justifying Uruguay has failed to comply to its obligation under the statute of 1975 for protection of Uruguay River. This case established principle that countries have a duty to prevent transboundary harm caused by their activities.

In the Council of State in case of *Office of the Inspector General and Others v. Ministry of Environment and Sustainable Development and Others, 2022*. Council of state ruled that Colombian Government has failed to fulfil its obligation in addressing climate change. Government's lack of action has hindered progress in tackling the problem of climate change. This ruling served as a wake-up call for the government to action on immediate basis and discharges its duties of addressing issue of climate change.

In *Greenpeace v. Spain II*, environmental and human rights organisation has taken legal action against government of Spain as it made allegation on Spanish government over inadequate action on climate change. It was held by the Supreme Court that Spain's regulatory action are consistent with obligations of Paris Agreement and is also as per the requirements of EU'S commitments an regulation.
<https://climatecasechart.com/non-us-case/greenpeace-v-spain-ii/>,

Conclusion

The fight against climate change requires a multi-pronged approach, and legal system has crucial role to play. By providing a platform for holding government accountable and ensuring polluters are held responsible, courts act as catalyst for meaningful climate action. Legal victories alone are not enough to solve climate change crisis there is need for governments, businesses and individuals to achieve a sustainable future.