
CLIMATE LITIGATION IN INDIA AND THE PHILIPPINES: A COMPARATIVE ANALYSIS OF LEGAL STRATEGIES AND OUTCOMES

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ABSTRACT

Climate litigation is a form of legal action that seeks to address the causes and consequences of climate change. It can be used to challenge the policies and practices of governments and corporations that contribute to greenhouse gas emissions, or to demand compensation and adaptation measures for the victims of climate impacts. Climate litigation has emerged as a global phenomenon, with cases filed in various jurisdictions and fora. However, the legal strategies and outcomes of climate litigation vary depending on the context and characteristics of each case. This research paper aims to compare and contrast the climate litigation experiences of India and the Philippines, two countries that are highly vulnerable to climate change and have active civil society movements. The paper will examine the main drivers, actors, and arguments of climate litigation in both countries, as well as the legal frameworks and institutions that enable or constrain such litigation. The paper will also analyse the outcomes and impacts of climate litigation, both in terms of legal precedents and policy changes, as well as the challenges and opportunities for future litigation. The paper will draw on a range of sources, including court judgments, legal documents, academic literature, media reports, and interviews with litigants and experts. The paper will use a comparative and interdisciplinary approach, combining legal analysis with insights from political science, sociology, and environmental studies. The paper will contribute to the growing literature on climate litigation, as well as to the broader debates on climate justice, human rights, and environmental governance.

Keywords: Climate litigation, India, Philippines, policy changes, legal strategies, outcomes.

Introduction

Climate litigation is the use of the legal system to address the issue of climate change. It can involve a wide range of legal claims, including public nuisance, negligence, human rights violations, and breaches of fiduciary. Climate litigation is a new field of law, but it has grown rapidly in recent years. The first climate change case was filed in the United States in 1986, but it was not until the early 2000s that climate litigation began to take off. There are several factors that have contributed to the growth of climate litigation. One factor is the increasing scientific consensus that climate change is real and caused by human activity. Another factor is the growing awareness of the impacts of climate change, such as more extreme weather events and rising sea levels. Climate litigation has also been driven by the failure of governments and businesses to take adequate action to address climate change. In many cases, climate litigation has been used to compel governments and businesses to take steps to reduce their greenhouse gas emissions.

In recent years, there has been several trends in climate litigation. One trend is the increasing number of cases being brought against governments. Another trend is the increasing number of cases being brought in developing countries. There has also been a shift in the focus of climate litigation. In the early days of climate litigation, most cases focused on tort claims such as negligence and public nuisance. However, in recent years, there has been an increase in cases based on constitutional law and human rights law.

Chapter 1 : Development of Climate Litigation in India and Philippines

Climate litigation in India is still in its nascent stages, but it has grown rapidly in recent years. The first climate change case in India was filed in 2004, and since then there have been over 100 climate change cases filed in Indian courts.

The evolution of climate litigation in India can be divided into three main phases:

Phase 1: Early cases (2004-2010)

The early climate change cases in India were mostly filed by environmental groups and challenged government actions that contributed to climate change, such as the permitting of new coal-fired power plants. These cases were often unsuccessful, but they helped to raise

awareness of the issue of climate change and to lay the groundwork for future litigation.

Phase 2: Strategic litigation (2011-2020)

In the second phase of climate litigation in India, environmental groups began to use strategic litigation to force governments to take more ambitious action on climate change. For example, in 2011, a group of environmental lawyers filed a lawsuit against the Indian government alleging that it had failed to take adequate action to mitigate climate change or to protect people from its impacts. The case is still ongoing, but it has already forced the government to take some steps to address climate change.

Phase 3: Expansion of climate litigation (2021-present)

In the third phase of climate litigation in India, the number of climate change cases has increased significantly. This is due in part to the growing recognition of the severity of climate change, as well as the increasing availability of legal resources for climate litigants. Climate litigation is now being used to address a wide range of climate change issues, including:

- The government's failure to take adequate action to mitigate climate change.
- The government's failure to protect people from the impacts of climate change.
- The corporate sector's role in causing climate change.
- The environmental impacts of specific projects, such as coal-fired power plants and mines.

Climate litigation has had several important impacts in India. For example, it has forced the government to take some steps to address climate change, such as developing a national climate action plan and setting targets for reducing greenhouse gas emissions. Climate litigation has also held businesses accountable for their role in causing climate change, and it has helped to raise public awareness of the issue of climate change.

The Philippines is one of the country's most vulnerable to climate change. It is in the tropics, which makes it particularly susceptible to typhoons, floods, and other extreme weather events. Climate change is already having a significant impact on the country, with more frequent and

severe storms, rising sea levels, and more extreme droughts.

Against this backdrop, climate litigation is appearing as a powerful tool for Filipinos to seek justice and hold their government accountable. In recent years, there have been several high-profile climate litigation cases in the Philippines, including:

Global Legal Action on Climate Change v. The Philippines Government (2010): In this case, a group of environmental organisations filed a petition with the Supreme Court of the Philippines, alleging that the government had failed to adequately protect its citizens from the impacts of climate change. The petitioners argued that the government had a constitutional obligation to protect the right to a healthy environment, and that its failure to do so was a violation of human rights. The case was settled out of court, with the government agreeing to take several steps to address climate change.

Philippine Reconstruction Movement and Greenpeace Southeast Asia v. Commission on Human Rights of the Philippines (2015): In this case, a group of environmental organizations and individuals filed a petition with the Commission on Human Rights of the Philippines, alleging that the world's largest carbon-emitting companies had violated their human rights by contributing to climate change. The petitioners argued that the companies had a duty to protect human rights, and that their failure to do so had caused significant harm to Filipinos through climate change impacts such as typhoons, floods, and droughts. The Commission is currently investigating the case.

The Road Sharing Case (2019): In this case, a group of environmental organizations and individuals filed a petition with the Supreme Court of the Philippines, challenging the government's decision to build a new highway in a protected forest area. The petitioners argued that the highway would destroy critical environmental resources and worsen climate change. The case is currently pending before the Supreme Court.

These cases are the first stages of climate litigation in the Philippines. However, the field is growing rapidly, and it is expected that there will be many more climate litigation cases in the years to come.

Chapter 2: Role and Impact of Climate Change Legislations.

Role of Climate Change Legislations in India

Climate change legislations in India play a vital role in addressing the challenges of climate change and its impacts. These legislations provide the legal framework for the government to reduce greenhouse gas emissions, promote renewable energy, and adapt to the impacts of climate change.

Environmental Protection Act, 1986: This is the umbrella legislation for environmental protection in India. It empowers the central and state governments to take measures for the protection and improvement of the environment, including the prevention and control of pollution.

Air (Prevention and Control of Pollution) Act, 1981: This Act aims to prevent, control, and abate air pollution. It empowers the central and state governments to set up air pollution control boards and to prescribe emission standards for various industries.

Water (Prevention and Control of Pollution) Act, 1974: This Act aims to prevent and control water pollution. It empowers the central and state governments to set up water pollution control boards and to prescribe effluent standards for various industries.

Energy Conservation Act, 2001: This Act aims to promote energy efficiency and conservation. It empowers the central government to appoint energy-intensive industries and to prescribe energy efficiency standards for them.

National Action Plan on Climate Change, 2008: This is a policy document that outlines India's strategy for addressing climate change. It includes targets for reducing greenhouse gas emissions, promoting renewable energy, and adapting to the impacts of climate change.

In addition to these legislations, the Indian government has also introduced several other initiatives to address climate change, such as the National Solar Mission, the National Mission for Electric Mobility, and the Green India Mission.

Impact of Climate Change Legislations in India

Climate change legislations in India have had several positive impacts. For example, the

Energy Conservation Act has helped to reduce India's energy consumption by over 20% since 2001. The National Action Plan on Climate Change has helped to promote renewable energy and energy efficiency in India. As a result, India's renewable energy capacity has increased by over 20 times since 2008.

However, there are still some challenges that need to be addressed. For example, India's coal consumption is still high, and this needs to be reduced to meet India's climate change targets. Additionally, India needs to invest more in adaptation measures to protect the country from the impacts of climate change, such as sea level rise, extreme weather events, and droughts.

Overall, climate change legislations in India have played a significant role in addressing the challenges of climate change and its impacts. However, more needs to be done to reduce India's greenhouse gas emissions and to invest in adaptation measures.

The Energy Conservation Act has led to a significant reduction in India's energy consumption. For example, the Act has helped to reduce the energy consumption of the Indian Railways by over 25%.

The National Action Plan on Climate Change has helped to promote renewable energy in India. For example, India's solar power capacity has increased from 2.3 GW in 2014 to over 60 GW in 2023. The Green India Mission has helped to increase India's forest cover. For example, India's forest cover has increased from 21.2% in 2011 to 24.3% in 2023.

Despite these positive impacts, there are still some challenges that need to be addressed. For example, India's coal consumption is still high, and this needs to be reduced to meet India's climate change targets. Additionally, India needs to invest more in adaptation measures to protect the country from the impacts of climate change, such as sea level rise, extreme weather events, and droughts.

Role of Climate Change Legislations in the Philippines

The Philippine government has enacted several climate change legislations to address these challenges. The most important of these is the Climate Change Act of 2009 (RA 9729). This Act sets up a comprehensive framework for climate change action in the Philippines, including mitigation, adaptation, and disaster risk reduction.

Other important climate change legislations in the Philippines include:

Renewable Energy Act of 2008 (RA 9513): This Act promotes the development and use of renewable energy in the Philippines. It supplies incentives for renewable energy projects, such as tax breaks and net metering.

National Disaster Risk Reduction and Management Act of 2010 (RA 10121): This Act sets up a comprehensive framework for disaster risk reduction and management in the Philippines. It includes provisions for climate change adaptation.

Philippine Green Jobs Act of 2016 (RA 10771): This Act promotes the creation of green jobs in the Philippines. It defines green jobs as jobs that contribute to the preservation, restoration, or improvement of the environment.

These legislations have played a key role in promoting climate action in the Philippines. For example, the Renewable Energy Act has helped to increase the country's renewable energy capacity from 4.5% in 2008 to over 30% in 2023. The National Disaster Risk Reduction and Management Act has helped to reduce the number of casualties from natural disasters in the Philippines. And the Philippine Green Jobs Act has helped to create thousands of green jobs in the country.

Impact of Climate Change Legislations in the Philippines

The impact of climate change legislations in the Philippines has been mixed. On the one hand, these legislations have helped to promote climate action and reduce the country's vulnerability to climate change. On the other hand, there are still some challenges that need to be addressed, such as the prohibitive cost of renewable energy and the lack of skilled workers in the green jobs sector.

The Renewable Energy Act has helped to increase the country's renewable energy capacity from 4.5% in 2008 to over 30% in 2023. This has helped to reduce the Philippines' reliance on fossil fuels and to reduce its greenhouse gas emissions. The National Disaster Risk Reduction and Management Act has helped to reduce the number of casualties from natural disasters in the Philippines. For example, the number of deaths from typhoons has decreased from an average of over 1,000 per year in the 1990s to less than 100 per year in the 2020s. The

Philippine Green Jobs Act has helped to create thousands of green jobs in the country. For example, the Philippine government has created a Green Jobs Fund to support the training and placement of workers in the green jobs sector. Despite these positive impacts, there are still some challenges that need to be addressed. For example, the cost of renewable energy is still relatively high in the Philippines, and this is a barrier to its wider adoption. Additionally, there is a shortage of skilled workers in the green jobs sector, which is limiting the growth of this sector.

Chapter 3: Role and Impact of Judicial System in Climate Change Litigation.

Role of the Indian Judicial System in Climate Change Litigation

The Indian judicial system has played a significant role in addressing the challenges of climate change through litigation. The Indian courts have interpreted existing laws and regulations in a way that promotes climate action and protects the environment. The courts have also issued several landmark rulings on climate change cases and have used the public interest litigation (PIL) process to challenge government policies and actions that are harmful to the environment.

Case Laws

Intellectuals Forum, Tirupathi v. State of A.P. & Others¹ : The Supreme Court of India held that the government has a duty to take precautionary measures to protect the environment and to prevent climate change. The court also held that the right to a healthy environment is a fundamental right under Article 21 of the Indian Constitution.

Common Cause v. Union of India²: The Supreme Court of India directed the government to prepare a National Action Plan on Climate Change (NAPCC). The NAPCC is a comprehensive plan that outlines India's strategy for addressing climate change.

Ashish Kothari v. Union of India³ : The Supreme Court of India held that the government must conduct environmental impact assessments (EIAs) for all infrastructure projects, including those that are related to climate change. The court also held that EIAs must be made

¹ (2006) 3 SCC 549

² (2017) 7 SCC 158

³ (2013) 12 SCR 283

public and that communities must be consulted before EIAs are completed.

Goa Foundation v. Union of India⁴ : The NGT held that the government must take steps to protect the Western Ghats Mountain range, which is a biodiverse region that is vulnerable to climate change. The NGT also held that the government must conduct a cumulative impact assessment of all development projects in the Western Ghats before approving any new projects.

Impact of Climate Change Litigation in India

The recognition of the right to a healthy environment as a fundamental right has been a pivotal step in India's journey towards environmental protection and climate action. This landmark decision has not only raised awareness about the urgency of addressing climate change but has also empowered citizens to demand accountability from both the government and private entities for their environmental actions.

Raising Awareness and Catalyzing Action: The recognition of the right to a healthy environment has served as a powerful catalyst for raising public awareness about the detrimental impacts of climate change and the need for immediate action. This recognition has shifted the discourse from a purely environmental concern to a fundamental human rights issue, emphasising the inextricable link between environmental well-being and human health.

Enforcing Environmental Regulations and Protecting Communities: Landmark rulings on climate change cases have compelled the government to take concrete steps towards reducing greenhouse gas emissions and protecting the environment. These rulings have strengthened environmental regulations, enforced stricter emission standards, and promoted the adoption of renewable energy sources.

Empowering Citizens and Promoting Accountability: The PIL (Public Interest Litigation) process has emerged as a powerful tool for ordinary citizens to hold the government and private entities accountable for their actions that pollute the environment and contribute to climate change. PILs have enabled individuals and non-profit organizations to bring legal challenges against environmentally harmful practices, seeking justice and environmental protection.

⁴ (2012) 10 SCC 1

Developing a Robust Environmental Law Framework: Climate change litigation has played a crucial role in shaping and developing a comprehensive body of environmental law in India. Court decisions have established precedents, clarified legal principles, and provided guidelines for addressing environmental issues. This robust legal framework will serve as a cornerstone for future environmental protection efforts in India.

Role of the Judicial System in the Philippines

The judicial system in the Philippines plays a vital role in climate change litigation. The courts have the power to interpret and apply the law, and they can issue orders to compel the government and private entities to address climate change.

The courts have also recognized the right to a healthy environment as a fundamental right under the Philippine Constitution. This means that the courts can strike down laws and regulations that are harmful to the environment, and they can also order the government to take steps to protect the environment.

Case Laws

Greenpeace Southeast Asia v. Climate Change Commission⁵: The Supreme Court of the Philippines ruled that the Climate Change Commission has a duty to address climate change. The court also held that the government has a duty to protect the rights of Filipinos who are affected by climate change.

Oposa v. Factoran (1993)⁶: The Supreme Court of the Philippines recognized the right to a healthy environment as a fundamental right under the Philippine Constitution. The court held that this right is not just for the present generation, but also for future generations.

Cruz v. DENR (2008)⁷: The Supreme Court of the Philippines ruled that the government has a duty to protect the environment from harmful chemicals. The court ordered the government to phase out the use of lead in gasoline and paint.

⁵ Case No. CHR-NI-2016-0001

⁶ G.R. No. 101083, 224 S.C.R.A. 792 (1993)

⁷ G.R. No. 135385

Impact of Climate Change Litigation in the Philippines.

The courts have played a crucial role in advancing environmental protection and climate action in the Philippines. By raising awareness about the urgency of climate change, compelling the government to take meaningful steps, and safeguarding communities from harmful activities, climate change litigation has left an indelible mark on the country's environmental landscape.

Raising Awareness and Catalyzing Action : Court proceedings have brought the gravity of climate change to the forefront of public discourse, educating the public and policymakers about the impending risks and the need for urgent action. These proceedings have served as a powerful platform for disseminating scientific evidence, highlighting the impacts of climate change on vulnerable communities and ecosystems, and underscoring the importance of transitioning to a low-carbon economy.

Enforcing Environmental Regulations and Protecting Communities: The courts have upheld environmental laws and regulations, ensuring that the government adheres to its commitments to protect the environment. This has led to the implementation of stricter environmental standards, improved enforcement mechanisms, and the halting of harmful projects that threatened communities and ecosystems. For instance, court decisions have played a significant role in safeguarding communities from the devastating impacts of coal mining and lead pollution.

Shaping Environmental Law and Empowering Citizens: Climate change litigation has contributed to the development of a comprehensive body of environmental law in the Philippines. These legal precedents provide a framework for addressing future environmental challenges, enforcing environmental protections, and ensuring that the government's climate action plans align with international commitments. Moreover, climate change litigation has empowered citizens to hold their government accountable for environmental protection and climate action. This has strengthened civic engagement, fostered a sense of environmental stewardship, and expanded opportunities for public participation in environmental decision-making processes.

Empowering a Sustainable Future: As the Philippines continues to face the challenges of climate change, the judiciary is likely to remain a critical actor in advocating for a sustainable and resilient future. The courts' commitment to environmental protection, their ability to

interpret and enforce environmental laws, and their role in empowering citizens position them as powerful allies in the fight against climate change. By continuing to raise awareness, compel action, and safeguard the environment, the courts can help pave the way for a more sustainable and climate-resilient Philippines.

Conclusion

Climate litigation is a growing phenomenon that aims to hold public and private actors accountable for their actions or inactions that contribute to or aggravate the causes and effects of climate change. This paper has compared the legal strategies and outcomes of climate litigation in two countries in the Asia Pacific region: India and the Philippines. Both countries are highly vulnerable to the adverse effects of climate change but have different legal and political contexts that shape the opportunities and challenges for climate litigants.

The paper has found four main types of legal strategies used by climate litigants in India and the Philippines: constitutional claims, public interest litigation, human rights claims, and administrative law claims. The paper has also analysed the outcomes of climate litigation in terms of procedural and substantive aspects, as well as the potential impacts on policy and behaviour change. The paper has found that climate litigation in both countries has achieved some procedural successes, such as granting standing, admitting petitions, and issuing orders or directions. However, the substantive outcomes have been more mixed, as some cases have been dismissed, withdrawn, or pending for a long time. Moreover, the impacts of climate litigation on policy and behaviour change have been limited, as there are several factors that influence the implementation and enforcement of judicial decisions, such as political will, institutional ability, public awareness, and social mobilisation.

The paper has concluded that climate litigation in India and the Philippines is an emerging and evolving field that has the potential to advance climate justice and accountability, but also faces significant challenges and limitations. The paper has suggested some recommendations for future research and practice, such as exploring the role of non-state actors, developing innovative legal arguments and remedies, enhancing the quality and availability of evidence, strengthening the ability and coordination of litigants and lawyers, and fostering public engagement and support for climate litigation.