

A Review on Climate Law

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ABSTRACT

Climate change lawsuits has been under increased scrutiny in recent years. Climate change litigation is complicated by scientific, economic, and political issues that act as significant impediments to developing an appropriate litigation strategy. This article makes an attempt to ascertain the current legal status of climate change litigation in India and to chart a prospective future. To that end, the author has limited his study to two of the world's legal systems: the United States of America and India. The article argues that climate claims will have a strong foothold in India in the coming years if an objective legal strategy based on common law principles such as public nuisance and negligence is developed. While climate change litigation based on common law theory may appear uncertain to critics, the potential for such suits to add a new dimension to the entire climate change discussion cannot be overlooked.

KEYWORDS: Climate, Law, Review

INTRODUCTION

A suitable legal strategy must be created in order to cope with with the climate change issue, and the latter may prove to be critical. assignment for the legal profession in the coming years. The judiciary's function is particularly critical when interpreting current legislation in order to formulate a new legal strategy is necessary in light of the growing impact of greenhouse gas emissions and the ever-increasing economic activities that touch every aspect of human productivity, daily living, and the ongoing global climate change debates. Although the underlying mechanism by which carbon dioxide and other greenhouse gases warm the earth has been widely understood for decades, it was not until the late 1980s that climate change became a serious international issue. Following then, it took the world community more than a decade to resolve [1-4]. To create a comprehensive legal framework for climate change adaptation worldwide issue. India's burgeoning GDP and ever-increasing emissions have elevated India to a position of prominence in the global fight against climate change. This, in turn, fact, minimises an important fact, i.e. India's judicial system is still dormant. To the lawsuits surrounding climate change. Additionally, the inability of the capacity of the Indian judiciary to address such concerns is another source of concern. To be effectively addressed. One could claim that common law activities such as in the hands of some, public annoyance or negligence can be extremely effective tools. Judges to address the issue of climate change in India, specifically in the legislative provisions that are not articulated. Numerous scholars, Attorneys and concerned individuals are examining the viability of these lawsuits. Now [5-8].

The purpose of this article is to ascertain the current legal status of climate change litigation in India and to chart a probable future. I have limited my study to two distinct legal systems in the world: the United States

of America and India, because the former more accurately depicts the rich North, while the latter more accurately depicts the impoverished South. These two famous common law countries, united by a democratic ethic, have enormous potential to affect the world's legal views [9-12].

The number of instances concerning climate change has increased significantly during the previous decade. Numerous cases have been filed in national and international tribunals around the world. The United States has seen an increase in this type of litigation. *Massachusetts v. EPA* was one such case, and the United States Supreme Court's judgement profoundly affected federal policy and reshaped the litigation environment. Massachusetts and many other states sued the United States Environmental Protection Agency (EPA) over the agency's decision not to regulate greenhouse gas (GHG) emissions from motor vehicles under the 1963 Clean Air Act. Massachusetts contended that the EPA was required by the Clean Air Act to regulate any air pollutant, including greenhouse gases, that could "fairly be expected to damage public health or welfare." The United States Supreme Court ruled that the Clean Air Act of 1963 does confer regulatory authority on the EPA [13-18].

CASES

In the United States of America, courts are still hesitant to address the scientific issue of climate change. However, dealing with annoyances is not uncommon there. *Connecticut v. American Electric Power Co.*¹⁴ was the first of its sort to bring a common law case for public nuisance.

In 2004, a coalition of states, private property trusts, and the city of New York sued a group of large electric utilities for their role in climate change. They alleged that these power companies are the largest emitters of greenhouse gases (GHGs) in the United States, emitting 650 million tonnes of carbon dioxide per year collectively; that carbon dioxide is the primary GHG; and that GHGs trap atmospheric heat and contribute to global climate change, which is a continuing public nuisance that must be abated under federal or state common law. Plaintiffs sought a court order forcing defendants to voluntarily cap and reduce their greenhouse gas emissions. Before any scientific evidence could be submitted, the United States District Court for the Southern District of New York dismissed this case in 2005 as a non-justiciable political dispute. However, in September 2009, the Second Circuit Court of Appeals reversed the District Court's verdict, reviving the lawsuit. It decided that the political question doctrine did not preclude the Court from hearing the case and that all plaintiffs have standing to sue electricity providers for damages caused by climate change [19].

Another significant case on climate change is *Comer v. Murphy Oil USA*¹⁸, in which a three-judge panel of the Fifth Circuit Court reinstated a lawsuit brought by residents along the Mississippi Gulf coast against several corporations in the energy and fossil fuels industries, alleging they were responsible for property damage caused by Hurricane Katrina. Plaintiffs initially sought damages in 2007 under the tort doctrines of unjust enrichment, civil conspiracy and aiding and abetting, public and private nuisance, trespass, carelessness, and fraudulent misrepresentation and concealment. The defendants prevailed in dismissing the plaintiffs' complaint in district court. The United States District Court for the Southern District of

Mississippi approved the defendants' motions and dismissed the suit, finding that the plaintiffs lacked standing to pursue political issues that should not be decided by the court. Additionally, the Court determined that the harm was not traceable to specific defendants. On 16 October 2009, the United States Court of Appeals for the Fifth Circuit reversed a District Court's dismissal in part, holding that both plaintiffs have standing to raise at least three of the claims (nuisance, trespass, and negligence), and that the claims are justiciable, only to vacate the panel decision in March 2010 deciding to consider the District Court's appeal [20].

CONCLUSION

This recent development in *Comer v. Murphy Oil USA* is critical because it may set a precedent for future climate lawsuits in American courts. Additionally, it may provide an answer to the question of whether a corporate corporation can be held accountable for catalysing catastrophic climate events, as well as defining the plaintiff's legal standing to file such an action. Scientific hurdles are projected to continue to impact climate change litigation based on public nuisance and negligence claims. Additionally, it is suggested that plaintiffs may prevail by adopting certain common law ideas. If this occurs as predicted, the resulting damages and adaption costs will be tremendous, as would the interest in locating parties willing to pay those costs.

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