



KAUTILYA SCHOOL OF PUBLIC POLICY

GITAM (Deemed to be University)
Rudraram, Patancheru Mandal
Hyderabad, Telangana 502329

Course Code: PPOL6761	Course Title: Climate Change Litigation	
Trimester: Term 2 & Term 5	Course Type: Elective	Credits: 3
Home Program(s): MPP	Batch/Academic Year: 2023-2025 & 2022-2024	
Course Lead: Dr Judith Spiegel	Assigned T/RA: Ms. Shivangi Pandey	

Course Description

Seeking climate justice through climate change litigation is a growing phenomenon and a critical component of climate governance at the local, national, regional and global level. Young people, old people, NGOs and others address the courts to challenge governments' and corporations' actions or inactions on climate change issues. These claims are not only based on national and international environmental laws, but also on general legal concepts such as tort or the public trust doctrine and human rights laws. The goal is not (only) to obtain compensation, but to force policy change or enforce existing policies. This course explores this relatively new phenomenon that not only shows us something about the (in)effectiveness of both global and national climate policies and laws but might also change them. How does it work? Who can sue? Who can be sued? Where? On what grounds? What's the strategy? And what is the reason that climate litigation is booming?

Learning Objectives

The role of climate change litigation cannot be ignored by policymakers. It can challenge existing or intended policies. The discussion is becoming increasingly polycentric, expanding from mainly UN negotiations to numerous institutions, including national courtrooms. Focus of this course will be on:

1. The peculiarities and complexities of climate change litigation;
2. The strategies of climate change litigation;
3. The role of human rights in climate change litigation;
4. The role of corporate in climate change;
5. Future trends of climate change litigation.

Course Outcomes

On successful completion of this course, students:

1. Will understand the legal context, foundations and opportunities of climate change litigation;
2. Will be able to make strategic choices in climate change litigation;
3. Will be able to read case law;
4. Will be able to build a case;
5. Will have an understanding of the landmark cases of climate change litigation;
6. Will be able to translate litigation outcomes into policy decisions;
7. Will have stronger written and verbal communication skills and critical thinking skills.

Textbooks and Course Materials

Textbooks

- Peter Gailhofer et. Al (editors), *Corporate Liability for Transboundary Environmental Harm*, Springer 2023, open source: <https://link.springer.com/book/10.1007/978-3-031-13264-3?page=1#toc>
- *Should Trees Have Standing? Law, morality and the environment*, Christopher Stone.

Articles

- Maria Saracino-Lowe, *Urgenda, milieudefensie, and the impact of climate change litigation on global trade policy*. Minnesota Journal of International Law, 32(1), 2023, p. 301-322.
- Parshant Kumar, *Climate Change and Environmental Justice in India*, International Journal of Law Management & Humanities, 5, 1901 (2022).
- Fon Bisalbutr, *The potential impact of climate change litigation on government policy*, Notre Dame Journal of International and Comparative Law, 11 no. 2 (2021), p. 272-293.

Course Schedule

Unit I	10/11/12 Jan	Sessions: 6	Understanding the overall trend of climate change litigation
<ul style="list-style-type: none"> ● Climate change in context (of environmental law, liability law, human rights law) ● URGENDA V. THE NETHERLANDS ● <i>Locus standi</i> in climate change litigation: NGOs (URGENDA V. NETHERLANDS), individuals (RIDHIMA PANDY V. INDIA, SWISS SENIOR WOMEN FOR 			

<p>CLIMATE PROTECTION V. SWITZERLAND), unborn children (SEGOVIA ET AL. V CLIMATE CHANGE COMMISSION (PHILIPINES)), group actions.</p> <ul style="list-style-type: none"> • Does nature have standing? • Defendants: Governments (national and subnational), central banks, corporations, universities (HARVARD CLIMATE JUSTICE COALITION V PRESIDENT & FELLOWS OF HARVARD COLLEGE). • Avenues for litigation: national courts, ICJ (THE VANUATU ICJ INITIATIVE), ITLOS, ECHR (SWISS CLIMATE SENIORS, PORTUGUESE CHILDREN) ISDS arbitration (RWE V NETHERLANDS) • India: The National Green Tribunal • Strategies of impact litigation: selecting the right claimants, target the right defendants, seek remedies that extend beyond the situation of individual litigants, contribute to intended policy and regulatory impacts, consider the effect in other jurisdictions etc. • Class Action against BHP in Brazil over the 2015 mining disaster, filed in UK. 			
Unit II	16/17/18 Jan	Sessions: 5	Climate litigation in India and the Global South
<ul style="list-style-type: none"> • LEGHARI V PAKISTAN • PANDEY V INDIA and other cases (http://climatecasechart.com/non-us-jurisdiction/india/) • Constraints and opportunities for the Global South • Environmentalism for the rich, the reporting-based architecture of international instruments, lack of good governance, issues of historic responsibility, priorities and unsafe political environments, access to court etc. • Trends in Global South climate change litigation (south-south cooperation, north-south cooperation) • India specifics, NGT, judicial activism • Loss and damage developments after COP 27 (and 28), new grounds for litigation? • Climate justice 			
Unit III	18/19/20 Jan	Sessions: 4	Applicable law, attribution, evidentiary issues, conflicting obligations
<ul style="list-style-type: none"> • AMIS DE LA TERRE AND SHERPA V PERENCO • Obligations based on national law: administrative environmental laws, consumer law, corporation law, principle of public trust, rights of nature, duty of care, tort etc. • India: overview of environmental and climate change laws • Obligations based on international laws (Climate Change Convention, Kyoto Protocol, Paris Agreement, the ft. High Seas Treaty etc.), human rights instruments (see also unit V). 			

			<ul style="list-style-type: none"> • Conflicting obligations (eg. reducing GHG by building a dam or offshore windfarm), the (by now controversial) Energy Charter Treaty, dual use of weather changing solutions (ENMOD convention) • The importance and difficulties of attribution science for legal causality, the IPCC reports
Unit IV	20/22/23 Jan	Sessions: 4	ESG, Business, Product Liability and Sustainable Consumption
			<ul style="list-style-type: none"> • AUSTRALASIAN CENTRE FOR CORPORATE RESPONSIBILITY V. SANTOS • Accountability following from ESG • Greenwashing, climate disinformation, disclosure, carbon labelling etc. • Putting a price on nature, offsetting markets • Financial institutions' investment policies, shareholders activism • Funding of climate change litigation: Philanthropy groups, crowdfunding, investors from pension funds, Professional Litigation Funders, Impact investors etc. • Reducing the risk of being involved in climate litigation: the proposal for a Directive on Corporate Sustainability Due Diligence issued by the European Commission in February 2022, the UN Principles for Responsible Investment, Green Claims Code (UK) etc.
Unit V	23/24/25 Jan	Sessions: 5	The growing role of human rights, criminal law as the next step, policy changes after climate litigation
			<ul style="list-style-type: none"> • MILIEUDEFENSIE V. SHELL • The UN Human Rights Council Resolution 48/13 • Role of human rights at COP 26 • Growing recognition of corporate actors' human rights responsibilities • Involvement of the ECHR • Climate civil disobedience: climate protests under the cover of human rights protection? • Green collar crime, ecocide (THE PLANET V BOLSANARO) • Does it work? Policy changes following climate litigation (India updated NDC, NL closed coal plants etc.)