



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN



WHITE BLACK
LEGAL.

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

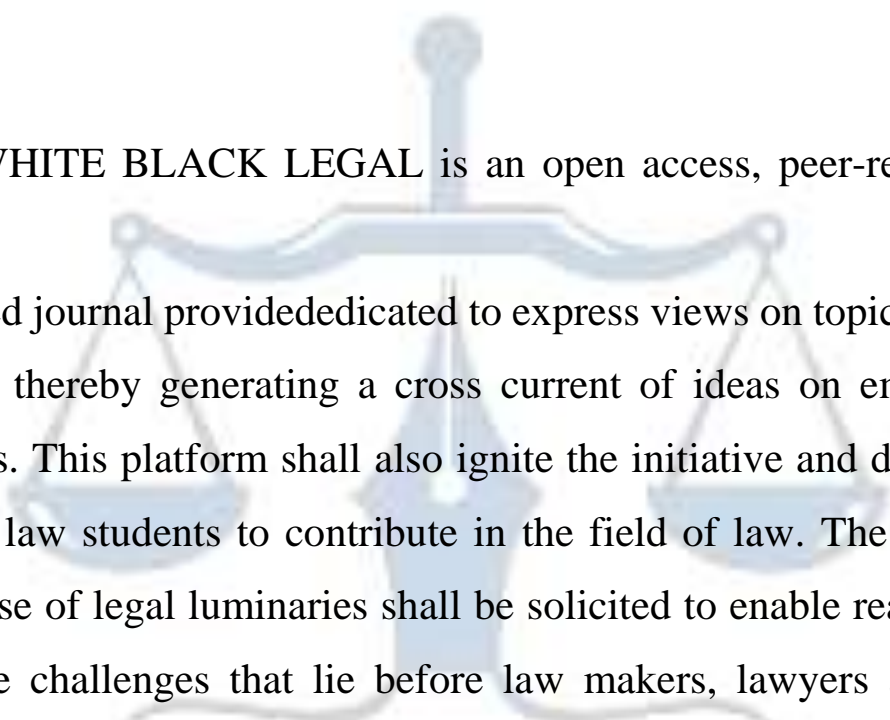


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

NAVIGATING TRADE AND ENVIRONMENTAL STANDARDS: EMPHASIS ON CLIMATE CHANGE LITIGATION

AUTHORED BY - CHUNDURI SAI NAIMISHA

Introduction:

Recently, a new study found that international trade embodies approximately 20 percent of global carbon dioxide emissions.¹ The main problem associated with trade liberalization is that different countries maintain different production standards. There are countries that produce exorbitant amounts of harmful goods such as the US, India, China, etc..., and there are countries that produce marginal amounts of goods as the population, geographical conditions, availability of raw materials, production capacities, and economic resources significantly vary among various nations. Thus, underprivileged countries often go against policies that establish uniform environmental standards.

Similarly, implementing trade policies and environmental standards is often a challenge to international organizations and mediating bodies as it is difficult to establish non-discriminatory trade goals. Another major obstacle to implementing these policy standards is emission leakage. Countries that follow weaker environmental emission standards may nullify the efforts put forth by those countries that implement stricter climate policies due to international trade. Moreover, national environmental policies target emissions that are production-based rather than consumption-based.² It means although few countries reduce their production of goods, an increase in consumption within that country fueled by imports leads to emission leakage, rendering their efforts ineffective. To tackle these issues, well-organized institutional and legal frameworks were set up, which will be discussed further below.

¹ 1 Glen Peters and Edgar G. Hertwich, "CO₂ Embodied in International Trade with Implications for Global Climate Policy," *Environmental Science & Technology*, vol. 42, no. 5 (2008), pp. 1401–1407.

² Lay, Margaret. *Can Trade Policy Support the Next Global Climate Agreement?: Analyzing the International Trade and Environment Regimes*. Carnegie Endowment for International Peace, 2008. *JSTOR*, <http://www.jstor.org/stable/resrep13053>. Accessed 12 Aug. 2024.

World Trade Organization: Institutional and Legal Framework

World Trade Organization is an inter-governmental forum that is tasked with supervising and regulating trade activities between countries. It constitutes 98% of the global trade economy comprising 164 United Nations member states. It was carved out of the General Agreement on Trade and Tariffs (GATT) and the Marrakesh Agreement in 1995.

Legal Framework:

1. **General Agreement on Trade and Tariffs (GATT):** GATT is an international agreement signed by 23 nations initially in 1947. Its main objective is to promote and facilitate trade in the international domain. Article XX of GATT allows for exceptions to trade rules for measures necessary to protect human, animal, or plant life or health, and for the conservation of exhaustible natural resources, provided these measures are not applied in a discriminatory manner.³ This interpretation of Article XX helps the climate change litigation to evolve over time while balancing both trade and the environment. In addition to this, Article VIII of GATT restricts subsidies to primary sector occupations such as fisheries and agriculture because the exploitation of natural resources is an integral part of such occupations.
2. **Technical Barriers to Trade (TBT):** Technical Barriers to Trade is an agreement that was entered into in 1994 during the Uruguay Rounds of Multilateral Trade Negotiations. Its purpose is to ensure that trade is not unreasonably restricted due to technical discrepancies and assessment standards. However, it acknowledges the idea of climate change mitigation and setting environmental standards. Climate change-related TBTs aim to decrease GHG emissions directly or indirectly arising from the production, use, and disposal of domestically produced and imported goods.⁴ It undertakes three significant measures to deal with climate change.
 - a) **Technical Regulations:** It recommends setting technical regulations such as emission standards for vehicles and energy utilization standards for electric appliances etc.,.

³ Robert Howse on May 31 & Robert Howse, CLIMATE MITIGATION AND THE WTO LEGAL FRAMEWORK: A POLICY ANALYSIS INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, <http://www.iisd.org/library/climate-mitigation-and-wto-legal-framework-policy-analysis> (last visited Aug 12, 2024).

⁴ Making trade work for climate change mitigation: The case of technical regulations, UNCTAD (2023), <https://unctad.org/publication/making-trade-work-climate-change-mitigation-case-technical-regulations> (last visited Aug 12, 2024).

- b) **Labeling Instructions:** It mandates labeling emission standards to be added on the products, indicating their impact on the environment so as to facilitate customers in making sensible decisions.
- c) **Conformity Assessment Procedures:** It sets out appropriate assessment procedures to verify if the production and packaging methods confirm the required emission and environmental standards.
3. **Sanitary and Phytosanitary Measures:** It encourages member countries to own standards to protect human, animal, and plant life or health from risks arising from pests, diseases, and contaminants.⁵ It also facilitates a forum for redressal, discussion, and assessment of SPS measures through the SPS committee.⁶ Moreover, it ensures transparency by mandating members to notify any changes in SPS regulations and standards.⁷
4. **Environmental Goods Agreement:** This is an agreement signed by members of WTO to reduce tariffs on goods that are eco-friendly so as to increase their accessibility and availability worldwide. These negotiations are built on a list of 54 environmental goods identified by the Asia-Pacific Economic Cooperation (APEC) forum in 2012.⁸ In a pioneering move, the APEC nations agreed to reduce import tariffs on these goods to 5 percent or less by 2015.⁹ It involves promoting green technologies including wastewater management mechanisms, hydroelectric projects, renewable energy technology, ethanol production, and so on. Although it has its challenges such as accurately defining what constitutes an environmental good and difficulties in ensuring the participation of all the signatories, it has the potential to make a good difference by promoting sustainable development and trade of environmental goods in the upcoming years.

⁵ SANITARY AND PHYTOSANITARY MEASURES NOTIFICATION REQUIREMENTS - NOTIFICATION PORTAL, <https://notifications.wto.org/en/notification-requirements/sanitary-and-phytosanitary-measures> (last visited Aug 12, 2024).

⁶ *Id*

⁷ *Id*

⁸ The WTO Environmental Goods Agreement: Why even a small step forward is a good step, WORLD BANK BLOGS, <https://blogs.worldbank.org/en/trade/wto-environmental-goods-agreement-why-even-small-step-forward-good-step> (last visited Aug 12, 2024).

⁹ The WTO Environmental Goods Agreement: Why even a small step forward is a good step, WORLD BANK BLOGS, <https://blogs.worldbank.org/en/trade/wto-environmental-goods-agreement-why-even-small-step-forward-good-step> (last visited Aug 12, 2024).

Institutional Framework:

- 1. Dispute Settlement Mechanism (DSM):** Dispute settlement is regarded by the WTO as the central pillar of the multilateral trading system and as a "unique contribution to the stability of the global economy."¹⁰ The main purpose of this is to oversee the conduct of member countries while resolving the cases that have been filed before the dispute settlement body. When negotiations between the countries over trade regulations imposed by any parties fail, DSM acts as a forum to adjudicate and decide on the case. Moreover, the DSM provides an appellate body to challenge the rulings of the DSM panel by an aggrieved party. In recent years, the WTO has struck down several decisions of special panels related to climate change mitigation and environmental standards. Some of the prominent cases dealt by the WTO Appellate body include the Mexican Tuna Case, 1994; The US Gasoline Case, 1995; the Shrimp Turtle Case, 1997; and many more which will be discussed in detail later on.
- 2. Committee on Trade and Environment (CTE):** A ministerial decision in 1994 led to the establishment of the Committee on Trade and Environment commonly known as CTE. It was set up to assess whether a particular trade policy is likely to damage the environment and impact global and national climatic conditions. Its primary objective is to recognize policies that relate to and link trade and the environment and make recommendations that soothe the climatic impacts caused by that trade policy. It also facilitates a forum to discuss, debate, review, and analyze such policies which would help by bringing best practices and standards with the potential to reduce the environmental impact caused by that trade policy.
- 3. Committee on Trade and Environment- Special Session (CTE-SS):** Although CTE plays a noteworthy role in understanding and examining trade policies, its effectiveness and scope were questioned due to lack of rule-making power. As its role is limited to recommendations, assessment, and verification, its ability to make a significant impact in creating a world with regulated climatic conditions and environmental change has diminished over time. Thus, to handle this issue, WTO set up CTE-SS during the Doha Round of Multilateral trade negotiations. It works under the WTO General Council and is conferred with rule-making power on aspects that are referred explicitly by WTO to CTE. It is represented by representatives from all the member countries and conducts

¹⁰ World Trade Organization, WTO, https://www.wto.org/english/news_e/spsp_e/spsp29_e.htm (last visited Aug 12, 2024).

regular meetings to assess its policies and recommendations. Additionally, it collaborates with other organizations and stakeholders including the United Nations Framework Convention on Climate Change (UNFCCC).

Multilateral Environmental Agreements:

Multilateral Environmental Agreements famously known as MEA are entered into by both developing and developed countries under the supervision of international organizations and stakeholders with the aim of reducing their emission impact on atmospheric conditions. They are implemented and administered by several global organizations such as the United Nations Framework Convention on Climate Change (UNFCCC) and the United Nations Environmental Program. An estimated 230 MEAs employ a variety of tools to address distinct environmental challenges and only twenty of these MEAs include trade restrictions.¹¹ A few of the core MEAs designed precisely to tackle trade and environment-related issues are analyzed below:

1. Convention on International Trade in Endangered Species (CITES):

CITES is an international agreement ratified by 184 members (as of now) to preserve endangered flora and fauna whose survival is crucial to ensure environmental protection. It categorized approximately 38,000 species into three different lists on the basis of their proximity to extinction. Appendix 1 deals with those species that require the highest level of safeguard. It includes species like red panda, Asian elephant, and monkey puzzle tree etc.,. Appendix 2 involves species that are on the verge of extinction. For example, great white sharks, stony corals, emperor scorpions, and green iguanas are some of the prominent species on this list. Finally, Appendix 3 recognizes species that need to be preserved at least in one country or when countries seek CITES support to regulate their trade.

Two significant mechanisms for its enforcement would be trade pollution permits and penalties. Parties backing strong pollution and emission standards will be issued trade permits so as to encourage them to follow international environmental standards. Similarly, members who fail to adhere to the prescribed standards or the agreed regulations will be penalized with restrictions on trade. The best example to showcase its effectiveness is the ban on caviar by the CITES secretariat in 2006. Virtually all trade in Beluga caviar was banned in 2006 because the five main producers—

¹¹ Lay, Margaret. *Can Trade Policy Support the Next Global Climate Agreement?: Analyzing the International Trade and Environment Regimes*. Carnegie Endowment for International Peace, 2008. JSTOR, <http://www.jstor.org/stable/resrep13053>. Accessed 9 Aug. 2024.

Azerbaijan, Iran, Kazakhstan, Russia, and Turkmenistan (of which all but Turkmenistan are parties to CITES)—refused to provide adequate information about the sustainability of their sturgeon catches.¹² This ban on caviar is reported to have improved monitoring systems in those countries that faced penalties.

2. Kyoto Protocol:

It is one of the noteworthy treaties outlined to combat greenhouse gas (GHG) emissions all over the world. It is designed to eliminate hostilities generated by Global Warming. The Kyoto Protocol is applied to the seven greenhouse gases listed in Annex A: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF₆), nitrogen trifluoride (NF₃).¹³ It constitutes two commitment periods between 2008-2012 and 2012- 2020, during which the member countries are required to implement measures to bring down the production and emission of GHGs. The Kyoto Protocol contributes significantly to combat the environmental issues by implementing the following mechanisms:

- i) It encourages countries to engage in emission trading, i.e., permits the countries to purchase and sell emission allowances.
- ii) It promotes the research and development of emission reduction procedures by validating the circulation of Certified Emission Reduction (CER) credits.
- iii) Most importantly, it allows developed countries to earn emission reduction units (ERUs) by investing in projects that reduce emissions in other developed countries.¹⁴
- iv) It ensures transparency and accountability by mandating countries to report their emission targets and verification procedures.
- v) It organizes a compliance committee to verify if the member countries are following the requirements mandated in the protocol and impose sanctions in case of default.

3. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal:

This is a multilateral agreement that has been active since 1992. Its primary aim is to

¹² *Id*

¹³ Greenhouse Gas Emissions Reports - DEFRA, UK, GREENHOUSE GAS EMISSIONS REPORTS - NAEI, UK, https://naei.beis.gov.uk/reports/reports?section_id=3 (last visited Aug 12, 2024).

¹⁴ UNFCCC.INT, https://unfccc.int/kyoto_protocol (last visited Aug 12, 2024).

prevent health risks and protect the environment from the movement of hazardous wastes from country to country. It mainly focuses on substances that are poisonous, nuclear, toxic, explosive, corrosive, and infectious. It is a universally acknowledged convention as it includes signatories from 175 countries around the world. The functions and roles of the convention in safeguarding the environment and preventing the deterioration of climatic conditions are as follows:

- i) It works to prevent the unreasonable trade of hazardous substances from developed countries to developing countries, thereby forbidding developed countries from taking advantage of their superior position in trade and development.
- ii) It plays a key role in encouraging Environmental Sound Management (ESM), which implies advocating for the cut down of creating harmful substances and promoting the disposal of such substances by means of eco-friendly procedures.
- iii) It involves a Prior Informed Consent (PIC) procedure wherein the exporting countries must operate the trade of hazardous substances with the prior consent and approval of the importing country.
- iv) The convention establishes a legal framework that includes the rights and obligations of the countries for the smooth functioning of trade among them.
- v) It provides assistance to developing and underdeveloped countries by offering technical assistance and promoting the transfer of technology for the environmental sound management of hazardous waste.¹⁵

4. The Rotterdam Convention on Pesticides and Chemicals:

The Rotterdam Convention functions along the lines of the Basel and Stockholm Convention, and its operative functions include all the aforementioned rights and obligations of the Basel Convention. It works towards the objective of regulating trade in harmful chemicals and pesticides. Some examples of pesticides and Chemicals covered under this agreement include Aldrin, Chlordane, DDT, Dieldrin, Heptachlor, Methyl Parathion, Asbestos, Hexachlorobenzene, Polychlorinated Biphenyls, Tetramethyl lead, TRIS, etc., It came into force in 2004 to address the growing concerns on environmental degradation caused by the international trade and consumption of harmful chemicals and pesticides.

¹⁵ Emily Benson & Sarah Mortensen, THE BASEL CONVENTION: FROM HAZARDOUS WASTE TO PLASTIC POLLUTION CSIS, <https://www.csis.org/analysis/basel-convention-hazardous-waste-plastic-pollution> (last visited Aug 12, 2024).

5. The Cartagena Protocol on Biosafety:

The Cartagena Protocol was entered into by 103 countries across the world in the year 2000 and came into force in September 2003. The treaty was established to control the trade of Living Modified Organisms (LMOs) i.e., the organisms that are genetically modified using bio-technology. The term Organisms includes crops (such as Maize, Cotton, and Rapseed); Microorganisms (Bacteria, Viruses); Animals (fish, cows, insects); and trees (Eucalyptus, Poplar trees). It incorporates the following measures to protect the environment and prevent harmful trade :

- i) It ensures the safe, handling and use of LMOs by setting out rules and regulations.
- ii) It encourages countries to undertake precautionary measures in cases where there is access to only limited information on the abilities and features of LMOs.
- iii) The protocol follows the Advanced Information Agreement (AIA) procedure, which involves sharing precise and accurate information about the LMOs that are being traded so as to assist the importing country in making a conscious decision.
- iv) It directs the countries to carry out risk assessment procedures to calculate the potential risks of trading LMOs.
- v) This framework established an online platform to help countries share data on risk assessments, regulatory decisions, and other relevant information, promoting transparency and informed decision-making on the trade of LMOs.¹⁶

6. Stockholm Convention on Persistent Organic Pollutants:

It is a United Nations treaty ratified in 2001 with currently 152 signatories to manage the trade of Persistent Organic Pollutants (POPs) among the member countries. POPs are "chemical substances that persist in the environment, bio-accumulate through the food web, and pose a risk of causing adverse effects to human health and the environment".¹⁷ It constitutes the Global Environment Facility, a financial mechanism required to operate the Stockholm Convention. This convention primarily focuses on the restriction of POPs like Aldrin, Mirex, Heptachlor, Chlordane, etc., and the elimination of certain other POPs namely DDT and perfluorobutane Sulfonic Acid

¹⁶ Biosafety Unit, THE CARTAGENA PROTOCOL ON BIOSAFETY THE BIOSAFETY CLEARING-HOUSE (BCH) (2024), <https://bch.cbd.int/protocol> (last visited Aug 12, 2024).

¹⁷ Stockholm Convention, UNIDO, <https://www.unido.org/our-focus-safeguarding-environment-implementation-multilateral-environmental-agreements/stockholm-convention> (last visited Aug 12, 2024).

(PFOS). It ensures the safe disposal and supervision of recognized POPs to prevent them from generating adverse effects on the Environment and mitigate climate change. The Stockholm Convention is also responsible for identifying new POPs to address the issues efficiently. The treaty also assists developing countries promote capacity building and research on identifying safer alternatives to trade the Persistent Organic Pollutants.

7. Montreal Protocol:

Montreal Protocol is a multilateral agreement that is considered to be universally ratified as it constitutes approximately 200 signatories around the world. It was entered into to regulate the trade of appliances and substances produced using harmful artificial chemicals. Its main aim is to control ozone layer depletion by regulating the trade of what is known as ozone-depleting substances (ODS). The protocol mandates two important mechanisms to achieve its objective. First, trade is banned between signatories and nonsignatories in the substances controlled by the protocol, and trade is banned between signatories and nonsignatories of products containing any of the controlled substances, such as refrigerators and air conditioners.¹⁸ These regulations enhanced the survival of marine ecosystems and mitigated various skin and cancer-related issues caused by exposure to UV rays. Monitoring the trade of chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) worked so well that it practically prevented a 2.5-degree Celsius rise in temperature by the end of 20th century.

Climate Change Litigation:

It is a widely acclaimed fact among environmentalists, advocates and lawyers that climate change issues can be adjudged in a court of law however it offers only a piecemeal approach. They assert that it is the job of the legislature to address issues related to environment protection and climate change as they believe that “*global warming issues are complex, delicate, political, scientific issues that need to be resolved in a comprehensive, careful way through the political process as opposed to [in the] courts, which decide things on an ad hoc basis that doesn't allow for the kind of analysis that is required in this area.*”¹⁹

¹⁸ The Montreal Protocol on substances that deplete the ozone layer, THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER | OZONE SECRETARIAT, <https://ozone.unep.org/treaties/montreal-protocol> (last visited Aug 12, 2024).

¹⁹ “A Changing Climate of Litigation.” *Environmental Health Perspectives*, vol. 115, no. 4, 2007, pp. A204–07. *JSTOR*, <http://www.jstor.org/stable/4150339>. Accessed 12 Aug. 2024.

In contrast, some litigators contend that litigation in climate change could bring in policies that could effectively change the world-view in shaping the environmental concerns. It can be clearly understood in the words of Joseph Smith, an Australian Lawyer and Researcher at University of Adelaide “*There’s a period where there’s an accumulation of scientific evidence, yet the cases don’t succeed, But then the gradual accumulation becomes over-whelming, consensus changes, and the law follows. I don’t think this is going to go away.*”²⁰

Similarly, there are scholars who support climate change litigation not because they trust the process but because they have nowhere else to go. This idea is depicted in the statement of David Bookbinder “*I’m the first person to say this is not a very effective means of addressing the problem. But it’s the only one we’ve got and we are pursuing litigation for the simple reason because you pursue all the avenues.*”²¹ As mentioned above, although distinct views presupposes the functioning of litigation in climate change, it is important to note that it has always played a significant role in answering few of the most important unaddressed questions and paved the way to instil confidence among environmentalists by assuring them that there are other platforms to efficiently convey their greiveiances and resolute their concerns. Some of such instances are explained below:

1. **Mexico v United States (1994):**

Facts: The case revolves around the dispute between United States and Mexico regarding the import of Tuna fish into the U.S territory. United States banned the import of Tuna fish contending that fishing procedures particularly the purse-seine nets, used by fisherman in Mexico caused high mortality rate of dolphins in the country. The U.S built the ban on the basis of Marine Mammal Protection Act (MMPA), 1972 which aims to prevent the death of mammals and preserve their population from going into extinction.

Issue: Whether trade restrictions imposed by the U.S Government is valid and are in accordance with the principles of GATT agreement?

Decision: The GATT panel reiterated the Article XX of GATT agreement which implies “GATT allows for exceptions to trade rules for measures necessary to protect human, animal, or plant life or health, and for the conservation of exhaustible natural resources, provided these measures are not applied in a discriminatory manner.”²² The

²⁰ “A Changing Climate of Litigation.” *Environmental Health Perspectives*, vol. 115, no. 4, 2007, pp. A204–07. JSTOR, <http://www.jstor.org/stable/4150339>. Accessed 12 Aug. 2024.

²¹ “A Changing Climate of Litigation.” *Environmental Health Perspectives*, vol. 115, no. 4, 2007, pp. A204–07. JSTOR, <http://www.jstor.org/stable/4150339>. Accessed 12 Aug. 2024.

²² Robert Howse

panel ruled that trade restrictions put forth by U.S government contradicts the principles of GATT agreement and amounts to an unilateral arbitrary restriction on the import of Tuna fish. However, the court emphasized on the need for eco-friendly fishing practices by recommending Mexico to change its fishing practices and highlighted that even though the ban of such imports is to promote sustainable cultivation, restrictions should not be imposed in a way that would discriminate other countries.

2. EC- Asbestos Case (2001):

Facts: In this case, EC (European Communities) banned the sale and import of Asbestos (a harmful mineral that is often used to fireproof materials) and products made using Asbestos to prevent health risks inflicted by the consumption of asbestos material. This restriction was challenged by Canada, one of the major exporters of Asbestos in WTO.

Issues: Whether the ban on asbestos is justifiable and is at par with the GATT rules?

Decision: The case was decided by the WTO Appellate Body wherein it was held that the ban on sale and imports of asbestos is valid as it is not discriminatory against any particular country and is imposed with the intention of protecting environment and minimizing health risks. It is significant in that, it recognized the idea of imposing stringent trade restrictions as long as it is implemented in a free and fair manner.

3. Brazil Re-traded Tyres Case (2007):

Facts: Brazil banned the import of tyres as the accumulation of waste tyres diffused poisonous chemicals into the atmosphere and caused severe health risks in the country. European Union, a major producers of tyres challenged this ban on tyres arguing that the country accepted the import of tyres from certain countries on the basis of regional trade agreements and such a ban is not based on scientific analysis.

Issue: Whether the ban on tyres violated the principles of GATT agreement?

Decision: Although WTO accepted the ban on the basis of logical and deductive reasoning, it ruled that Brazil failed to impose its restriction consistently which is why it degraded the effectiveness of its own policy, thereby questioning the purpose and objective of such a ban. The panel ruled that Brazil cannot proceed with the ban as it lacked consistency and acted in a discriminative manner against the tyre manufacturers

of European Union.

4. US Shrimp Turtle Case (1997):

Facts: United states initiated a ban on the imports of shrimp from the countries that did not use turtle excluder devices to capture the shrimp with the intention of protecting certain species of turtles from going extinct. India, Malaysia, Thailand and Pakistan challenged this ban on shrimp before the panel of WTO.

Issue: Whether the trade restrictions imposed by US Government is in accordance with Article XX of GATT agreement?

Decision: It was initially held by the WTO panel that such a ban is not valid. However, the WTO Appellate body overruled the decision of the panel and stated that sea turtle could be considered as an “exhaustible natural resource” and it is necessary to take measures for its protection. But it later found that US has offered other countries technical and financial assistance to use turtle excluder devices and thereby discriminated against India, Pakistan, Thailand and Malaysia by failing to provide similar aid to these countries. It reinforced the idea that countries cannot discriminate against other member nations while implementing their policies in the name of environment.

5. Shell v. Milieudefensie (2021):

Facts: Milieudefensie, an NGO in Netherlands filed a case against Royal Shell of Dutch stating that, the multinational company failed to adhere to the established environmental standards. It was also alleged that emissions released from their company is contributing to the environmental damage significantly at the national level.

Issue: Whether Royal Dutch shell failed to follow the international environment standards and whether the company is legally responsible to meet the set standards?

Decision: The Dutch court ruled in favour of Milieudefensie, highlighting the primacy of environmental protection and prevention of adverse effects caused due to change in climate. The court held that the Royal Dutch Shell is legally liable to cut down its production emissions and ordered the company to reduce its emissions upto 45% by 2030 with reference to 2019 levels.

6. Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (2024):

Facts: The petition was filed by a union of senior aged women from Switzerland against Switzerland government before the European Court of Human Rights. It was alleged that Switzerland’s Government failure to address the environmental concerns in the country has projected severe health risks among the people especially the elderly

women and violated their human Rights under Article 2- Right to life and Article 8- Right to private and family life conferred under European Convention on Human Rights.

Issue: Whether the rights of the petitioner are violated under European Convention on Human Rights?

Decision: The court held in favour of the association of senior women by stating Switzerland's Government infringed the rights of women as it found that Switzerland is negligence in effectively implanting environment standards and related policies and the pollution and climate change in the country has significantly affected petitioners health conditions. This case is significant as it is the first time an international court has ruled that state inaction on climate change violates human rights.²³

7. M.C Mehta V Union of India (1986):

Facts: In 1995, Delhi witnessed one of the disheartening incidents in the Indian History i.e.,. Oleum Gas was leaked from Shriram Food and Fertilizers industry leading to numerous deaths and long term health hazards. This incident is famously known as oleum Gas leak tragedy. A case was filed against the factory seeking compensation under Article 21 – Right to life and personal liberty and Article 32- Constitutional Remedies.

Issues: Whether the factory is liable to pay the compensation and how to determine the compensation for the damage caused?

Decision: This is a landmark judgement as in, it propounded the Principle of Absolute liability which eventually paved the way for the enactment of Public Liability Insurance Act, 1991. The rules states that *“If an industry or enterprise is engaged in some inherently dangerous activity from which it is deriving commercial gain and that activity is capable of causing catastrophic damage then the industry officials are liable to pay compensation to the aggrieved parties”*²⁴ This principle is designed to counteract the advantages claimed under the principle of Strict Liability. The court ruled in favour of the petitioner and declared that the principle of strict liability fails to adequately hold the responsible parties accountable. Wherefore the court brought in the principle of Absolute Liability with the intention of holding industries, manufacturers responsible

²³ Climate Change Litigation: The European Court of Human Rights finds violation of Convention rights, DEBEVOISE (2024), <https://www.debevoise.com/insights/publications/2024/04/climate-change-litigation-the-european-court> (last visited Aug 12, 2024).

²⁴ STRICT AND ABSOLUTE LIABILITY, <https://gyansanchay.csjmu.ac.in/wp-content/uploads/2022/10/08-Strict-and-absolute-Liability-3.pdf> (last visited Aug 12, 2024).

irrespective of their mens rea.

8. Indian Council for Enviro-Legal Action v. Union of India (1996):

Facts: In this case, The Indian Council for Enviro-Legal Action (ICELA) filed a writ petition against the Union of India and several chemical companies, alleging that the industries were discharging untreated toxic waste, contaminating soil and groundwater leading to health hazards among the local population in Bichiri Village, Rajasthan.²⁵

The petitioners contended that this negligence towards local population infringed their fundamental rights including Article 21- Right to life and personal Liberty and invoked various other laws such as Environment Protection Act, 1986, Water (Prevention and control of Pollution) Act, 1974 and Air (Prevention and control of pollution) Act, 1981.

Issue: Whether government of India and chemical industries are guilty of violating the petitioner's rights?

Decision: The supreme court recognized that the industries are wrongfully dumping hazardous wastes in the village. Thus court reiterated the Polluter Pays Principle and held that the chemical industries are liable for discharging toxic materials and wastes unlawfully and they were ordered to reimburse the costs required to refine resources of the village. This decision increased the compliance costs among the industries and highlighted the significance of corporate environment responsibility while dealing with toxic substances, thereby posing a consequential impact on the trade of the state.

Conclusion:

Developing countries strive to perform well in the economic arena and aspire to raise their social standards, thus it is comparatively a lot more difficult for them to set stringent environmental standards due to high costs of compliance. All these problems together discourage countries to act in accordance with international benchmarks in spite of their willingness to secure clean environment, rendering litigation in climate change inefficient. Therefore, it is essential to improve climate change litigation especially in developing and underdeveloped countries to raise their enforcement standards and policy execution mechanism.

²⁵ INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION ... VS UNION OF INDIA AND ORS.ETC ON 13 FEBRUARY, 1996, <https://indiankanoon.org/doc/1818014/> (last visited Aug 12, 2024).