

Combating Climate Change: A Comprehensive Study of the Role and Importance of the Rule of Law in Afghanistan

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ABSTRACT

Afghanistan stands prominently among nations significantly impacted by climate change, a consequence exacerbated by successive wars and economic challenges. The new government in Afghanistan has many tasks to accomplish, chief among them being the imperative task of addressing climate change. Effectively combatting climate change necessitates the establishment of a robust legal framework and the adherence to a fundamental governance principle the rule of law. This research explores the indispensable role and importance of the rule of law and discusses the ways which are beneficial in combating climate change, Likewise, it reminds the government and the people to this important principle (the rule of law), and highlights its value. The research aims to inform policymakers and legal practitioners, providing valuable insights into the importance of the rule of law and climate action in Afghanistan and to clarify the significance of the determination of responsibilities of government in this manner. This research is bibliographic and relying on secondary data sources. The findings of this research show that the rule of law outlines how governments and individuals must legally address climate change responsibilities. This not only ensures effective implementation but also promotes international cooperation, clarity, and confidence in combating climate change and resolving existing issues.

Keywords: Rule of law, climate change, regulation, resource management, legal framework

INTRODUCTION

Climate change is a big global phenomenon, which has been threatening the life of all human beings. The world endeavors to combat it through many ways. One of the fundamental way is the rule of law. The rule of law is the basic principle for building a safe, prosperous and free society. The secret of the development of all the developed countries of the world is the rule of law. Where the law rules, there is prosperity, stability, and protection of people freedoms. A Wise woman said “When the Rule of Law disappears we ruled by the whims of men”. The Greek philosopher Plato says that in a society where the laws are sidelined and lose their character, destruction is imminent (Poorhashemi & Mirfakhraei 2022). The rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards” (United nations, 2004). American bar association define as: “The rule of law is a set of principles, or ideals, for ensuring an orderly and just society. Many countries throughout the world strive to uphold the rule of law where no one is above the law, everyone is treated equally under the law, everyone is held accountable to the same laws, there are clear and fair processes for enforcing laws, there is an independent judiciary, and human rights are guaranteed for all.” (Pavel 2020).

Even more simply, as a result of the above definitions, it can be said that the concept of the rule of law means that both government officials and the people should bound by the law (Tamanaha, 2012). Look for this principle can help the government for better combating climate changes. This Article aim to discuss the role and importance of the rule of law in Combating climate change, and to determine the elements of this critical principle, which is beneficial for climate actions in Afghanistan as follow:

Enforcement of Environmental Regulations

The aim of environmental regulations is to regulate environmental risks within a suitable overall risk management framework. Yet the mere existence of laws is rarely sufficient to ensure their success, and much environmental damage has been caused by illegal use, storage, and disposal of dangerous or waste materials.

Obviously, compliance is a problem, and environmental laws and regulations typically include some kind of enforcement provisions intended to ensure that the desired level of environmental protection is achieved (Fang et al., 2009). The rule of law establishes a legal framework that includes environmental regulations aimed at curbing activities contributing to climate change. Regulatory bodies empowered by the rule of law can monitor and enforce compliance with emission standards, sustainable practices, and conservation measures. Based on the correct and sure application of environmental rules, public health is protected and environmental risks are reduced (Friesen, 2001).

Accountability and Liability

Accountability mechanisms are recommended as a key component of the strategy of the rule of law which promises protection and recourse against the arbitrary exercise of power, and as an expression of the partnership between those who wield political power and those subject to it. This is viewed as a partnership that involves not only mutual commitments to comply with the law, but also common commitments to hold each other accountable to its terms (Postema, 2017). Legal systems under the rule of law hold individuals, corporations, and governments accountable for environmental damage and non-compliance with climate-related regulations. Establishing liability encourages responsible behavior and ensures that those responsible for environmental harm bear the associated costs.

Access to Justice

Access to justice is central to the rule of law. In a rule of law everyone should be able to receive remedies in conformity with fundamental rights, access to justice comprises the civil justice system and the criminal justice system (Botero and Ponce, 2011). If people cannot access legal help and assistance to seek remedies or enforce their rights, then their participation in society is diminished and the rule of law undermined (Lucy, 2020). The rule of law provides avenues for affected parties to seek legal remedies in case of environmental damage or non-compliance with climate policies. Citizens, NGOs, and other stakeholders can challenge environmentally harmful activities through courts, promoting a more transparent and participatory approach.

International Cooperation and Treaties

In the climate change context, international cooperation is used in a rather broad sense to encapsulate a wide range of activities from developing the climate change regime, to undertaking mitigation activities to reduce global emissions, to providing support to developing countries to assist them in implementing their responsibilities. The 2030 Agenda for Sustainable Development notes that: “the global nature of climate change calls for the widest possible international cooperation aimed at accelerating the reduction of global greenhouse gas emissions and addressing adaptation to the adverse impacts of climate change” (Dowd & mcadam, 2017). The rule of law facilitates the negotiation and implementation of international treaties and agreements addressing climate change. These legal frameworks enable nations to work collaboratively, establishing commitments and mechanisms to collectively combat climate change.

Property Rights and Resource Management

Property rights refers to control over and access to resources, that is, the way in which people (individually or collectively) hold rights and responsibilities to land and natural resources upon it. Thus, the issue of property rights raises fundamental questions of who claims rights to what resources, who has access to the land and associated natural resources, and who has the responsibility for managing these lands. Of particular interest then is how land and property rights create incentives or disincentives for sustainable management and governance of natural resources such as agricultural lands, forest resources, freshwater and coastal resources, wild species of plants or animals or watersheds (Aggarwal & Elbow, 2006). Clear property rights, upheld by the rule of law, encourage responsible resource management and discourage overexploitation. Legal frameworks ensure that natural resources are used sustainably, preventing degradation and depletion that contribute to climate change.

Judicial Independence and Impartiality

Judicial independence and the rule of law are essential features of modern governments (Helmke & Rosenbluth, 2009). Moreover it is one of the essential elements of the rule of law and a condition for any fair trial. Independence means that adjudicators take their decisions free from any external pressure or manipulation. In other words, independence is characterized by the absence of any external control or pressure for the decision maker (Schacherer, 2018). Independent and impartial judiciaries, a key component of the rule of law, contribute

to fair and just resolution of environmental disputes. This ensures that legal decisions are based on facts and laws, fostering public trust and confidence in the legal system's ability to address climate-related issues.

MATERIALS AND METHODS

This study is a review of existing literature, relying on secondary data. The approach involves analyzing the insights provided in previously published works.

RESULTS

Ultimately without the rule of law Afghan government can do nothing in combating climate change. This principle paved the way for enforcing environmental laws, Accountability, Access to justice, International cooperation, Property rights, Resource management and judicial independence which effectively contribute to the government efforts for climate action.

DISCUSSION

This research emphasizes the critical importance of the rule of law in combatting climate change, asserting that a strong legal framework is essential for enforcing environmental regulations (Friesen, 2001), ensuring accountability, and fostering international cooperation. The findings underscore that a robust rule of law is a linchpin for effective governance in addressing the complex challenges posed by climate change.

CONCLUSION

In Conclusion, the rule of law is crucial in combating climate change. It provides a clear legal structure, outlining the responsibilities of governments and individuals. It also promotes global collaboration by establishing common standards, protects the rights of current and future generations. Ultimately, it serves as the legal backbone, guiding strategies and fostering accountability for effective global action against the challenges posed by climate change.

Conflict of Interest: All authors express no conflict of interest in any part of the research.

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