systems in the Bay of Bengal. Since the SST of the Bay of Bengal has been unusually high, one finds scientific link between rising SST with increasing episodes of rough sea conditions, the latter having serious livelihood implications on poor fishers of Bangladesh. With increasing SST, they can hardly survive one unusual year. How can they sustain their livelihood for generations to come?

Dr Ahsan further showed with data from 2007 that 12 out of 22 incidents of formation of low-pressure and depressions in the Bay of Bengal occurred during July and mid-November, the peak of the fishing season along the Southeastern coastal region. The apparent high energy in the sea affected the entire coastal zone by bringing in unusually high tides (much higher than average high tide) and frequent occurrence of rough sea conditions. The latter effect was so pronounced that the Port Authority issued a total of 89 signals throughout the year, of which 12 signals were issued during July and mid-November, which were higher than "potentially dangerous" signal number 3 or above.

A media report published last month shows that 10 cyclones and 50 incidents of formation of low-pressure and depressions in the Bay of Bengal occurred during the last two and a half years, as a result of which about 30 million people were affected. The report and the aforementioned scientific arguments provide the clear causal link between increased SST and global warming, which causes harm to life and livelihood of millions of coastal people. Therefore, this community qualifies scientifically as a plaintiff of climate litigation.

Causal responsibility and defendants

In the context of climate science, relative contributions of different states to climate change can be estimated based on the cumulative contribution and, as such, each state should be liable proportionally. It is pertinent to mention that the majority of GHG are generated by private entities. However, under international law, a state is responsible and accountable for the activities within its territory. Historical and current global emissions of GHG originated in industrialised countries, so they should be liable for the harm caused to the climate affected people of Bangladesh.

As such, Bangladesh, on behalf of its climate-affected people, can take the issue to international judicial forums on the basis of Public International law. At the same time, affected fishers can ask the government of Bangladesh to protect their fundamental rights of life and livelihood, which are guaranteed through the Constitution. However, it requires further analysis of the current legal course to ascertain a credible legal option outlining the substantive and procedural means.

Substantive and procedural means

Public international law, which is sourced primarily from treaties and customary law, is the means of bringing a dispute before a judicial forum at the international level. Treaties are obligatory only for the parties, and are based on the clauses agreed, while customary international law is derived from the consistent practices of states along with opinion juris. On the other hand, domestic law provides a well-defined body of law that governs the particular issues. However, relevant specific provisions of international and national law must be scrutinised for bringing the case to the right forum.

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International climate litigation

Treaties relevant exclusively to climate-affected people are UNFCCC and its Kyoto Protocol. Article 2 of UNFCCC requires the parties to secure the stabilisation of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Moreover, Article 4(2) compels developed state parties to take measures related to mitigation and adaptation. State liability and attributed wrong can be identified under UNFCCC, however, it requires an appropriate forum to lodge the claim.

The compliance mechanism of UNFCCC suggests a consultative process. The Kyoto Protocol entails reporting, monitoring and compliance within its own mechanism, and any binding requirements demand amendment to its provisions. As such, UNFCCC and Kyoto Protocol prefer self-governing dispute settlement mechanisms and bar the member states from seeking