

HUMAN RIGHTS AND CLIMATE CHANGE

DISSERTATION

SUBMITTED TO:

National Law School of India University, Bengaluru

UNDER THE SUPERVISION OF:

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LLM/937/2021

Human Rights Laws

CERTIFICATE

This is to certify that this dissertation titled '**Human Rights and Climate Change**', submitted by **Ms. Kritika Gautam**, Student ID No. - **937/2020**, in partial fulfilment of the requirements of LL.M. Degree for the academic session 2020-21 at National Law School of India University, Bengaluru, is a bonafide research work carried out by her under my guidance and supervision.

Further certify that work is fit for submission and evaluation.

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DECLARATION

I declare that this dissertation titled as '**Human Rights and Climate Change**', submitted to National Law School of India University, Bengaluru for LL.M. Degree (2020-21), is an original and bonafide research work carried out by me – Kritika Gautam, having student ID - LLM/937/2020, under the supervision of my supervisor. In case the contributions of others are involved, every effort has been made to give due credit to them through reference to the literature. The information contained in this work is true to the best of my knowledge. This dissertation or any part thereof has not been submitted for the award of the degree, diploma, certificate or fellowship not has it been sent for any publication purpose.

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INTRODUCTION

"Climate change is a reality that now affects every region of the world. The human implications of currently projected levels of global heating are catastrophic. Storms are rising and tides could submerge entire island nations and coastal cities. Fires rage through our forests, and the ice is melting. We are burning up our future – literally." - Michelle Bachelet, United Nations High Commissioner for Human Rights, 9 September 2019, Opening Statement to the 42nd session of the Human Rights Council.¹

Climate change is a natural phenomenon which has economic, social, political and human rights repercussions. The effects of climate change be it natural or human induced, vary from environment and environmental security to violation of human rights. While the effects of climate change are multidimensional, its most significant outcome has been observed as human displacement.² The effects of climate change can vary from affecting livelihood of people to food scarcity and increase in natural disasters etc.³

This dissertation undertakes a legal inquiry of the problems which arise because of climate change. It explores the implications of climate change that leads to human misery and examines the scope and extent to which they are addressed in the legal ordering. The effects of climate change are very grave and the problems which arise because of climate change leads to large-scale violation of human rights.⁴ The research work argues for a human right based approach in combating climate change.

Human rights violations that take place because of climate change and debates surrounding it keeps on surfacing. The United Nations Human Rights Council on March 25th 2009, adopted a resolution 10/4 which identified that, "climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights including, inter alia, the right to life, the right to adequate

¹ Human Rights Council, *Report of the Human Rights Council on its Forty-Second Session* ((A/HRC/42/2).

² MD Abdul Awal Khan, 'Impacts of Climate Change on the Human Rights of Displaced People: Bangladesh Perspective' [2015] WSU.

³ Secretariat of the United Nations Permanent Forum on Indigenous Issues, "Climate Change – An Overview" [2007] DESA.

⁴ Ken Nemire, "Introduction to the Special Issue on Combating Climate Change: The Role of Human Factors/Ergonomics" [2014] *Ergonomics in Design: The Quarterly of Human Factors Applications* 3.

food, the right to the highest attainable standard of health, the right to adequate housing...”⁵

This research work examines the phenomenon of climate change, the concept of climate justice and the relationship between climate change and human rights. The paper studies various international and national instruments or agreements pertaining to climate change. It will also establish that, in order to respond to the human miseries arising out of climate change, the integration of human rights principles with legal arrangements pertaining to climate change will ensure great stability and protection to vulnerable people.

This research will also assert that the application of human rights principles and norms will bring a range of benefits to the international and national legal frameworks corresponding to climate change. It would provide a more adequate and effective safeguard to the human rights violations that take place because of climate change.

STATEMENT OF PROBLEM

This study elaborates and highlights the significant impact of climate change and the inadequate attempts of global communities and the nation states in addressing the problems of human rights. The research work explores the legal safeguards that exist for protecting and promoting human rights and for reducing the victimization of the communities of people which result because of to the adverse effects of climate change.

The study identifies the gap that exists in the legal ordering in addressing the human right violations and miseries which results from climate change. It examines the international and national legal frameworks governing human rights and climate change and identifies the relevant synergies and tensions that exist between them. A rights-based approach entails strengthening the capacity of duty bearers (Nation States) to meet their obligations and empowering rights-holders (individuals) to claim their rights. This can result in more sustainable and just climate policies; it can increase the effectiveness of those policies in protecting human rights from hazardous effects of climate change.

⁵ UN Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate change and human rights* (A/HRC/10/61).

AIM OF THE RESEARCH

Research aims to promote a human rights-based approach to climate action. It critically evaluates and examines the international and domestic laws concerning climate change, to identify the human rights issues addressed therein.

OBJECTIVES

- To examine the relationship between climate change, climate justice and human rights.
- To critically examine the international and national legal frameworks governing human rights and climate change.
- To make a comparative study of the laws and litigation concerning climate change of different nation states.
- To inspect India's international obligations and national legal arrangements on climate change.
- To recommend measures that would better integrate human rights considerations into environmental laws and policies.

HYPOTHESIS

The law concerning climate change has been poor, insufficient and inadequate in dealing with the human miseries and problems.

RESEARCH QUESTIONS

- i. Whether climate justice is an adequate and sufficient step for combatting the problems of climate change?
- ii. Are the existing international frameworks on climate change sufficient enough to addresses human rights problems?
- iii. Whether there is any human rights accommodation in the climate change laws and policies of different nation states?
- iv. Whether current environmental laws and policies governing India are adequate and comprehensive enough to meet the issues concerning human rights?

RESEARCH METHODOLOGY

This dissertation has been primarily a work of doctrinal research using the methods of analytical and descriptive research. The author has relied upon primary and secondary sources for conducting the research. Doctrinal method has been adopted for the study of select instruments relating to climate change and cases in which significant issues relating climate change and human rights came up for consideration before the adjudicating authorities. Qualitative study has been adopted to analyse the information and case studies as to draw inferences from therein.

MODE OF CITATION

In this dissertation, the researcher has adopted the Oscola format of citation. The mode of citation is uniform throughout the dissertation.

SCOPE AND LIMITATIONS OF THE STUDY

The core subject of this paper is to study the relationship between human rights and climate change action hence, the main part of this research comprises of a detailed analysis of international instruments relating to climate change as well as human rights. The researcher has analysed the laws and jurisprudence concerning climate change of different legal systems which have been party to international legal arrangement.

For the purpose of this research, the researcher has identified three categorizes of nation states and restricted the study only to Denmark, Britain and United States of America. The researcher has studied India's legal framework on climate change for this research. The researcher has relied upon online databases, information and reports provided by the United Nations Organization and its various committees. Reliance has been placed upon laws, policies and judicial pronouncements of above-mentioned nation states. Due to COVID 19 pandemic no empirical research has been conducted by the researcher.

CHAPTER SCHEME

In *Chapter I - Concept of Climate Change*, the researcher has examined the definition of climate change and the relationship between climate change and human rights. The researcher in order to establish the relationship between climate change and human rights has examined various human rights which are affected by climate change and different international instruments under which these rights are protected. This

chapter further positions climate justice within the existing international regime on climate change and human rights.

In *Chapter II – Human Rights Based Approach to Climate Change – International Perspective*, the researcher in this chapter has traced various international instruments pertaining to climate change. This chapter explores the strengths and weaknesses of these instruments in addressing human rights issues which arise because of climate change and its effects.

In *Chapter III – Human Rights Based Approach to Climate Change – Comparative Study*, the researcher has identified three nation states – Denmark, Britain and United States of America to study the climate change policies and laws. The researcher has also analysed judicial pronouncements of these nation states to map the human rights approach undertaken to by these states to mitigate the threats posed by climate change.

In *Chapter IV – Human Rights Based Approach to Climate Change – National Perspective*, the researcher has examined the international obligations of India towards climate change. This chapter also covers the policy and judicial actions undertaken by the Indian Government and the Judiciary for the protection and promotion of human rights from the impact of climate change.

In *Chapter V – Conclusion and Suggestion*, the researcher concludes the study with her observations on the working of the discussed instruments on climate change, how far these legal arrangements – national as well as international, are adequate in accommodating human rights problems and issues. The researcher further advances few suggestions to have a human right based approach while combating the effects of climate change.

CHAPTER I – CONCEPT OF CLIMATE CHANGE

Climate change is a phenomenon, it can either be natural or human induced. Climate change poses unique and grave concerns for the international community. Its effects are multidimensional and they transcend political boundaries and therefore it requires a co-ordinated approach to tackle this problem.⁶ Climate change is one of the major concerns of today. It threatens the existing way of human life. It can substantially alter the human life and it affects all the aspects of human life from food security and availability of water to energy sources and biodiversity.⁷ The study of climate change is interdisciplinary as it spans across disciplines of law, economics, politics, human rights etc.

This chapter is divided into three parts. The first part seeks to study the concept of climate change, second part evaluates the relationship between climate change with human rights and the third part explores the conceptualization of climate justice.

1.1 WHAT IS CLIMATE CHANGE

“[Climate change is] an issue so vast and threatening to peace, prosperity, social justice and indeed life itself that it demands we seek solutions together, or face irreparable damage to humanity. Climate change is a threat multiplier, a force that intensifies the likelihood of poverty and deprivation of all kinds; conflict; and the precarious migration of people.” – UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein (2015).⁸ This statement covers all the characteristics of climate change and it can be used to explain the concept of climate change better.

Article 1 (2) of the United Nations Framework Convention on Climate Change, 1992 (UNFCCC) defines climate change as “a change of climate which is attributed directly or indirectly to human activity, that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.”⁹

The Intergovernmental Panel on Climate Change defines climate change as, “Climate change refers to a change in the state of the climate that can be identified

⁶ Richa Chauhan, ‘Climate Change: An Issue of Equity, Justice and Human Rights’ [2019] ILILR 2.

⁷ *ibid.*

⁸ David Elliott and Lindsey Fielder Cook, ‘Climate justice and the use of human rights law in Reducing Greenhouse Gas Emissions’ [2016] QUNO 5.

⁹ United Nations Framework Convention on Climate Change 1992, art 1(2).

(e.g., by using statistical tests) by changes in the mean and/or the variability of its properties, and that persists for an extended period, typically decades or longer. Climate change may be due to natural internal processes or external forcing such as modulations of the solar cycles, volcanic eruptions and persistent anthropogenic changes in the composition of the atmosphere or in land use.”¹⁰

Consequently, the majority of climate experts are of the opinion that climate change which is human induced or the result of human activities can have devastating effects if left unchecked and that cost of action on climate change are significantly lower than the costs of inaction. Climate change is the greatest environmental threat for humanity.¹¹ The Intergovernmental Panel on Climate Change (IPCC) reported in 2007 in its fourth assessment report on climate change that the impacts of climate change are already being felt, particularly in the poorest communities all over the world who have in fact the least historical responsibility for causing climate change. Climate change has occurred naturally throughout the ages, and continues to occur with or without the human interference. But climate change events which are caused by the “human forcings” or which are human induced are of great concern today worldwide.

Climate change occurs to a great extent because of the production and emission of greenhouse gases and simultaneously through the depletion of the ozone layer. These two sources of the climate change are interlinked. The depletion of the ozone layer has resulted in the increase of global warming and on the other hand, among other causes, the emission of greenhouse gases also leads to the depletion of the ozone.¹² If climate change continues at the present course, the coming decades will bring higher temperature, increasing drought and severe storms. Tropical diseases will spread rapidly and massive human dislocation would be a common feature as low-lying coastal areas around the globe would be flooded by rising seas.¹³

While explaining the issue of climate change terminologies like, emissions, carbon footprint, temperature rise, etc, are often used. However, this dissertation would not

¹⁰ Arthur C. Petersen, *Stimulating Nature* (2nd edn, CRC Press 2012) 95.

¹¹ IPCC, *Climate Change* (AR4, 2007).

¹² Christian Roschmann, ‘Climate Change and Human Rights’ in Oliver C. Ruppel, Christian Roschmann and Katharina Ruppel-Schlichting (eds), *Climate Change: International Law and Global Governance* (Nomos Verlagsgesellschaft mbH 2013).

¹³ Amy Sinden, ‘Climate Change and Human Rights’ (2007) 27 JNREL 256.

deal with the issue of climate change as a scientific phenomenon. This research work delves into those strands of climate change which have human rights dimension, equity dimension and undertakes a legal inquiry of the same.

1.2 RELATIONSHIP BETWEEN CLIMATE CHANGE AND HUMAN RIGHTS

“Climate change, human-induced climate change, is obviously an assault on the ecosystem that we all share, but it also has the added feature of undercutting rights, important rights like the right to health, the right to food, to water and sanitation, to adequate housing, and, in a number of small island States and coastal communities, the very right to self-determination and existence.” – Flavia Pansieri, United Nations Deputy High Commissioner for Human Rights.¹⁴

Climate change is one of the greatest threats which the humanity is facing today. It affects lives and well-being of individuals and communities across the world.

In the previous chapter we analysed how climate change directly or indirectly affects human rights. This chapter would discuss such human rights in details. The Intergovernmental Panel on Climate Change (IPCC)’s Fifth Assessment Report (AR5) identified some of the major threats that climate change poses to human rights, ecosystems, natural resources and physical infrastructure.¹⁵

In order to examine whether the effects of climate change directly or indirectly effect human rights of people under the current climate change regimes, it is pertinent to examine whether the problems faced by the impact of climate change interfere with the rights recognized by the existing climate change regimes.¹⁶ This chapter would analyse the effects of climate change on human rights thereby establishing the link between human rights and climate change.

1.2.1 RIGHT TO LIFE

The Universal Declaration of Human Rights under Article 3 states that, “everyone has the right to life, liberty and security of person.”¹⁷ Further, the International Covenant on Civil and Political Rights under Article 6(1) states that “every human being has the

¹⁴ Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, *Understanding Human Rights and Climate Change* (COP21) 13.

¹⁵ UNEP, *Climate Change and Human Rights* (<https://wedocs.unep.org/20.500.11822/9530>) 2.

¹⁶ James B. Martin-Schramm, ‘Human Rights and Climate Change’ (2009) 9 (2) JLE <https://www.elca.org/JLE/Articles/407> accessed 20 August 2021.

¹⁷ Universal Declaration of Human Rights 1948, art. 3.

inherent right to life.”¹⁸ Under article 11 of International Covenant on Economic, Social and Cultural Rights it is established that, “everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing. Everyone has the right to be free from hunger.”¹⁹ Article 6 of the Convention of the Right of Children confers and recognizes the right to life of the children and ensures protection of such right.²⁰ The United Nations Human rights Committee has established that right to life should not be interpreted narrowly and in its General Comments, it has further established the duty on the part of the state parties to take positive measures under the right to life.²¹

According to IPCC projections climate change will significantly affect surface water, ground water resources, it also projected that, the coastal systems and low-lying areas will increasingly experience adverse impacts such as submergence, flooding, erosion, and saltwater intrusion, primarily due to sea level rise.²² All these projections of climate change will have right to life of the people. A report by the World Bank also found that, “further health impacts of climate change could include injuries and deaths due to extreme weather events.”²³ Due to catastrophic effects of climate change, people who reside in areas which majorly face the consequences of the climate change, they face the brunt of these effects. They end up suffering from bad health, lack of nutrition, lack of access to clean drinking water. Because of climate change the quality of life for such people are affected from every aspect.²⁴

The impact of climate change which leads people to have constant displacement is also one the major impacts of climate change. This is further discussed in the latter section of the chapter.

1.2.2 RIGHT TO HEALTH

¹⁸ International Covenant on Civil and Political Rights 1966, art 6(1).

¹⁹ International Covenant on Economic, Social and Cultural Rights 1966, art 11.

²⁰ Convention on the Rights of the Child 1989, art 6.

²¹ UN Human Rights Committee (HRC), CCPR General Comment No. 6: Article 6 (Right to Life), 30 April 1982, available at: <https://www.refworld.org/docid/45388400a.html> [accessed 15 August 2021].

²² IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability, Contribution of the Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2014).

²³ The Potsdam Institute for Climate Impact Research and Climate Analytics, ‘Turn Down the Heat: Why a 4°C Warmer World Must be Avoided’ IBRD https://climateanalytics.org/media/turn_down_the_heat_11-16-12.pdf accessed 12 August 2021.

²⁴ New South Wales Young Lawyers, ‘Human Rights and Climate Change Study’ OHCHR https://www2.ohchr.org/english/issues/climatechange/docs/submissions/NSW_Young_Lawyers_HR_C_limateChange.pdf accessed 12 August 2021.

The Universal Declaration of Human rights under Article 25²⁵ recognizes right to health. International Covenant on Economic, Social and Cultural Rights recognizes right to health under article 12(1) which states that, “the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”²⁶ Some other conventions such as CRC - Convention on the Right of the Child²⁷ and (CEDAW) Convention on the Elimination of All Forms of Discrimination against Women²⁸ contains similar provisions to establish and recognize the right to health.

Climate Change poses a significant threat to right to health of people. Climate change results in the spread of various infectious diseases which also poses a great threat to the health of people across the globe. “Dupont and Pearman explain that, “[a]s the planet heats up, mosquitoes will move into previously inhospitable areas and higher altitudes, while disease transmission seasons may last longer.”²⁹ A joint study conducted by the World Health Organization in and the London School of Hygiene and Tropical Medicine found that, “global warming may be responsible for more than 160,000 deaths a year from malaria and malnutrition; a number that could double by 2020.”³⁰

Under developed and developing countries face the adverse effects of these health risks. People living in countries with poor or inadequate health facilities often suffer with malnutrition and climate change aggravates the diseases such as malaria, dengue, which often leads to “high mortality rates among people suffering from malnutrition than among food-secure people.”³¹

1.2.3 RIGHT TO FOOD

Article 11(1) and 11(2) of the International Covenant on the Economic Social and Cultural Rights recognizes the right to food of all human beings. Article 11 reads as,

²⁵ Universal Declaration of Human Rights 1948, art. 25(1) “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family...”

²⁶ International Covenant on Economic, Social and Cultural Rights 1966, art 12(1).

²⁷ Convention on the Rights of the Child 1989, art 24.

²⁸ Convention on the Elimination of All Forms of Discrimination against Women 1979, art. 12.

²⁹ Young Lawyers (n 11) 17.

³⁰ Human Rights and Equal Opportunity Commission, *Human Rights and Climate Change*’ (HREOC 2008) 6.

³¹ *ibid* (n 11) 18.

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need. lays down that everyone has a right to adequate food and to be free from hunger.”³²

The committee on economic, social and cultural rights in its General Comment no. 12 stated that, “the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights.”³³ UN has recognized the right to food as a human right, inherent in all people. The right to food includes four components – “access to food, stability of food supply and utilization of food.”³⁴

The Special Rapporteur to the Commission on Human Rights on the Right to Food explained the right to food by stating that, “[T]he right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a

³² International Covenant on Economic, Social and Cultural Rights 1966, art 11.

³³ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999, available at: <https://www.refworld.org/docid/4538838c11.html> [accessed 12 July 2021].

³⁴ High-Level Conference on World Food Security: The Challenges of Climate Change And Bioenergy, *Soaring Food Prices: Facts, Perspectives, Impacts and Actions Required* (HLC/08/INF/1) 2.

physical and mental, individual and collective, fulfilling and dignified life free of fear.”³⁵

The effects of climate change on the right to food are very clear, they were also identified by the Food and Agricultural Organization of the United Nations:³⁶

- i. Availability of food – it will be affected and reduced by the the change in the availability and quality of land. Lack of access to crops and varieties would also affect the productivity;³⁷
- ii. access to food – gets affected because of climate change. Climate change leads to deprivation of people to their property, it the damages infrastructure which in turn causes the loss of income and employment opportunities;³⁸
- iii. stability of food supply – the fluctuation in food prices and import and export of food affects the stability of food supply;³⁹
- iv. utilization of food – it is directly or indirectly affected by food safety hazards associated with pests and animal diseases as well as the increased presence of human diseases such as malaria and diarrhea.⁴⁰

1.2.4 RIGHT TO WATER

Though the right to water has not been expressly identified by any of the human rights covenants, however, the Committee on Economic, Social and Cultural rights under its General Comment no. 15 on the Right to water, opined that the right to water is a human right enshrined under article 11(1) of ICESCR⁴¹ and it is inextricably related to the right to the highest attainable standard of health⁴², the rights to adequate housing and adequate food⁴³. It further stated that the right to water should be seen in

³⁵ Special Rapporteur on the Right to Food to the Commission on Human Rights, *The Right to Food* (UN Doc E/CN.4/2001/53, 2001).

³⁶ world food security (n 21).

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons, 8 December 1995, E/1996/22, available at: <https://www.refworld.org/docid/4538838f11.html> [accessed 12 August 2021].

⁴² International Covenant on Economic, Social and Cultural Rights 1966, art 12(1).

⁴³ International Covenant on Economic, Social and Cultural Rights 1966, art 11.

conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.⁴⁴

The committee further identified that the right to water is also inherent in many other international documents including treaties, covenants and other human rights declarations. “For instance, Article 14 (2) of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to [...] water supply”. Article 24 (2), of the Convention on the Rights of the Child requires States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking water.”⁴⁵ The committee also recognized the access to safe and fresh water as a legal entitlement.⁴⁶

The major impact of climate change on the right to water is the lack of access of fresh water which may even trigger the violation of other human rights and degrade the quality of life. Climate change affects the quality and access of water. Increase in water temperature is projected to affect the quality of water and it also induces various forms of water pollution, sediments, nutrients, dissolved organic carbon, pathogens, pesticides and salt, as well as thermal pollution, with possible negative impacts on ecosystems, human health, and water system reliability and operating costs.⁴⁷ These effects of climate change on the freshwater bodies and natural water resources consequently affects other stresses as well, such as, irrigation, economic activities, land-usage etc.⁴⁸

1.2.5 RIGHT TO DEVELOPMENT

The right to development was introduced at a later stage in comparison to other rights which are so far discussed. The concept of the Right to Development is a new addition to the international human rights regime.⁴⁹ The Declaration on the right to development was adopted by the United Nations General Assembly in the year 1986.

⁴⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, E/C.12/2002/11, available at: <https://www.refworld.org/docid/4538838d11.html> [accessed 12 August 2021].

⁴⁵ *ibid.*

⁴⁶ Young Lawyers (n 11).

⁴⁷ Bates, B.C., Z.W. Kundzewicz, S. Wu and J.P. Palutikof, ‘Climate Change and Water’ [2008] IPCC 3.

⁴⁸ *ibid.*

⁴⁹ L. Amede Obiora, ‘Beyond the Rhetoric of a Right to Development’ (1996) 18 Law and Policy 369.

The right to development however was later affirmed and reaffirmed at various conferences. The world conference on Human Rights, held in Vienna in 1993, reaffirmed that the right to development is a universal and inalienable right and it is an inherent part of fundamental human rights.⁵⁰

The Article 1 of the Declaration provides that⁵¹ –

“1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

2. The human right to development also implies the full realization of the right of peoples to self - determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.”

The declaration identifies human person as the subject of the development.⁵² The article 1 of the declaration is pertinent to note here, it states that “the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”⁵³

It also recognizes the responsibility of each of the person in ensuring the full realisation of the right to development.⁵⁴ Article 2(2) of the Declaration reads as, “all human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free

⁵⁰ UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, available at: <https://www.refworld.org/docid/3ae6b39ec.html> [accessed 12 August 2021].

⁵¹ UN General Assembly, Declaration on the Right to Development: resolution / adopted by the General Assembly, 4 December 1986, A/RES/41/128, available at: <https://www.refworld.org/docid/3b00f22544.html> [accessed 12 August 2021].

⁵² Declaration on the Right to Development 1986, art. 2(1).

⁵³ Declaration on the Right to Development 1986, art. 1.

⁵⁴ Declaration on the Right to Development 1986, art. 2(2).

and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.”⁵⁵

Complete and full realisation of all the rights is pre-conditioned to the realization of the right to development. the right to development is an inalienable human right and hence it required realization and enjoyment of all other human rights, violation of any of those rights would impair the right to development. The UNDP, has also identified that climate change is a major threat to human development as it poses a threat to human freedom and realization of rights and choices.⁵⁶

The right to development includes not only the right to the process of development, but as well as the progressive and phased realization of all the recognized human rights. It also ensures economic growth and its consistency with the human rights standards.⁵⁷ Climate Change can affect the right to development as it threatens the food availability and water security. Natural calamities because of climate change such a forest fire, cyclones end up destructing the ecosystem and infringe the right to development of human persons. “Because of the above effects of climate change on the right to development, the attainment of the right to development by developing countries will be severely impaired and the advances made in human development in both developing and developed countries may be reversed.”⁵⁸

1.2.6 RIGHT TO PROPERTY

Universal Declaration of Human Rights affirms right to property under article 17 which reads as –

- “1. everyone has the right to own property alone as well as in association with others,
2. No one shall be arbitrarily deprived of his property.”⁵⁹

Though, there is no specific recognition of right to property under ICCPR or ICESCR, property related rights can be found in other international human rights instruments such as, European Convention for the Protection of Human Rights (ECHR) and Fundamental Freedoms, Protocol No. 1.⁶⁰ Similar provision can also be found in the

⁵⁵ *ibid.*

⁵⁶ Human Development Report, *Fighting Climate Change: Human Solidarity in a Divided World* (UNDP 2007/08).

⁵⁷ Arjun Sengupta, ‘The Human Right to Development 32 (2004) 182.

⁵⁸ *ibid.*

⁵⁹ Universal Declaration of Human Rights 1948, art. 17.

⁶⁰ First Protocol: Protection of property 1950, art 1. “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public

American Convention on Human Rights (ACHR).⁶¹ Both these courts have their separate judicial bodies/courts to enforce and interpret the scope of these rights.

Right to property is one of the most affected rights by the climate change. Right to property coincides with other rights such as right to developments, healthy environment etc. Because of climate change number of people have to migrate from one place to another because of deprivation of their property. As climate change causes change in temperature, cyclones, draughts, it in turn affects the possible land use.

1.2.7 RIGHTS OF INDIGENIOUS PEOPLE

Indigenous people often live in the world's most vulnerable ecosystems and they are usually the ones who face the brunt of climate change.⁶² Indigenous people and their rights are internationally recognized, as well as their way of life and developing their own political, religious, cultural practices is given respect and promotion.

Article 1 of International Covenant on Civil and Political Rights, and article 1 of the International Covenant on Economic, Social and Cultural Rights also guarantees indigenous peoples the “right to self-determination and the right to control their own natural wealth and resources.”⁶³ Indigenous rights are also recognized by the International Covenant on Civil and Political Rights under article 27. Article 27, “protects the rights of minorities, including indigenous minorities, to enjoy their own culture, religion and languages.”⁶⁴

Some other conventions which protect and promote the rights of indigenous people are – Indigenous and Tribal Peoples Convention, 1989⁶⁵; The Convention on Biological Diversity⁶⁶; The Rio Declaration on Environment and Development;⁶⁷ and Chapter 26 of Agenda 21⁶⁸. Further, the United Nations Declaration on the Rights of

interest and subject to the conditions provided for by law and by the general principles of international law.”

⁶¹ American Convention on Human Rights 1969, art 21.

⁶² Prudence E Taylor, “From Environmental to Ecological Human Rights: A New Dynamic in International Law?” (1997- 1998) 10 (2) *GeoIntlEnvtlLRev* 309, 318.

⁶³ International Covenant on Civil and Political Rights 1966, art 1.

⁶⁴ International Covenant on Civil and Political Rights 1966, art 27.

⁶⁵ Indigenous and Tribal Peoples Convention 1989, art. 5.

⁶⁶ The Convention on Biological Diversity 1992, art 8.

⁶⁷ The Rio Declaration on Environment and Development 1992, principle 22. “States should recognize and support their identity, culture and interests, and enable their effective participation in the achievement of sustainable development.”

⁶⁸ Agenda 21 1992, chapter 26. “Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands and shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination...”

Indigenous Peoples, 2007 also recognizes the rights of indigenous people with respect to their environment.

The effects of climate change are significantly felt by the indigenous communities. Hence, to incorporate their human rights issues and miseries in the climate change laws is pertinent. The rights of indigenous populations are often vulnerable to climatic changes because of their close relationship and dependence on the environment, they often rely on the land and sea for their day-to-day activities or for mere subsistence.⁶⁹

Because of the poor socio-economic conditions and limited access to health facilities they often face the effects of climate change with little to no scope for adaptation to these rapid changes. For this reason, indigenous communities are often more vulnerable to the effects of environmental degradation, making them more at risk of human rights violations caused by the effect of climate change.⁷⁰

Indigenous people are completely dependent on environment for their food, water, health, property, and as discussed above all of these are severely affected by the climate change. Because of these inundations caused by climate change people belonging to these communities not only lose their place of habitat but also lose their long-established customs which have their roots there.

Since these communities have long-established customs that are tied directly to their homelands, if they are forced out of their land as a result of inundation caused by climate change, they will not only lose their place in the world but also a direct link to their culture and identity. possible land use. of the chapter.

1.2.8 ENVIRONMENTAL/CLIMATE REFUGEES

As discussed in the previous section climate change deprives people of their right to life and right to property and as a result number of people have to leave their habitats. Migration caused by climate change is an important crisis which needs to be addressed. According to the United National International Organization for Migration (IOM), 20 million people were displaced due to the extreme weather conditions, 4.6 million has to internally migrate because of the conflict and violence.⁷¹ IOM estimates

⁶⁹ Young Lawyers (n 17).

⁷⁰ Bridget Lewis, "Climate Change and Human Rights - Perspectives of Environmental and Indigenous Rights" (2008) 1 JALTA159.

⁷¹ International Organization for Migration, *Migration, Environment and Climate Change: Assessing the Evidence* (IOM 2009).

that by 2050, 25 million to 1 billion people will be displaced due to climate change.⁷² According to IPCC, climate change predictions for the 21st century are very catastrophic in nature. “It indicated that even more people are expected to be on the move as weather related disasters like extreme temperatures and rainfall become more frequent and intense.”⁷³

Increase in refugees and population displacement is equally an environmental problem as much as it is a social and economic problem. People have to migrate from one place to another because of natural catastrophes such as, floods, cyclones, forest fires, droughts etc. “Climate change and poverty continues to amplify the impacts of migration leading to an increased migration frequency as well as larger number of refugees (2016).”⁷⁴

The UN General Assembly in December 2018 affirmed the Global Compact on Refugees. It recognized that, “climate, environmental degradation and disasters increasingly interact with the drivers of refugee movements”⁷⁵. The UN High Commissioner for Refugees (UNHCR), Mr. Filippo Grandi also stated that, “We need to invest now in preparedness to mitigate future protection needs and prevent further climate caused displacement. Waiting for disaster to strike is not an option”⁷⁶ The UNHCR has played a significant role in addressing climate change and disaster-related displacement. In 2020, the High Commissioner for Refugees appointed Andrew Harper as the Special Advisor on Climate Action. He takes forward the UNHCR’s engagement on the climate emergency, serves as a global advocate, and is responsible for providing oversight and expertise to shape UNHCR's climate action agenda.⁷⁷ This climate action plan is based on three main areas:⁷⁸

1. Law and Policy - Providing legal advice, guidance to people who are displaced in order to develop enhances protection for refugees and other people displaced due to climate change and environmental disasters.

⁷² *ibid.*

⁷³ UNEP (n 2).

⁷⁴ Braun, Lang, and Hochschild, “Impact of refugee camps on their environment - a case study using multi-temporal SAR data” (2016) 4 JGEESI.

⁷⁵ UNHRC, Climate change and disaster displacement in the Global Compact on Refugees (2018) <https://www.unhcr.org/protection/environment/5c9e13297/climate-change-disaster-displacement-global-compact-refugees.html> accessed 12 August 2021.

⁷⁶ IOM / UNHCR, *IOM and UNHCR Call for Improved Safeguards for the Displaced on the Frontlines of Climate Emergency* (2021).

⁷⁷ UNHRC (n 53).

⁷⁸ *ibid.*

2. Operations – Actions to reduce environmental degradation and also enhancing preparedness and resilience of displaced people and communities who are displaced due to climate change. “A key aspect of disaster preparedness and response is to anticipate – addressing the root causes of displacement to reduce the reasons why people are displaced in the first place.”
3. UNHCR’s Environmental Footprint – Reducing the emission of greenhouse gases, and taking steps for environmental sustainability.

In 2020, UNHCR initiated Legal Considerations to guide the interpretations and discussion on such matter. Regardless, the term “climate refugee” is not endorsed by UNHCR, and it is more accurate to refer to “persons displaced in the context of disasters and climate change.”⁷⁹

Similar actions and effective steps are needed to combat the problem of climate change and to ensure that rights of people are not violated due to environmental catastrophes.

1.3 CONCEPTUALIZATION OF CLIMATE JUSTICE

Climate justice ensure that all the policy decisions for the mitigation and adaptation of the effects of climate change as well as the international conventions should give due regard to the rights of the communities that are least responsible for climate change. Climate justice ensures that, the right to development and the right to safe environment are balance on the scale of justice and equity.⁸⁰

“Climate Justice links human rights and development to achieve a human-centred approach, safeguarding the rights of the most vulnerable and sharing the burdens and benefits of climate change and its resolution equitably and fairly.” Mary Robinson Foundation - Climate Justice (N.D.)⁸¹

The term climate justice is used to address the issue of climate change as a political and an ethical issue as opposed to being treated as a purely environmental or scientific issue. Climate justice interlinks development with the cost of that development. It evolves a human rights-based approach to the problem of climate change.⁸² Climate

⁷⁹ *ibid.*

⁸⁰ Rich (n 6) 11.

⁸¹ David Elliott (n 8) 11.

⁸² Rich (n 6) 11.

justice also addresses the longstanding challenge of combatting climate change. The impacts of climate change are intergenerational, hence current inaction will unjustly rob the future generation of earth's resources and would limit their ability to adapt to climate change.⁸³ It ensures that, those who have the least capacity to protect themselves and those who bear the least responsibility for the causes of climate change are protected. It ensures equitable sharing of actions that are needed to avoid the dangers of climate change.⁸⁴ Climate justice addresses not only the issues and threats we face today but also those which the future generation would face because of climate change.⁸⁵

Climate justice is a felt between states. Industrialized states have “emitted the greatest amount of anthropogenic GHG emissions”. In addition, while many developing nations are particularly vulnerable to disruptions because of their location within the climatic system. The least or under developed countries often lack the human, technological and financial resources which are required to adapt to climate change efficiently. “Many States in the global South hold that this disparity undermines their longstanding development and poverty reduction goals - which they may in turn consider incompatible with substantial GHG emissions reductions.”⁸⁶

Climate justice also identifies and recognizes vulnerable and marginalized people within the state. Climate change affects are more significantly faced by these people. Their lives and livelihoods are negatively affected by other forms of structural inequalities within their states and the impacts of climate change are more severely felt by them.⁸⁷

A climate justice incorporates gender perspective as well. “Gender inequities alone can motivate more women to lead in taking action, but women’s leadership must address the entire range of climate issues as well as bringing a gender perspective to each of them.” In many countries women face the brunt of climate change. But women are also powerful agents of change and taking action at global, national and community level. The experience, knowledge and participation of women, especially

⁸³ Jennifer Huang, 'Climate Justice: Climate Justice and the Paris Agreement' (2017) 9 *JAnimal & Env'tl L* 23.

⁸⁴ Mary Robinson, 'Human Rights, and Climate Change' (2015) 39(2) *Fletcher Forum World Aff.* 9, 12.

⁸⁵ Mary Robinson, 'Climate Justice: Challenge and Opportunity' (2011) 22 *Irish Stud. Int. Aff.* 67-74.

⁸⁶ *ibid.*

⁸⁷ *ibid.*

from the global south communities as they are most affected by climate change, is vital to successfully mitigate as well as to adapt to climate change.⁸⁸ Climate justice encourages both individual as well as collective responsibility.⁸⁹

The issue of environmental responsibilities between States in international law is a topic of constant discussion. Various international Conventions and Declarations have made provisions for equitable sharing of environmental responsibilities between the developed and the less developed States. Some of the provisions of these instruments are discussed below.

The Stockholm Declaration makes provision for the applicability of different standards for developed and underdeveloped countries. The standard should be ‘without prejudice to such criteria as may be agreed upon by the international community, or to standards which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.’⁹⁰

This provision recognized the practicality as the of the differences in the approach which will be used by the developed and the underdeveloped states. As, climate change is a phenomenon which presents challenge to human rights universally but to have practical universal standards to address these challenges of climate change is difficult and almost impossible because of the differentiating factors between the developed and the underdeveloped states, such as, access to funds, access to information, socio-economic factors, availability of relevant technology, etc.

The Rio Declaration makes provision for the need to consider the special situation of the most environmentally vulnerable countries, and consequently give them special priority. It goes further to suggests that States should be responsible for the environment, based on their differential contribution to environmental degradation. Consequently, the ‘special situation and need of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given

⁸⁸ *ibid.*

⁸⁹ David Elliott (n 8) 11.

⁹⁰ Stockholm Declaration on the Human Environment 1972, Principle 23.

special priority.’⁹¹

Preamble to the Paris Agreement also mentions about climate justice it states, “Noting the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of "climate justice", when taking action to address climate change...”⁹²

India’s Prime Minister ahead of the Paris Conference, also urged that the global communities should focus on the climate justice. He emphasised that the under-consumption of the poor cannot subsidise the over-consumption of the rich, both across and within the nations. States should try to not only protect the environment but also ensure that the rights to life and development are upheld if not equally, equitably. That would result in more sustainable and successful climate change negotiations in the future.⁹³

Hence, it can be said that, the dilemma of climate change is that the most vulnerable are the most unprepared for the necessary actions needed to limit the adverse effects of climate change. The vulnerable States, which mostly fall under the underdeveloped and developing States, have more immediate socio-economic challenges which makes issues like climate change secondary. Therefore, in reality, climate mitigation is usually not high on their domestic agenda. An equitable climate change sustainable development framework should put into consideration the limiting factors of developing nations and establish a policy framework that will assist them financially and technologically in achieving the required global emission reduction and temperature threshold.⁹⁴

⁹¹ Rio Declaration on Environment and Development 2012, Principle 6.

⁹² Paris Agreement 2015.

⁹³ Samir Saran, ‘Climate Change and Human Rights: Securing the Right to Life’ [2015] ORF.

⁹⁴ Olufunto Soje, ‘The Relationship Between Climate Change, Sustainable Development and Human Rights’ [2020] UWA.

CHAPTER II – HUMAN RIGHTS BASED APPROACH TO CLIMATE CHANGE – INTERNATIONAL PERSPECTIVE

In the previous chapter we discussed the concept of climate justice, climate change and its relationship with human rights. This chapter would examine various international instruments pertaining to climate change to examine the position of human rights within those.

2.1 FIRST WORLD CLIMATE CONFERENCE, 1979

In 1979, **First World Climate Conference** (WCC) was held. This conference explored how climate change can affect human activities. It issued a declaration which called the government of different nation states "to foresee and prevent potential man-made changes in climate that might be [averse] to the well-being of humanity". It also endorsed a World Climate Programme, the United Nations Environment Programme and the International Council of Scientific Unions (ICSU).⁹⁵

2.2 THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, 1988

The **Intergovernmental Panel on Climate Change** (IPCC) was established in 1988. IPCC is an intergovernmental body of the United Nations which is authorized to provide objective scientific information relevant to understanding human-induced climate change, its natural, political, and economic impacts and risks, and possible response options. IPCC released its First Assessment Report in the year 1990.⁹⁶ It emphasised on the global consequences of climate change and the requirement of international cooperation to curb the same.

2.3 SECOND WORLD CLIMATE CONFERENCE, 1990

This conference though did not specify any specific international targets for the reduction of the emissions. However, it did support a number of principles which were later included in the climate change convention. Emphasis was given to the principle of equity, the common but differentiated responsibility of countries at different levels of development and climate change was treated as a common concern of human kind.⁹⁷

⁹⁵ United Nations Environment Programme, 'Climate Change Information Sheet 17' [2000] IUC.

⁹⁶ *ibid.*

⁹⁷ *ibid.*

2.4 THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC), 1992

The United Nations Framework Convention on Climate Change (UNFCCC) is the primary international instrument which addressed the issue of climate change. It was adopted at the United Nations Conference on Environment and Development (UNCED) (which is also known as the Earth Summit) held in Rio de Janeiro from 3 to 14 June 1992. The treaty is aimed at stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. At the UN Summit in Rio de Janeiro in 1992, 154 countries signed the UNFCCC. Today, 192 countries have ratified the convention. It entered into force on March 21, 1994.⁹⁸

The first and direct reference to human rights in the context of UNFCCC was made in 2010, when the decision 1/CP.16 (The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention)⁹⁹ was referred to the Human Rights Council's Resolution 10/4¹⁰⁰, which recognized the adverse effects of climate change on the full and effective enjoyment and realization of human rights. It called upon state parties to ensure respect for human rights.

2.5 UNITED NATIONS - REDUCING EMISSIONS FROM DEFORESTATION AND FOREST DEGRADATION IN DEVELOPING COUNTRIES, 2008

UNFCCC established a program, called Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD). The objective of the UN-REDD Programme is to engage in a human rights-based approach to programming and policy that is committed to ensuring that international human rights instruments are the models adopted in development, cooperation and programming.¹⁰¹ Consequently, member States' actions must complement human rights standards and be consistent with objectives of human rights conventions and agreements. The REDD program also provided that the culture of indigenous people

⁹⁸ The United Nations Framework Convention on Climate Change (UNFCCC), 1994.

⁹⁹ United Nations Framework Convention on Climate Change, *Report of the Conference of the Parties on its Sixteenth Session, held in Cancun from 29 November to 10 December 2010* FCCC/CP/2010/7/Add.1.

¹⁰⁰ UNHRC Res 10/4 (25 March 2009) A/HRC/RES/10/4.

¹⁰¹ United Nations REDD Programme 2008.

and local communities should be respected by taking into account relevant international obligations, national circumstances and laws, as well as ensuring that REDD- related actions are used to secure other social and environmental benefits.¹⁰² There is an opinion that ‘REDD+ strategies that involving local communities in participatory carbon monitoring may significantly improve the capacity of developing countries to deliver large cuts in greenhouse gas emissions at a low cost within a short time frame’.¹⁰³

2.6 UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS, 2011

States also have climate change related human rights obligations under the United Nations Guiding Principles on Business and Human Rights (UNGP on Business and Human Rights), which make provision for State and State owned/controlled enterprises. The UNGP on Business and Human rights was endorsed in 2011 by the United Nations Human Rights Council, and have become an internationally recognized framework for business and human rights.¹⁰⁴ Under UNGP, state parties can also be held liable for the breach of human rights (duty to protect and duty to respect), if their entities act in a manner which is inconsistent with the international human rights standards.¹⁰⁵

2.7 THE KYOTO PROTOCOL, 2005

The Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change. The Kyoto Protocol was adopted in Kyoto, Japan, on 11 December 1997 and entered into force on 16 February 2005. 184 Parties of the Convention have ratified its Protocol to date. The detailed rules for the implementation of the Protocol were adopted at COP 7 in Marrakesh in 2001, and are called the “Marrakesh Accords.”¹⁰⁶

The major feature of the Kyoto Protocol is that it sets binding targets for 37 industrialized countries and the European community for reducing greenhouse gas

¹⁰² Mucahid Mustafa Bayrak and Lawal Mohammed Marafa, ‘Ten Years of REDD+: A Critical Review of the Impact of REDD+ on Forest-Dependent Communities’ [2016] 8(7) Sustainability 620.

¹⁰³ REDD (n 101) 30.

¹⁰⁴ United Nations Guiding Principles on Business and Human Rights 2011.

¹⁰⁵ John Ruggie (SRSG), *State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations* (A/HRC/RES/17/4 2007).

¹⁰⁶ The Kyoto Protocol to the United Nations Framework Convention on Climate Change 1997.

(GHG) emissions. These amount to an average of five per cent against 1990 levels over the five-year period 2008-2012.¹⁰⁷ Significantly, the Kyoto Protocol does not directly or indirectly mention about the human rights issues of climate change. It does not truly involve grassroots communities and peoples who are worst-affected. It has grossly neglected the severe damage to their livelihoods, well-being and welfare.¹⁰⁸ However, some scholars argue that since Kyoto Protocol is directly linked with the United Nations Framework Convention on Climate Change (UNFCCC), it has also implied purposes to reduce the impact of climate change from human rights perspective.

2.8 THE PARIS AGREEMENT, 2015

Paris Agreement is a “legally binding international treaty” on climate change. It was adopted in the year 2015 at COP 21 in Paris and it entered into force on 4th November 2016.¹⁰⁹ The main objective of the Paris Agreement is to combat and provide solutions to the challenges posed by climate change. It encourages cooperation between state parties in order to reduce their individual domestic greenhouse gas emissions.¹¹⁰ It provided for the state parties to undertake domestic measures in order to better adapt¹¹¹ to the effects of climate change effects and mitigate¹¹² its adverse consequences. It also provides for the finance, technology¹¹³ and capacity building for developing countries¹¹⁴ and provides for the access to climate change information and compliance.¹¹⁵ The preamble to the Paris Agreement calls upon states when taking action to address climate change, to "respect, promote and consider their respective obligations on human rights". The agreement recognizes that “parties may be affected not only by climate change but also by the impacts of the actions taken in response to

¹⁰⁷ *ibid.*

¹⁰⁸ Statement on the Kyoto Protocol and Climate Change. (2008) Asia-Pacific Research Network (APRN) http://www.aprnet.org/index.php?option=com_content&view=article&id=68:statement-on-the-kyoto-protocol-and-climate-change&catid=50:issues-a-concerns accessed 15 August 2021.

¹⁰⁹ United Nations Climate Change, *The Paris Agreement* <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement> accessed 12 July 2021.

¹¹⁰ The Paris Agreement 2015, art. 21.

¹¹¹ The Paris Agreement 2015, art. 7.

¹¹² The Paris Agreement 2015, art. 4.

¹¹³ The Paris Agreement 2015, art. 10.

¹¹⁴ The Paris Agreement 2015, art. 9.

¹¹⁵ The Paris Agreement 2015, art. 11.

it”.¹¹⁶ It encourages state parties to prepare, communicate and maintain nationally determined contribution (NDC).¹¹⁷

Though Paris Agreement is an improvement and an effective step towards the integration of human right in the climate change legal arrangement, it is the first binding legal arrangement that refers to human rights. However, still more stringent provisions are required in order to impose obligations upon the state parties.

¹¹⁶ *ibid.*

¹¹⁷ The Paris Agreement 2015, art. 4.

CHAPTER III – HUMAN RIGHTS BASED APPROACH TO CLIMATE CHANGE – COMPARATIVE STUDY

In the previous chapter we examined various international instruments concerning climate change. This chapter makes a comparative study of three different nations – Denmark, Britain and United States of America. These three nation states are selected because of their unique stand with respect to climate change policies and laws. Denmark is one such nation state which has not only ratified and confirmed to the international obligations pertaining to climate change but also has not laid down any condition for its compliance to such agreements. Britain on the other hand can be identified as one such nation which has ratified the climate change agreements but has made its confirmation to such agreements subject to certain conditions. The third nation state taken up for study is United States of America, it can arguable be categorized as one such nation which has agreed to climate change agreements but has never adhered to the same.

3.1 DENMARK

In January 2019, a petition was filed for bringing a climate law that would bring Denmark in line with the Paris Agreement. “The Climate Act sets out a target to reduce Denmark’s emissions by 70 percent in 2030 compared to 1990 and climate neutrality by 2050. The Act sets a rolling five-year target, 10 years in advance.”¹¹⁸ This Danish law has various safeguards against climate change. “The Act sets a series of reporting obligations on government, including an annual parliamentary examination of the government’s action towards meeting the targets. Government is required to produce on the impact of its climate policy on Danish imports and consumption. Government must also produce an annual global strategy stating how the government's foreign, development and trade policies ensure Denmark’s role as a global driver in international climate policy”.¹¹⁹

3.3 BRITAIN

The UK was considered to be the pioneer amongst world’s major economies for its climate change laws and policies. Its Climate Change Act of 2008 provided for a

¹¹⁸ The Climate Act 2020.

¹¹⁹ *ibid.*

framework for the country to cut its greenhouse gas emissions by 80%. This act was amended in June, 2019. This amendment changed its 2050 target to net zero carbon emission.

Britain has undertaken human rights approach while addressing issues of climate change quite extensively. Some of the decisions are discussed below –

In *Plan B Earth v Secretary of State*¹²⁰, permission was sought for a judicial review to stop the amendment of UK's long-term target for the reduction of the GHG emissions in the light of 2015 Paris Agreement. Claimant took the human right recourse and argued that such a decision but infringe human rights or would breach the public sector equality duty.

In *Friends of the Earth v. UK Export Finance*¹²¹, the claimant challenged the government's decision to "provide around \$1 billion of UK taxpayer support for a liquefied natural gas development in Mozambique. They claim that the decision is inconsistent with the State's obligations under the Paris Agreement and unreasonable on the ground of major impacts on climate change, biodiversity and human rights."¹²²

In *Plan B Earth & Others v Secretary of State*¹²³, the petitioners challenged the government's climate change plan, alleging that it is inconsistent with the UK's responsibility under the Paris Agreement and that it is violating their right to life, family life and freedom from discrimination under ECHR.

3.4 UNITED STATES OF AMERICA

*Massachusetts v. Environmental Protection Agency*¹²⁴, is considered to be one of the most influential as well as significant case concerning climate change. In this case, a group of states brought a suit to compel the Environmental Protection Agency (EPA) to regulate carbon dioxide (CO₂) as a pollutant under the Clean Air Act (CAA). This case was litigated on the ground of standing, interpretation of the CAA and the

¹²⁰ *Plan B Earth v Secretary of State for Business*, [2018] EWHC 1892.

¹²¹ *Friends of the Earth v. UK Export Finance*, [2020] EWHC.

¹²² ENNHRI, *Climate Change and Human Rights in the European Context* (2020).

¹²³ *Plan B Earth & Others v Secretary of State* [2020] EWCA Civ 214.

¹²⁴ *Massachusetts v. Environmental Protection Agency*, 549 U.S.497 (2007).

administrative discretion of EPA. Here no new law was brought rather amendments were brought to the existing legislations.

CHAPTER IV – HUMAN RIGHTS BASED APPROACH TO CLIMATE CHANGE – NATIONAL PERSPECTIVE

In the previous chapters we did the international and comparative study of rights-based approach to climate change. This chapter explores the India's position with respect to climate change negotiations. It covers the international as well as the national obligations of India towards climate change and analyses the integration/accommodation of human rights issues within those legal arrangements.

This chapter is divided into three parts. The first part examines India's international obligations concerning climate change. It analyses India's commitments with respect to climate change. The second part of the chapter covers the domestic laws of India with respect to climate change. And the last part of the chapter explores India's climate litigation through various judicial pronouncements.

4.1 INDIA'S INTERNATIONAL OBLIGATIONS ON CLIMATE CHANGE

In the past decade India has been a part of various international climate negotiations, particularly in the negotiations leading up to the 2015 Paris Agreement.

4.1.1 Ratification of Human Rights-related Instruments relevant in the context of climate change –

India has ratified following human rights related instruments which are relevant in the context of climate change – The International Covenant on Economic, Social and Cultural Rights, 1966; International Covenant on Civil and Political Rights, 1966; Convention on the Elimination of All Forms of Discrimination against Women, 1979; Convention on the Rights of the Child 1989; International Convention on the Elimination of All Forms of Racial Discrimination 1979; Convention on the rights of persons with disabilities, 2006.¹²⁵

India is a party to many international agreements and negotiations concerning climate change some of these are – The Antarctic Treaty (Washington, 1959) – “framed with the objective that the Antarctic shall continue to be a zone that shall be used for

¹²⁵ Human Rights and Climate Change Working Group, 'Country Profile Overview: India' (2017) <https://climaterights.org/database/india/> accessed 12 August 2021.

peaceful purposes only and shall not become an object of international discord”; Convention on International Trade in Endangered Species of wild fauna and flora (CITES), 1973 – India had signed the agreement in July 1976; Montreal Protocol on Substances that deplete the Ozone Layer (to the Vienna Convention for the Protection of the Ozone Layer), 1987; Basel Convention on Transboundary Movement of Hazardous Wastes, 1989 - India ratified to the treaty in 1992 and included some provisions of the Basel Convention in The Indian Hazardous Waste Management Rules Act, 1989; UN Framework Convention on Climate Change (UNFCCC), 1992 - India has shown leadership in moving ahead with policy frameworks that includes the National Environment Policy (NEP) and the National Action Plan on Climate Change (NAPCC); Convention on Biological Diversity, 1992; Agenda 21; UN Convention on Desertification, 1994; Paris Agreement 2015.

4.1.2 Positions in the procedures of the UN Human Rights Council –

India has sponsored following Human Rights Council’s resolution(s) on Human Rights and Climate Change –

- HRC Resolution 7/23 (2008) – This resolution a request to Office of Office of the United Nations High Commissioner for Human Rights was made to conduct “within existing resources, a detailed analytical study on the relationship between climate change and human rights, to be submitted to the Council prior to its tenth session...”¹²⁶;
- HRC Resolution 10/4 (2009) – where in relationship between human rights and climate change was discussed, “decides to hold a panel discussion on the relationship between climate change and human rights at its eleventh session in order to contribute to the realization of the goals set out in the Bali Action Plan and to invite all relevant stakeholders to participate therein...”¹²⁷;
- HRC resolution 32/33 (2016) – Important things to note from this resolution are, that while welcoming the Paris Agreement adopted under United Nations Framework Convention on Climate Change, it emphasises that the state parties, when taking action to address climate change should “respect, promote and consider their respective obligations on human rights, the right to health,

¹²⁶ UNHRC Res 7/23 (28 March 2008) A/HRC/RES/7/23.

¹²⁷ UNHRC Res 10/4 (25 March 2009) A/HRC/RES/10/4.

the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity...”¹²⁸

Another reference to human rights was made while welcoming the Sendai Framework for Disaster Risk Reduction 2015-2030, adopted at the Third United Nations World Conference on Disaster Risk Reduction.¹²⁹

4.1.3 India’s 3rd Universal Periodic Review Report –

India in its last UPR i.e., 3rd UPR Cycle (Universal Periodic Review) Report has addressed the issue of climate change and made following submissions –

- “India has facilitated the entry into force of the Paris Agreement by ratifying it in October 2016, and thereby renewing its commitment to achieve its Nationally Determined Contributions (NDC). India pushed for the acceptance of the principles of historical responsibility, equity, and Common but Differentiated Responsibility (CBDR) to defend the interests of the people in developing countries.”¹³⁰
- “In compliance with its obligations under the UNFCCC, India launched the Climate Change Action Programme, 2014 which aims to create and strengthen the scientific and analytical capacity for assessment of climate change and provide a framework for implementation of the National & State Action Plans on Climate Change. India has already submitted two national communications to UNFCCC providing details of its compliance with the Convention.”¹³¹
- “India has articulated its belief in ethical and people centric approach to climate change through the concept of “Climate Justice”. The Supreme Court

¹²⁸ UNHRC Res 32/33 (1 July 2016) A/HRC/RES/32/33.

¹²⁹ *ibid.*

¹³⁰ Human Rights Council Working Group on the Universal Periodic Review Twenty-seventh session, *National Report Submitted in Accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 – India* (A/HRC/WG.6/27/IND/1, 2017).

¹³¹ *ibid.*

of India¹³² has also recognized the right to clean environment as part of an individual's right to life guaranteed by the Constitution of India.”¹³³

To understand India's position with respect to its international obligations on climate change, a quote from the then Prime Minister Smt. Indira Gandhi is often discussed. In her statement at the first UN Environment Summit at Stockholm in 1972, “Are not poverty and need the greatest polluters?” This is emblematic of the continued primacy of the poverty alleviation over environmental issues in Indian Politics. In 1990s however, the debate surrounding national environmental problems and climate policy started surfacing. The increasing impacts of climate change and environmental pollution and the intensive discussion of climate change led the government under the then Prime Minister Mr. Manmohan Singh to adopt the National Action Plan on Climate Change.¹³⁴

4.2 INDIA'S DOMESTIC LAWS CONCERNING CLIMATE CHANGE

Even during the colonial India i.e., prior to India's independence there were several legislation pertaining to environment but the real impetus for bringing a well-structured and developed framework came after the United Nations' Conference on the Human Environment (Stockholm, 1972). Under this, the National Council for Environmental Policy and Planning within the Department of Science and Technology was set up in 1972. It later led to the evolution and set up of the Ministry of Environment and Forest in 1985, which is the primary administrative body for the regulation and ensuring protection of environment. After the Stockholm Conference in 1976, through the 42nd Amendment, constitutional sanction by incorporating the environmental concerns into the Directive Principles of State Policy and Fundamental Rights and Duties.¹³⁵

Whether these policies and actions incorporate human right issues which arise because of climate change or not is a question of debate. Although India has several

¹³² *Vellore Citizens' Welfare Forum v. Union of India*, (1986) AIR 1986 SC 2715.

¹³³ UPR (n 1) 31.

¹³⁴ Susanne Dröge and Christian Wagner, 'India's Position in International Climate Negotiations' (2015) 14 SWP Comments 2.

¹³⁵ Vijay K. Sondhi, Faisal Sherwani and Achal Gupta, 'India: Climate Change - Indian Law and Judiciary' (2020) Mondaq <https://www.mondaq.com/india/clean-air-pollution/945304/climate-change--indian-law-and-judiciary> accessed 14 August 2021.

substantive laws during the colonial as well as post-colonial era, for the prevention and regulation of activities that may cause climate change. For example –

4.2.1 Laws prior to India's Independence

Shore Nuisance (Bombay and Kolaba) Act, 1853; The Indian Penal Code, 1860; The Indian Easements Act, 1882; The Fisheries Act, 1897; The Factories Act, 1897; The Bengal Smoke Nuisance Act, 1905; The Bombay Smoke Nuisance Act, 1912; The Elephant's Preservation Act, 1879; Wild Birds and Animals Protection Act, 1912.

Post-Independence laws, policies and actions –

4.2.2 Provisions under Indian Constitution

The Indian Constitution is one of the few in the world that contains specific provisions on the environment. The Directive Principles of State Policy and the Fundamental Duties chapters explicitly enunciate the national commitment to protect and improve the environment. Three constitutional provisions bear directly on environmental matters.

Firstly, in article 21, which reads as, "no person shall be deprived of his life or personal liberty except according to procedure established by law."¹³⁶ Supreme Court of India in *Subhash Kumar v. State of Bihar*¹³⁷ and *Virendra Gaur v. State of Haryana*¹³⁸ has expanded the interpretation of Article 21 and has laid down that the right to life also includes right to healthy environment. The State High courts have followed the Supreme Court's lead, and virtually all now recognize an environmental dimension to Article 21. Secondly, article 48A requires that "the state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."¹³⁹ And thirdly, Article 51A establishes that "it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wild life and to have compassion for living creatures."¹⁴⁰

4.2.3 Policy Measures and Action Plans

¹³⁶ The Constitution of India, art. 21.

¹³⁷ *Subhash Kumar v. State of Bihar*, A.I.R 1991 SC 420.

¹³⁸ *Virendra Gaur v. State of Haryana*, (1995) 2 SCC 577.

¹³⁹ The Constitution of India, art. 48 A.

¹⁴⁰ The Constitution of India, art. 51 A.

Every state is undertaking actions to combat climate change, however, accommodation of human rights in these laws and actions is questionable. Different ministries of India and agencies have also undertaken missions and policies to address the problem of climate change.

- National Council for Environmental Policy and Planning was set up in 1972 which was later evolved into Ministry of Environment and Forests (MoEF) in 1985.
- Policy Statement for Abatement of Pollution and the National Conservation Strategy and Policy Statement on Environment and Development were brought out by the MoEF in 1992
- EAP (Environmental Action Programme) was formulated in 1993 with the objective of improving environmental services and integrating environmental considerations into development programmes.
- National Environment Policy, 2006; Water (Prevention and Control of Pollution) Act, 1974; Water (Prevention and Control of Pollution) Cess Act, 1977; Air (Prevention and Control of Pollution) Act, 1981; Atomic Energy Act of 1982; The Wildlife (Protection) Act, 1972; The Forest (Conservation) Act, 1980; Environment (Protection) Act, 1986; The National Environment Appellate Authority Act, 1997; Public Liability Insurance Act (PLIA), 1991; National Environment Tribunal Act, 1995; Environment Impact Assessment (EIA) Notifications.
- The Government of India launched National Action Plan on Climate Change (NAPCC) on 30th June, 2008 outlining eight National Missions on climate change¹⁴¹ –
 - 1) National Solar Mission (started in 2010);
 - 2) National Mission for Enhanced Energy Efficiency (approved in 2009);
 - 3) National Mission on Sustainable Habitat (approved in 2011);
 - 4) National Water Mission;
 - 5) National Mission for Sustaining the Himalayan Ecosystem (approved in 2014);
 - 6) National Mission for a Green India (approved in 2014);

¹⁴¹ Government of India, *Climate Change Programme* <https://dst.gov.in/climate-change-programme> accessed 17 August 2021.

- 7) National Mission for Sustainable Agriculture (approved in 2010); and
- 8) National Mission on Strategic Knowledge for Climate Change.

The Department of Science & Technology, Ministry of Science & Technology was entrusted with the responsibility of coordinating two out of these eight national missions on climate change. These are:¹⁴²

- 1) National Mission for Sustaining Himalayan Ecosystem (NMSHE) and
- 2) National Mission on Strategic Knowledge for Climate Change (NMSKCC).

It is important to note that while some of these legislations and policy measures were undertaken, the issues of climate challenge and the threat it poses to human rights were not that adequately addressed here. However, Indian judiciary has responded to the human miseries and problems which arise due to climate change. Some of these are discussed in the following section.

4.3 Climate Litigation and Role of Judiciary

The increase in the number of climate change litigation has come under scrutiny under recent times. Climate-related claims are litigated in courts only in the mere passing. Climate change and its adverse impacts are taking India into its ambit. There is a growing recognition of the importance and the urgency of the climate related issues. India has an active civil society, an active judiciary and a progressive body of enviro-legal jurisprudence and an unparalleled discourse of public interest litigation. Which implies that there are both potential litigant as well as climate related claims like to be favourably entertained by the Indian judiciary.¹⁴³

Currently India is ranked as one of the primary emitters of greenhouse gases. But India's industrial process began in the latter half of the 20th century and as a developing country it is quite problematic for it to bear carbon dioxide reduction targets. Climate litigation in India is still developing and is in its infancy.¹⁴⁴

Climate change litigation in India finds its roots in liability claims as civil society is becoming aware of the fact that human actions can cause grim consequences on the

¹⁴² *ibid.*

¹⁴³ Lavanya Rajamani, 'Rights Based Climate Litigation in the Indian Courts: Potential, Prospects and Potential Problems' [2013] CPR.

¹⁴⁴ Deepa Badrinarayana, 'The Emerging Constitutional Challenge of Climate Change: India in Perspective' [2009] 19 Fordham Envtl. L. Rev.

environment which can also affects human health.¹⁴⁵ Broadly speaking Indian citizen can take following redressal measures for the violation of their environmental rights – “i. A common law action against the polluter including nuisance and negligence; ii. A writ petition to compel the authority to enforce the existing environmental laws and to recover clean-up costs from the violator; or iii. Redressal under various Environmental Statues like Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act of 1974, Air (Prevention and Control of Pollution) Act of 1981 etc.; or iv. Compensation under Public Liability Insurance Act, 1991 or the National Environment Tribunal Act, 1995 in the event of damage from a hazardous industry accident.”¹⁴⁶

Some of the decisions given by the Indian judiciary on the issues concerning climate change and human rights are discussed below –

In *Karnataka Industrial Areas Development Board v. Sri C. Kenchappa*,¹⁴⁷ a petition was filed by the farmers and agriculturists for restraining the government from converting their land for industrial purposes. The Supreme court of India took note of climate change concern on human rights among other environmental concerns. The court directed the authorities to study the impact of the project and ozone depletion on the environment.¹⁴⁸

In *Manushi Sangthan, Delhi v. Govt. Of Delhi*,¹⁴⁹ the issue was with respect to the limit set on the issue of cycle rickshaw licence by the Delhi Municipal Corporation. One of the arguments submitted by the petitioner was that the IPPC’s Fourth Assessment Report, 2007 had laid down that the policies of countries should encourage use of fuel-efficient vehicles, which was inclusive of cycle rickshaws. The court in this case opined that, “the limit imposed by the Delhi Municipal Corporation to be arbitrary, and ordered a more detailed study on urban transportation options.” It establishes that Indian judiciary is taking actions to meet the international standards for mitigating climate change and has ensures protection to human miseries.

¹⁴⁵ Arindam Basu, ‘Climate Change Litigation in India: Seeking a New Approach Through the Application of Common Law Principles’ [2011] NALSAREnvLawPRw 3.

¹⁴⁶ *ibid.*

¹⁴⁷ *Karnataka Industrial Areas Development Board v. Sri C. Kenchappa*, (2006) 6 SCC 371.

¹⁴⁸ Vidya Ann Jacob, Bhavna Mishra, Rishav Ambastha, ‘Climate Change Litigation and Human Rights’ [2018] LAWASIA.

¹⁴⁹ *Manushi Sangthan, Delhi v. Govt. Of Delhi*, 39 (2010) DLT 168.

In *Sukhdev Vihar Residents' Welfare Association v. Union of India*¹⁵⁰, the question was regarding the operation of waste-to-energy plant in a densely populated area. The NGT opined that the plant met all the prescribed standards of emission. The tribunal noted that the project was a clean development mechanism project and was therefore required to meet international standards including stoppage of greenhouse gases.¹⁵¹

In *Society for Protection of Environment and Biodiversity v. Union of India*¹⁵², NGT found some aspects/portions of the government notification exempting construction industry from a regulatory approval process to be illegal. The tribunal held that, such exemption was in contravention to the India's commitment under the Paris Agreement and the Rio Declaration.

In *Gaurav Bansal v. Union of India*¹⁵³, the applicants sought the order from the NGT to direct the central and the state government to show the steps undertaken by them to implement the NAPCC. The tribunal held that in the future, cases specific to the violation of the NAPCC, its impact or consequences, could be filed before it. It further directed states to draft their action plans in accordance with NAPCC and to get them approved by the Ministry of Environment, Forest and Climate Change expeditiously.

In *Kallpavalli Vrishka Pempakamdarula Paraspara Sahayaka Sahakara Sangam Ltd. & Others v. Union of India*¹⁵⁴, the litigant raised climate concerns while requesting the directions to create a new policy or to rearrange the existing policies. The applicant challenged the setting up of a windmill farm, the applicant requested windmill farm to obtain environmental approvals in advance on the ground that these projects have adverse effects on the environment. Though the tribunal rejected the claim, but the central government referred the inclusion of wind energy as a CDM

¹⁵⁰ *Sukhdev Vihar Residents' Welfare Ass'n v. Union of India*, Application No. 22 (THC)/2013 (Feb. 2, 2017).

¹⁵¹ Shibani Ghosh, 'Litigating Climate Claims in India' [2020] 114 AJIL 46.

¹⁵² *Society for Protection of Environment and Biodiversity v. Union of India*, Application No. 677/2016 (Dec. 8, 2017).

¹⁵³ *Gaurav Bansal v. Union of India*, Application No. 498/2014 (July 23, 2015).

¹⁵⁴ *Kallpavalli Vrishka Pempakamdarula Paraspara Sahayaka Sahakara Sangam Ltd. & Others v. Union of India*, Application No. 92/2013 (Aug. 25, 2015).

project to ensure that such project does not cause any harm to the environment. expeditiously.

In *Manu Anand v. State of Kerala*¹⁵⁵, the Kerala High court while directing the government to formulate policy on the use of agricultural land for mining operation stated that the, “the Kyoto Protocol “reminds the nation to strive for the policies and measures to minimize adverse effects on climate change and to promote sustainable forms of agriculture in the light of climate change conditions.”¹⁵⁶

Another important case to note here is, *Bombay Dyeing and Mfg. Co. Ltd. v. Bombay Environmental Action Group*¹⁵⁷, the Supreme Court noted that there is a need to prioritise environmental issues because of the increasing concerns of climate change. The court also acknowledged the climate concerns in the context of different energy sources.

The primary goal of climate litigation is to attribute the liability on the persons or entities who are responsible for the contribution towards climate change in a significant manner, i.e., human induced climate change. As discussed earlier, India’s Public Interest Litigation, National Green Tribunal (NGT) and additionally India’s strong Judicial activism can demonstrate a level of responsiveness and clarity while dealing with human right violations that take place because of climate change.

¹⁵⁵ *Manu Anand v. State of Kerala*, MANU/KE/0461/2016.

¹⁵⁶ *Shibani* (n 121) 37.

¹⁵⁷ *Bombay Dyeing and Mfg. Co. Ltd. v. Bombay Environmental Action Group*, (2006) 3 SCC 434.

CHAPTER V – CONCLUSION AND SUGGESTIONS

The researcher has examined the international and national framework pertaining to climate change and various human rights instruments. The research set out to understand the scope and extent to which the human right violations are addressed in these legal frameworks of climate. International instruments have little to no mention about the human miseries which arise because of climate change. Though Paris Agreement accommodates a human right approach, far more stringent and strict provisions are required in order to address the human right issues and violations adequately.

This investigation has led the researched to concluded that there is a need to modify the existing domestic laws of India in order to better address the human right violations that take place because of climate change. Reference with respect to human rights in climate change litigation has been majorly made in the passing. India's National Action Plan for Climate change does not deal with climate justice and fail to incorporate human rights in their climate change approach. There has been disregard of human right violation due to climate change in the legislations (Environment Protection Act 1986, Protection of Human Rights Act, 1993). Active judicial as well as legislative steps are need of the hour. Indian judiciary has developed over the past three decades is well placed to support climate litigation. At the same time, there has been a massive decline in all the environmental quality indicators.

In the light of the above discussed chapters and climate change regimes, findings and observations made, the researcher recommends that the following steps should be taken to ensure a human right based approach while combating climate change:

1. The lack of express inclusion of human rights in the existing climate change policies and agreements make it a secondary issue. The primary human right instruments fall short in protecting human rights from climate change. The international human right instruments as well as climate change agreements, do not provide climate justice and have no adequate solution to address the human right violations caused by climate change.
2. The non-binding nature of the international human right treaties on non-state actors make the international regimes very feeble in nature. As discussed above, non-state actors, corporations are key contributors to the climate

change and its effects on human rights. However, a philanthropic approach to international human rights agreements on the part of non-state actors is insufficient to provide the for the damages so caused. People who are placed at the centre of mitigation and adaptation measures should be informed by the use of use of impact assessments to ensure that climate actions benefit those facing the greatest risks.

3. The human rights infringement induced by climate change under the international law suffer from the lack of a structured remedial mechanism. Climate change takes the human right violations beyond the traditional purview of causation. For infringements that take place under climate change, more often than not it is difficult to hold the violators accountable because of the practical difficulties in establishing the causation between acts/omissions that constitute climate change and the violation that take place. Therefore, a better mechanism is required to establish and ensure transparency for human right violations that take place due to climate change.
4. India in its existing legislations (discussed in chapter V) can incorporate provisions for the protection and prometon of human rights from climate change – natural or human induced.

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