



SOCIO-LEGAL ANALYSIS OF CLIMATE CHANGE: A COMPARATIVE STUDY

Dr. MONIKA MALIK
SWECHHA MALIK

ABSTRACT

The climate change has become a reality and the impact of climate change is visible in the form of various natural calamities. The frequency of natural disasters has increased manifold. The United Nations have formulated various treaties to combat climate change. The recently concluded Glasgow Pact aims at reducing the use of coal and eliminating the subsidies on fossil fuels. The Judges of Supreme Court added new dimensions to Article 21 and recognized pollution free environment including pollution free water as a fundamental right.¹ There is a need to put a check on tendency of various online websites which wastes a lot of paper in packaging of the products. Further, access to environmental justice should be available and it should not be expensive process.

1. INTRODUCTION

Global warming means rise in temperature of earth's atmosphere due to presence of carbon-dioxide and other Green House Gases. It poses a serious threat to flora and fauna of earth. Along with burning of fossil fuels, deforestation is also a major contributor of climate change. Climate change is leading to biodiversity loss. Living Planet Report was published by WWF International and Zoological Society of London in 2018. According to this report there is 60% decline in the size of population of mammals, birds, fish, reptiles and amphibians in just 40 years.² Further, the climate change is responsible for natural calamities and leading to displacement of large number of people in various countries. The impact of climate change is more on poorer sections of the society.

2. CLIMATE CHANGE: EFFORTS AT INTERNATIONAL LEVEL

2.1 Stockholm Conference, 1972: It was attended by 113 countries and 19 inter-governmental agencies and more than 400 inter-governmental and non-governmental organizations.³ This declaration was Magna Carta to environmental issues and is regarded as foundation of modern international environment law. The Stockholm Conference is watershed in international relations as it placed the issue of biosphere on the official agenda of international policy and law. Principle 21 had a particular significance as it acknowledges state sovereignty over their natural resources but stipulated that States have responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states.⁴ The Stockholm Declaration was significant moment in the development of international environmental law and it was the opening process of discussion and recognized that environmental degradation is a global phenomenon and there is a necessary link between environment and development issues. The Stockholm Declaration articulated 26 general principles as a foundation for future developments in the international environmental scenario. It established the United Nations Environment Program (UNEP), the first international organization with a sole focus on the environment. The Environment Fund was established through voluntary contributions. The 5th of June has been designated as World Environment Day.

2.2 Earth Summit 1992: The United Nations Conference on Environment and Development (Earth Summit) 1992 was held in Rio de Janeiro from 3 to 14 June 1992, with over 180 countries and 100 heads of state in attendance.⁵ The main theme of the Earth Summit was the interdependence of the environment and sustainable development. The Earth summit was inspired and guided by Brundtland report, 1987. It put the world on a path of sustainable development which aimed at meeting the needs of present without compromising the ability of future generation to meet their own needs. Earth summit 1992 adopted five specific documents:

- Rio declaration on Environment and Development- a series of principles defining the rights and responsibilities of state in relation to the environment (not legally binding but morally binding).⁶

* Dr. Monika Malik, Head of Department and Associate Professor of Law, Central University of Haryana.

** Swechha Malik, Research Scholar, Central University of Haryana, Mahendergarh.

¹ *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420.

² WWF, "Living Planet Report" (2018).

³ The United Nations Conference on the Human Environment, 1972.

⁴ *Ibid*, Principle 21.

⁵ The United Nations Conference on Environment and Development, 1992.

⁶ Patricia Birnie, Alan Boyle, *et.al.*, *International Law and the Environment* 51-52 (Oxford University Press, New York, 2009).



SPECIAL EDITION: INTERNATIONAL CONFERENCE
Lala Hansraj Puthela College of Law Sirsa

- Agenda 21 - a comprehensive blueprint for global action to affect the transition to sustainable development.⁷
- Forest principles-A set of principles to support the sustainable management of forest worldwide.⁸
- Biodiversity convention - aimed at the protection of biological diversity (legally binding).⁹
- United Nations Framework Convention on Climate Change-aimed for preventing global climate change (legally binding).¹⁰

Agenda – 21 has four basic dimensions:

- Social and economic dimensions- This section includes recommendation for international cooperation to accelerate sustainable development in developing countries.
 - Conservation and management of resources for development.
 - Strengthening the role of major groups – This section provides global action for women towards the sustainable and equitable development.
 - Means of implementation- This section relates to financial resources and mechanism transfer of environment sound technology, co-operation and capacity building for sustainable development, promoting education.
- Finally, it can be said that Agenda 21 is a comprehensive document whose prime aim is to halt and reverse the environment degradation on earth and to promote environmentally viable and sustainable development in all countries of the world.

2.3 United Nations Framework Convention on Climate Change

The UNFCCC entered into force on 21 March 1994 and 197 countries have ratified the Convention. Article 1(2) of 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.*”¹¹

The United Nations Framework Convention on Climate Change aimed at reduction of emission of greenhouse gases which are believed to contribute to global warming. This was the first step to stop global warming. The convention does not set target and timetables for the action of stage to reduce CO₂ emission or any immediate change in fuel consumption.

- In climate convention it was agreed that financial commitment should be based on principles of ‘Common but Differentiated Responsibilities’ which means that wealthier nations should be required to contribute more than poorer nations.
- Convention states that developed countries shall take all practical steps to promote, facilitate, finance or access to environmentally sound technologies.
- The Conference of Parties serves as the UNFCCC's "supreme body," with the legislative authority to create additional protocols and amendments to the convention, as well as the authority to make any other decisions necessary to promote the Convention's effective implementation.¹²It facilitates the development of joint implementation projects between parties, as well as the monitoring of individual obligations and the assessment of the cumulative effect of their implementation. Unless otherwise decided by the Conference of the Parties, the ordinary sessions of the Conference of the Parties shall be held once a year.¹³

2.4 Kyoto protocol, 1997

Kyoto Protocol 1997 is an international agreement linked to United Nation Framework Convention on Climate Change [UNFCCC] that sets binding obligation on the industrialized countries to eliminate the emission of greenhouse gases.¹⁴ This Protocol recognized that developed countries are primarily responsible for high level of greenhouse gases. The Kyoto Protocol was drafted in 1997 but it was adopted in 2005. The objectives of Kyoto protocol were:

- To achieve stabilization of greenhouse gases concentration.
- To ensure that food production is not threatened.
- To enable economic development to proceed in a sustainable manner.

Mechanism of Kyoto protocol (flexible market mechanism)

⁷ *Ibid*

⁸ *Ibid*

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ The United Nations Framework Convention on Climate Change, 1992, art. 1(2).

¹² The United Nations Framework Convention on Climate Change, 1992, art. 7.

¹³ *Ibid*

¹⁴ Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997.



SPECIAL EDITION: INTERNATIONAL CONFERENCE
Lala Hansraj Puthela College of Law Sirsa

- **Emission trading** – It permits nations that have extra emission units to sell this surplus capacity to countries that are over their target.
- **Clean development mechanism (CDM)**- when One country invests in the other country to reduce Greenhouse Gas emissions and Carbon-dioxide that country leaves CER (certified emission reduction) units. For example, USA installs solar power plants in India.

2.5 United Nations Conference on Sustainable Development, 2012 or Rio + 20

This Conference was held 20 years after the Earth summit in 1992.¹⁵ Objectives of Rio + 20 are:

- Securing renewal political commitments for Sustainable Development
 - Assessing the progress made since Rio conference and remaining gap in implementation of outcomes.
 - Addressing new and emerging challenges (gender action plan was highlighted)
- Broad themes of the conference-
- A green economy in context of Sustainable Development
 - Poverty Eradication
 - Institutional framework for Sustainable Development

Outcomes of Rio + 20 are:

- New binding document called "The future we want"
- Nations agreed to explore alternative to GDP as a measure of wealth that take environmental and social factors into account.
- All nations reaffirmed commitments to phase out fossil fuels subsidies.
- The document calls the need to return ocean stocks to sustainable level "urgent" and calls on countries to develop and implement scientific waste management plans.

2.6 The Sustainable Development Goals: Sustainability means meeting our own needs without compromising the ability of future generations to meet their own needs. In addition to natural resources, we also need social and economic resources. Sustainability is not just environmentalism. The Sustainable Development Goals (SDGs), also known as the Global Goals, were adopted by all United Nations Member States in 2015 as a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030. The objective was to produce a set of universal goals that meet the urgent environmental, political and economic challenges facing our world.

2.7 The Paris Agreement: In 2015, Paris Convention was adopted which provides new hope for greener future. The Paris agreement represents the willingness of global community to take collective measures for achieving success and fight against climate change.¹⁶ **Highlights of the Paris Agreement are-**

- The agreement aims to hold the increase in global average temperature well below 2 Degree Celsius and this would significantly reduce the risk and impact of climate change.
- The agreement aims to increase the ability to adopt the adverse impact of climate change and lower the greenhouse gas emissions.
- The agreement explicitly states that the principle of equity and common but differentiated responsibilities in the light of different national circumstances will be respected.
- A five- year communication cycle for nationally determined contributions (NDC) has been agreed to this will apply to India post 2030.

Thus, this agreement asks the developed countries to continue taking the lead while developing countries would continue to enhance their mitigation effort countries should continue to enhance their mitigation efforts and you are encouraged to more over towards absolute targets.

- Key aspects of Paris Agreement
- Mitigation
- Adaption
- Finance
- Technology Development
- Green finance

¹⁵ The United Nations Conference on Sustainable Development, Rio +20, *available at:* <https://sustainabledevelopment.un.org/rio20> (last visited on July 3,2022).

¹⁶ The Paris Agreement, *available at:* https://en.wikipedia.org/wiki/Paris_Agreement (last visited on July 3,2022).



SPECIAL EDITION: INTERNATIONAL CONFERENCE
Lala Hansraj Puthela College of Law Sirsa

- Intended Nationally Determined Contributions are plans by different governments of various countries regarding the steps they will take to address climate change domestically.

2.8 Glasgow Climate Pact:

On 13 November 2021, the participating 197 countries agreed a new deal, known as the Glasgow Climate Pact, aimed at eliminating off dangerous climate change.¹⁷ Since the coal is the major contributor of Greenhouse Gases, States agreed to phase it down. Also, the Glasgow Pact aims at removing of fossil fuel subsidies. The Glasgow Pact calls for shift in production of energy away from fossil fuels and also promotes the use of renewable energy. It also calls for more finance to be transferred from developed to developing countries which are vulnerable to adverse impacts of climate change. The move away from fossil fuels means that usage of cleaner energy will increase in future and also that people will suffer from less respiratory diseases as they will have cleaner air to breathe. The Glasgow Climate Pact will supplement the functioning of the Paris Agreement and it will help to achieve the goals of the Paris Agreement. The idea of climate justice which states that poor people are more affected by the adverse climate change was also discussed at the Conference.

3. EFFORTS AT NATIONAL LEVEL TO MITIGATE CLIMATE CHANGE:

India has ratified Stockholm Conference and has formulated Air Act, 1981, Environment Protection Act, 1986, National Green Tribunal Act, 2010 by using powers under Article 253 of the Constitution of India. India has ratified United Nations Framework Convention on Climate Change, Kyoto Protocol as well as Paris Agreement as non-annex party.

The Constitution of India provides a golden triangle for environment. The protection of environment finds place in Directive Principles and Fundamental Duties of the Constitution along with expansion of Article 21 of the Constitution. The 42nd Amendment to the Indian Constitution was enacted in 1976. The Directive Principles of State Policy were formulated in the form of Article 48A, which calls on the state to "protect and improve the environment, as well as safeguard the country's forests and wildlife."¹⁸ The fundamental duties were formulated in the form of Article 51A(g), which states that it is the responsibility of every citizen "to protect and improve the natural environment, including forests, lakes, rivers, and wildlife, and to have compassion for living creatures."¹⁹

4. ROLE OF JUDICIARY IN INDIA TO MITIGATE CLIMATE CHANGE

Article 21 states that "No person shall be deprived of his life or personal liberty except according to procedure established by law."²⁰ Right to life has been interpreted to mean that it includes the right to live in a healthy environment.

In the case of *L.K. Koolwal v. State of Rajasthan*,²¹ a citizen moved to the Rajasthan High Court against failure of municipality to provide clean streets and spaces in Jaipur. It was held that city to be cleaned within 6 months and a person who brings the problem of citizens before the Court is a real citizen and it is the primary duty of Municipality to remove dirt and plea of non-availability of funds and non-availability of staff cannot be taken.

In the case of *Sachinand Pandey v. State of West Bengal*,²² it was observed by the Supreme Court that whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48A and Article 51A (g) of the Constitution.

The first indication of the right to a wholesome environment may be traced to *Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.*,²³ where the Supreme Court ordered the closure of mining operations in certain areas. Notably, the Apex Court considered the hardship caused to the lessees, but was of the view that 'it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance.'²⁴

In the case of *Subhash Kumar v. State of Bihar*,²⁵ the petition is filed under Article 32 of Constitution for issue of direction to stop discharge of sludge from industrial plant of respondent into Bokaro River. The Supreme Court observed that right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.

¹⁷ Available at: <https://unfccc.int/process-and-meetings/the-paris-agreement/the-glasgow-climate-pact-key-outcomes-from-cop26> (last visited on July 3, 2022).

¹⁸ The Constitution of India, art 48 A.

¹⁹ The Constitution of India, art. 51A(g).

²⁰ The Constitution of India, art. 21.

²¹ *L.K. Koolwal v. State of Rajasthan*, AIR 1988 Raj 2.

²² *Sachinand Pandey v. State of West Bengal*, AIR 1987 SC 1109.

²³ *Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.*, AIR 1985 SC 652.

²⁴ *Ibid*

²⁵ *Subhash Kumar v. State of Bihar*, AIR1991SC420



SPECIAL EDITION: INTERNATIONAL CONFERENCE
Lala Hansraj Puthela College of Law Sirsa

In the case of *Virender Gaur v. State of Haryana*,²⁶ the Supreme Court observed that actions causing environmental pollution like air pollution and water pollution etc. and actions disturbing ecological balance would be considered as violation of Article 21 and the hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment.

“The Polluter Pays Principle” has been held to be a sound principle in *Indian Council for Enviro-Legal Action v. Union of India*,²⁷ where the writ petition was filed for getting remedy for distresses of people living in vicinity of chemical industrial plants in the Bichhri village in Rajasthan. It was held that the polluter must compensate the victims of the pollution and the responsibility of repairing damage is on offending party. Further, directions were issued to the Central Government to carry out remedial measures for removing sludge and factories or plants not complying with Court Orders to be closed along with directions for making environmental legislations more strong and to conduct environmental audits. The “Precautionary principle” was laid down in *Vellore Citizens Welfare Forum v. Union of India*,²⁸ in which it was held that the government authorities must anticipate, prevent and attack the causes of environmental degradation and lack of scientific reasoning should not be used as a justification for postponing measures to prevent environmental degradation.

In the case of *M.C. Mehta vs. Kamal Nath*,²⁹ the Supreme Court held that the state is the trustee of all natural resources which are by nature meant for public use and enjoyment. The public at large is the beneficiary of the sea-shore, running waters, air, forests and ecologically fragile lands and these resources cannot be converted into private ownership.

In the case of *Murli S. Deora v. Union of India*,³⁰ the Supreme Court held that smoking in public places indirectly deprives the non-smokers of their right to life guaranteed under Article 21 and smoking affects the rights of passive smokers and hence has to be prohibited in public places.

The Indian judiciary has played an active role in holding that the right to clean environment is a part of right to life under Article 21 of Indian Constitution.³¹ Developed countries should set an example before the developing countries by decreasing the emission of greenhouse gases, making use of environmentally sustainable technologies, by doing research to develop environmental-friendly techniques and transferring such technologies to developing countries at reasonable prices.³² Frequently, Judges have to choose between two possible interpretations of an environmental statute, one that advances environmental protection, and the other favouring some other interest such as beneficial for industry or jobs creation.³³ In this situation, it is the duty of the Court to adopt an interpretation favouring ecological preservation because Environmental statutes are regarded as ‘beneficent’ legislation.³⁴

5. CONCLUSION AND SUGGESTIONS

A consumer should always ask the dealer about energy efficiency of a product and he should buy an energy efficient product. A consumer should use LED Bulbs. There is the concept of Extended Producer Responsibility in case of batteries and e-waste. E-waste to be given to the producer by the consumer and it is the responsibility of the producer to deal with e-waste. National Green Building Code has been formulated and building should be made environmental- friendly. Reuse, Reduce and Recycle to be followed. There is need to move from brown economy to green economy by motivating the institutions that are in-charge of carbon emissions. It is necessary that action should be taken by the younger generation. Access to Environmental Justice should not be expensive process because when you are talking about environment, you are talking about community at large and not talking of individuality.

²⁶ *Virender Gaur v. State of Haryana*, (1995)2SCC577.

²⁷ *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1446.

²⁸ *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715.

²⁹ *M.C. Mehta vs. Kamal Nath*, (1997)1 SCC 388.

³⁰ *Murli S. Deora v. Union of India*, AIR 2002 SC 40.

³¹ Vijay Chandrakant Oak, “Assertion of Right to Clean Environment in India” *SSRN Electronic Journal* (2012).

³² Dr. Mohd Yousuf Bhat & Dr. Syed Damsaz Ali Andrabi, “Right to Life in Context of Clean Environment: It’s Significance under Various Laws” 22(5) *IOSR Journal of Humanities and Social Science* 79-85(2017).

³³ Shyam Divan & Armin Rosencranz, *Environmental Law and Policy in India* 59 (2013).

³⁴ *Ibid*