



# UNDERSTANDING THE LEGAL FRAMEWORK FOR CLIMATE CHANGE IN INDIA

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## ABSTRACT

India's legislative framework on climate change takes a multipronged approach to tackling the intricate problems that climatic variability and environmental degradation present. An outline of the main elements of India's legal system is given in this abstract, together with information on its development, advantages, and shortcomings. The abstract starts off by looking at India's international obligations, such as the Paris Agreement, and its constitutional provisions. It then goes into legislative enactments like the Environment Protection Act and the National Action Plan on Climate Change. It also discusses the role of judicial interventions and regulatory mechanisms in shaping climate-related policies and enforcement. Furthermore, it explores the challenges of implementation, including issues of coordination, resource allocation, and stakeholder engagement. Through a comprehensive analysis, this abstract elucidates the significance of a robust legal framework in facilitating India's transition towards climate resilience and sustainable development.

Keywords : Climate change,Regulatory compliance,Climate Justice

## INTRODUCTION

Climate change is essentially known as the variation in global and regional climates over an inter-temporal phase. The earth's climate is dynamic and the changes have picked momentum, due to both manmade and natural factors. This poses a wide range of threats and challenges for the law makers. Development has come at a price-deterioration in environment, air and water pollution, depletion of forest caves, depletion of ground water to name a few. India has been under lots of pressure to develop a robust climate and environment policy that to address its climate change concerns arising out of development. Concerns about the environment are

growing as the nation's economy grows and develops and advantages trickle down to the less fortunate. Growth will contribute to the already increasing global emissions brought on by better energy services and changing lifestyles. Additionally, the intensity and frequency of our rains can be negatively impacted by climate change in the agriculture sector. Numerous other changes would have a negative influence on people's health and way of life, as well as cause the forest cover to disappear and coasts to erode. With this in mind, it is crucial to have a national guiding strategy that tackles India's growth profile and places a focus on environment policy adaptation. All this has led to the framework of "National Action Plan on Climate Change" in 2008 [NAPCC]. This policy was hard to shift our development paradigm towards 'sustainable growth' which also addresses climate change. Keeping this in mind eight missions were established. They are as follows: The National Solar Mission The National Initiative to Promote Energy Efficiency The National Sustainable Habitat Mission The National Water Mission The National Initiative to Preserve the Himalayan Ecosystem India's National Mission for Green The National Center for Sustainable Agriculture The National Mission for Climate Change Strategic Knowledge India has to implement a national strategy to combat climate change and increase the sustainability of its development path over the long term. The country must maintain its high economic growth path while addressing the issue of greenhouse gas emissions. In designing such, India has a broad spectrum of choices as we are on threshold of development. The broad idea is to create a society that is self-sufficient and can also safe guard the interests of present and future generations. India's climate change and environment laws should reflect the multilateral negotiations of the UN framework Convention on Climate Change (UNFCCC) and must also reflect its role as a responsible and enlightened member of the world.<sup>1</sup>

## **BACKGROUND OF CLIMATE CHANGE LAWS AT INTERNATIONAL LEVEL**

Laws and policies relating to climate change have appeared in multiple forums. Concrete measures are generally defined by States and subnational authorities, or sometimes through regional cooperation – most obviously in the European Union (EU). International law plays a leading role, in particular in promoting climate change mitigation and providing support for climate change adaptation. The international law on climate change consists of specific treaty rules as well as general norms of customary international law. Treaties establish rules that their parties expressly recognize as binding upon themselves. Specific treaties have been adopted to address climate change, including the United Nations Framework Convention on Climate Change (UNFCCC) and treaties negotiated under the UNFCCC. Other treaty-based regimes have also developed rules relating to climate change, whether with regard to GhG emissions from specific sectors such as international shipping or international aviation, or with regard to particular GhGs. Customary norms, by contrast, do not require the express agreement of any particular State. They form, instead, when a general practice becomes widely accepted as law. Some customary norms of international law apply to climate change in spite of the existence of more specific treaty rules.<sup>2</sup>

<sup>1</sup> Dr.Sandhya Varshney,CLIMATE CHANGE LAWS OF INDIA, International Advanced Research Journal in Science, Engineering and Technology, vol. 10, Issue 9, September 2023

<sup>2</sup> Looney, RobertThe Politics of Climate Change *Journal of World Energy Law & Business*, Vol. 3,

## THE UNFCCC REGIME, FROM RIO TO PARIS

The international law on climate change comprises, first of all, a series of international climate agreements such as the regime constituted under the UNFCCC, including the Kyoto Protocol and the Paris Agreement as well as the Copenhagen Accord and the Cancún Agreements, among others.

### THE UNFCCC

Evidence that human activities affect the climate system were progressively gathered during the second half of the twentieth century. In the late 1950s, measurements taken from the Mauna Loa observatory in Hawaii revealed a steady increase in carbon dioxide concentration in the atmosphere. In the 1980s, enough empirical evidence had been gathered to leave no reasonable doubt: colossal GhG emissions from the combustion of fossil fuels and other human activities were impacting the global climate system with largely unknown consequences on human and non-human life. Successful international negotiations had been conducted to reduce the production of ozone-depleting substances during the second half of the 1980s.

In 1988, the World Meteorological Organization (WMO) and the United Nations Environmental Programme set up the IPCC in order to take stock of a growing number of scientific studies to inform policy-makers based on the best available science. The IPCC's first report, published in 1990, confirmed the scientific bases of arguments for an international action against climate change. Accordingly, in December 1990, the UN General Assembly established the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC/ FCCC). The UNFCCC establishes a general framework.

It defines an "ultimate" objective and some principles for cooperation, outlines some vague national commitments to promote mitigation and adaptation, and establishes institutions which could facilitate further negotiations. It was clearly understood in 1992 that more specific obligations would need to be defined in a subsequent instrument. In the minds of the negotiators was the experience of the 1985 Vienna Convention on the Protection of the Ozone Layer, followed two years later by the adoption of its Montreal Protocol. Like the Vienna Convention, the UNFCCC was seen as a first step toward laying the ground for a new regime.<sup>3</sup>

***The Ultimate Objective:*** Article 2 of the UNFCCC defines the "ultimate objective" of the UNFCCC and any related legal instruments to achieve, in accordance with the relevant provisions of the convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. This provision defines the UNFCCC regime as a goal-oriented,

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Issue 1 (March 2010), pp. 113-116

<sup>3</sup> Sengupta, Piyali, *Recognition of the Rights of the Victims of Climate Change under Public International Law: A Study* Christ University Law Journal, Vol. 2, Issue 2 (July-December 2013), pp. 41-58

transitory regime. This suggests that the UNFCCC and any further international climate agreement would become obsolete once atmospheric GhG concentrations are stabilized at a safe level. Nevertheless, the UNFCCC does not contain any provision on its termination following the achievement of this goal, which in any case remains a distant prospect. The ultimate objective of the UNFCCC places emphasis on climate change mitigation. Nevertheless, adaptation efforts are mentioned several times in the Convention and they could be considered as a complementary way of reducing the danger of anthropogenic interference with the climate system.

**The Principles:** Article 3 of the UNFCCC states a list of principles. The principle of Common but Differentiated Responsibilities (and Respective Capabilities) has remained ill-defined due to a lack of consensus among negotiating States. There is no specification, in the UNFCCC or in documents adopted later, of the ground, extent or ambit of differentiation. Developing States promoted the insertion of elements of language that would recognize the historical responsibility of developing nations and the consequential obligations of these nations. Developed States, by contrast, accepted that they had greater moral obligations on the ground of their financial capacity, but rejected any mention of historical responsibilities. In addition to the principle of Common but Differentiated Responsibilities (and Respective Capabilities), Article 3 also acknowledges “the specific needs and special circumstances of developing country Parties.” It notes the relevance of “precautionary measures” in application of the principle of precaution. Finally, it highlights the “right” of the parties “to ... promote sustainable development” and their obligation to “promote a supportive and open international economic system,” thus suggesting that mitigation measures should not impose disproportionate constraints on national development policies.<sup>4</sup>

**National Commitments:** Article 4 defines the particular efforts that States agreed to carry on. In particular, Article 4.1 defines national commitments that all parties should implement, although taking their common but differentiated responsibilities into account. Article 4.2 contains more demanding commitments applicable only to developed countries, which includes the States which were then Members of the Organisation for Economic Co-operation and Development (OECD). The obligations contained in Article 4, paragraphs 1 and 2, include in particular obligations to make a national inventory of GhG emissions and obligations to take some measures to mitigate climate change and to facilitate adaptation. These provisions are formulated in a vague, almost incantatory language. They involve some obligations of conduct, for instance, the obligation for all States to “formulate, implement, publish and regularly update ... programmes containing measures to mitigate climate change” and for developed States to “adopt national policies and take corresponding measures on the mitigation of climate change.” Yet, these commitments do not define any obligation to achieve a particular result, such as any quantified targets of emission reduction. Article 4, paragraphs 3–5 suggest that developed States shall provide financial and technological assistance to the implementation of mitigation and adaptation policies by developing States. Article 4.8 recognizes the particular vulnerability of

<sup>4</sup> Hori, Shiro; Syugyo, Sachi, *The Function of International Business Frameworks for Governing Companies' Climate Change-Related Actions toward the 2050 Goals*,

*International Environmental Agreements: Politics, Law and Economics*, Vol. 20, Issue 3 (September 2020), pp. 541-558

nine categories of States, including small island states and countries with low-lying coastal areas as well as countries with areas of high urban atmospheric pollution and “countries whose economies are highly depending on income generated from the production, processing and export, and/ or on consumption of fossil fuels and associated energy-intensive products.”<sup>5</sup>

## THE KYOTO PROTOCOL

The Kyoto Protocol was adopted on 11 December 1997. Owing to a complex ratification process, it entered into force on 16 February 2005. Currently, there are 192 Parties to the Kyoto Protocol.

**Kyoto Protocol:** In short, the Kyoto Protocol operationalizes the United Nations Framework Convention on Climate Change by committing industrialized countries and economies in transition to limit and reduce greenhouse gases (GHG) emissions in accordance with agreed individual targets. The Convention itself only asks those countries to adopt policies and measures on mitigation and to report periodically.

The Kyoto Protocol is based on the principles and provisions of the Convention and follows its annex-based structure. It only binds developed countries, and places a heavier burden on them under the principle of “common but differentiated responsibility and respective capabilities”, because it recognizes that they are largely responsible for the current high levels of GHG emissions in the atmosphere. In its Annex B, the Kyoto Protocol sets binding emission reduction targets for 37 industrialized countries and economies in transition and the European Union.<sup>6</sup>

## THE PARIS AGREEMENT

The Paris Agreement is a legally binding international treaty on climate change. It was adopted by 196 Parties at the UN Climate Change Conference (COP21) in Paris, France, on 12 December 2015. It entered into force on 4 November 2016.

Its overarching goal is to hold “the increase in the global average temperature to well below 2°C above pre-industrial levels” and pursue efforts “to limit the temperature increase to 1.5°C above pre-industrial levels.” However, in recent years, world leaders have stressed the need to limit global warming to 1.5°C by the end of this century.

## INDIA’S ENVIRONMENT AND CLIMATE CHANGE LAWS

The regulatory and institutional decision making framework for environmental protection is embodied in nine major acts of the Indian Parliament as well as in articles of our constitution. Article 21 of our constitution implies the right of its citizens for a healthy environment. Article 48A empowers the nation and states to

<sup>5</sup> Sharma, Avi, *Who Leads in a G-Zero World? Multi-Nationals, Sustainable Development, and Corporate Social Responsibility in a Changing Global Order*

Washington International Law Journal, Vol. 24, Issue 3 (June 2015), pp. 589-612

<sup>6</sup> Nair, Noyonika; Mishra, Saranya, *Sustainability Reporting: A Step towards the Future or a Shot in the Dark? Evolving Precepts of Corporate Governance: Lessons to Learn and Unlearn*, *Journal on Governance*, Vol. 4, Issue 2 (2021), pp. 35-60

protect and improve the environment. Article 51A underlines the duty of every citizen towards the natural environment as a fundamental right. Several Acts have been formulated and the framework that was laid out was the 'NAPCC' in 2008 and it has eight subsidiary missions. Besides these, there are several other plans and incentives by governments for energy conservations and to mitigate impact of climate change. The Indian Constitution is one of the few in the world that contains specific provisions in the environment. Indian environment law has seen considerable development in the last three decades. The regulatory and institutional decision making framework for environment protection is embodied in nine major acts of the Indian Parliament.

They are as follows:

1. Water Act (Prevention and Control of Pollution), 1974
2. Water Cess Act, 1974
2. Air Act (Prevention and Control of Pollution), 1977
3. Forest Conservation Act, 1980 (amended in 1988)
4. Environment Act, 1986
5. Motor Vehicle Act of 1938 (amended in 1988)
6. Public Liability Insurance Act, 1991
7. Notification on the Coastal Regulation Zone, 1991
8. Environmental Impact Assessment of Development Projects (1994)
9. National Environment Appellate Authority Act (1997)

In 2015, the "Climate Change Bill" was introduced. The target of 'Net Carbon Account' for the year 2050 in accordance with international obligations was prescribed.

The Climate change policy can be described as: Geopolitical: Many countries have come together for climate change issues, Regional organisations pursuing clean environment goals for shared prosperity and India's role in the early warning system is important.<sup>7</sup>

## **CRITICAL ANALYSIS AND CONCLUSION OF THE ENVIRONMENT LAWS OF INDIA**

The problem is the actual effectiveness of the laws – a disconnect between "defacto" and "dejure". Environment Law is a combination of three things. The first is a statute that is passed by the government. The second is the list of regulations imposed by the Environment Protection Agency in relation to that particular statute and the third is the legal interpretation of these regulations by our courts. In India, the problems arise due to lack of political will and enforcement which erodes their effectiveness. Many instances of the lack of enforcement arise as the government is reluctant to implement air and water pollution laws as it feels it might stop or slow development projects. Another related reason is the implementation cost is high so the government feels it might put domestic firms at a 'cost disadvantage'. So as a result enforcement is patchy and even inconsistent. Small businesses in India in many cases have old and outdated processes and curtailing

<sup>7</sup> Dr.Sandhya Varshney,CLIMATE CHANGE LAWS OF INDIA, International Advanced Research Journal in Science, Engineering and Technology, vol. 10, Issue 9, September 2023

emissions is costlier in comparison with more sophisticated and latest technologies employed by international firms so stringent enforcement can lead to losses. In India effective cost benefit analysis of environment impacts is not done properly. Even the legal remedies are not devoid of problems. There is no independent regulatory body for environment governance. It is looked after by the Ministry of Environment, Forest and Climate Change and has excessive interference by government. In order to effectively enforce the environment laws stringently we need to cover the lacuna of lack of interdependence between central and state boards and lack of authority of these boards. The courts should be encouraged to disregard technical flaws and miss description. Environment statues have been more observed in the breach than in practice. They have a high level of specialisation and have different jurisdictions so difficult to impose due to lack of adequacy of skill, infrastructure, coordination and effective implementation. An independent regulatory body needed. We need both political will and public awareness. Cooperation of public, NGO's, judiciary and government is needed. We need to have a strong civil liability mechanism based on 'Polluter pay principle'.