

RIGHT TO FREE FROM ADVERSE EFFECT OF CLIMATE CHANGE

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ABSTRACT

Climate change is without a doubt one of the most pressing issues we encounter in the 21st century, mainly caused by human activities like fossil fuel combustion, deforestation, and industrial operations. The significant effects of climate change reach all corners of the planet, drastically impacting ecosystems, public health, economies, and global stability. We are observing an increase in average global temperatures, erratic weather patterns, and a concerning rise in extreme events such as hurricanes, droughts, and floods. Furthermore, changes in ecosystems and biodiversity present serious risks to both natural and human systems.

1 Introduction

Climate change presents us with profound challenges that touch every aspect of our existence, underscoring the vital connection between a stable environment and human life. Although the challenge of addressing climate change is indeed significant, the encouraging aspect is that many solutions are already known that can aid in reducing greenhouse gas emissions and even start to reverse some of the harm done. The solution lies in amplifying these strategies and initiating systemic changes throughout industries, economies, and communities.

2 Constitutional essence

The right to equality, as enshrined in Article 14, and the right to life under Article 21 are principles that must be examined in light of the decisions made by the Court, as well as the actions and commitments undertaken by the state both nationally and internationally. Furthermore, the prevailing scientific consensus regarding climate change and its detrimental impacts plays a crucial role in this discussion. From these factors, it is evident that individuals possess a fundamental right to be free from the harmful consequences of climate change. This awareness underlines the importance of

addressing climate issues to uphold these rights effectively

3 The goal to fight against climate change

Environmental equality

The Constitution of India contains several provisions relevant to environmental law and the protection of natural resources. These provisions reflect the commitment of the Indian government to sustainable development, environmental conservation, and citizen welfare.

A key constitutional provision related to environmental law is found in Article 48A, which directs the state to protect and improve the environment and to conserve forests and wildlife. This article emphasizes the state's obligation to uphold ecological balance and guarantee environmental safety for both present and future generations.

Article 48A of the Constitution mandates that the State shall endeavor to safeguard and enhance the environment as well as preserve the nation's forests and wildlife. Clause (g) of Article 51A articulates that every citizen of India has the duty to protect and enhance the natural environment, which encompasses forests, lakes, rivers, and wildlife, along with showing kindness towards all living beings.

While these provisions are not directly enforceable in courts, they indicate that the Constitution recognizes the importance of nature.

The value of the environment, as emphasized by these provisions, becomes a right within other areas of the Constitution. Article 21 guarantees the right to life and personal liberty, and Article 14 affirms that everyone is entitled to equality before the law and equal legal protection. These articles form essential bases for the right to a healthy environment and protection against the harmful effects of climate change.¹³⁶⁴

4. India's Commitment to International Obligations

The impact of international environmental law on India's constitutional provisions relating to sustainable development and environmental conservation is increasingly important in the global context. As one of the world's most populous and biologically diverse countries, India has a vested interest in ensuring that its environmental laws and policies align with best practices and international standards.

These agreements and conventions address various environmental issues, such as climate change, the preservation of biodiversity, marine pollution, and additional topics. In this detailed summary, we will explore several important international treaties and conventions that have played a crucial role in influencing global environmental governance.

1. Greenhouse gas emissions arise from all countries and affect every nation, making it essential for all nations to take action to tackle this issue. This key idea is expressed in the preface of the UNFCCC: "Recognizing that the global aspect of climate change necessitates maximum cooperation among all countries and their involvement in an efficient and suitable international response, in line with their shared but differing responsibilities and respective

abilities, as well as their social and economic situations, Also noting that States have the obligation to ensure that activities within their jurisdiction or control do not harm the environment of other States or of regions beyond the reach of national jurisdiction."

2. According to Article 2, the primary objective of the UNFCCC is to stabilize atmospheric concentrations of greenhouse gases in order to prevent detrimental human-induced disruption of the climate system.

3. Article 3 provides further details on the principles that support this goal. Importantly, Article 3(1) highlights the duty of parties to safeguard the climate system for the welfare of both current and future generations, based on justice and according to their capacities.¹³⁶⁵

5. Introduction of renewable energy

To achieve these goals, India has implemented various policy measures and initiatives designed to encourage investment, innovation, and the use of renewable energy. As highlighted in the government's supplementary affidavit, India's commitment to transitioning to non-fossil fuels is not just a strategic energy goal but also a critical necessity for environmental protection. Investing in renewable energy addresses pressing environmental challenges while also offering a wide range of socio-economic benefits. By shifting to renewable energy sources, India enhances its energy autonomy, reducing reliance on volatile fossil fuel markets and mitigating the risks associated with energy shortages. Additionally, the adoption of renewable energy technologies contributes to lower air pollution, thereby improving public health and reducing healthcare costs.

The development of renewable energy sources is essential for promoting social equity by ensuring that clean and affordable energy is available to all sectors of society, especially in

¹³⁶⁴ S. Anand & Amartya Sen, *Human Development and Economic Sustainability*, 28 World Dev. 2029, 2029–50 (2000).

¹³⁶⁵ U.N. Human Rights Office, *Understanding Human Rights and Climate Change: 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* (Nov. 26, 2015).

rural and underserved areas. This fosters poverty alleviation, enhances the standard of living, and promotes inclusive growth and development throughout the nation. Therefore, the transition to renewable energy is not just an environmental issue.¹³⁶⁶

6. India employs a variety of strategies to address climate change pertaining to equality

The Parliament has passed various laws, such as the Wild Life (Protection) Act of 1972, the Water (Prevention and Control of Pollution) Act of 1974, the Air (Prevention and Control of Pollution) Act of 1981, the Environment (Protection) Act of 1986, and the National Green Tribunal Act of 2010, among others. In 2022, amendments were made to the Energy Conservation Act of 2001, empowering the Central Government to implement a carbon credit trading scheme.

2.The Kyoto Protocol, adopted in 1997 as an addition to the UNFCCC, established legally binding emission reduction targets for developed countries. It introduced the first international emissions trading system and the Clean Development Mechanism, allowing developed nations to finance emission reduction projects in developing countries to offset their own emissions. Countries are responsible for managing their own emissions. Although the Kyoto Protocol encountered various challenges and limitations, it established a foundation for future international initiatives to tackle climate change.

3.The Paris Agreement, which was adopted in 2015, marks a crucial development in global climate governance. Its objective is to cap the increase in global temperatures to significantly below 2 degrees Celsius compared to pre-industrial levels, with the goal of striving for a rise of no more than 1.5 degrees Celsius. Unlike its predecessor, the Kyoto Protocol, the Paris Agreement encompasses commitments from both developed and developing nations,

indicating a more inclusive and just approach to climate action. Furthermore, this agreement highlights the necessity of nationally determined contributions and regular assessment mechanisms to boost ambitions over time.

4.The Convention on Biological Diversity (CBD), established in 1992, is a vital international agreement aimed at protecting biological diversity, promoting the sustainable use of its elements, and ensuring the fair and equitable distribution of benefits arising from genetic resources. The CBD has three main objectives: Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997, conserving biological diversity, utilizing its components sustainably, and guaranteeing the fair sharing of benefits derived from the use of genetic resources. This treaty has sparked initiatives to establish protected areas, protect endangered species, and promote sustainable resource management.¹³⁶⁷

5. The Cartagena Protocol on Biosafety, which acts as an additional agreement to the CBD, focuses on the safe transfer, handling, and use of living modified organisms (LMOs) created through modern biotechnology that may adversely affect biological diversity. Its goal is to ensure the secure handling, transport, and application of LMOs, while also safeguarding biodiversity and human health. The protocol provides guidelines for assessing risks, managing risks, and involving the public in decision-making processes regarding LMOs¹³⁶⁸

6. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, established in 1989, concentrates on governing the cross-border transport of hazardous wastes and their disposal. The treaty's aim is to minimize the production of hazardous waste, ensure its environmentally sound management, and prevent the movement of hazardous wastes

¹³⁶⁶ International Convention for the Prevention of Pollution from Ships (MARPOL), Nov. 2, 1973, 1340 U.N.T.S. 184, as modified by Protocol of 1978, Feb. 17, 1978, 1340 U.N.T.S. 61.

¹³⁶⁷ Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, 2226 U.N.T.S. 208.

¹³⁶⁸ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, 1673 U.N.T.S. 57.

from developed countries to developing ones. The Basel Convention has been instrumental in promoting the environmentally responsible management of hazardous waste and in reducing the risks associated with their transboundary movement

7. The Stockholm Convention on Persistent Organic Pollutants (POPs). The Stockholm Convention, ratified in 2001, seeks to safeguard human health and the environment from persistent organic pollutants. The treaty targets a category of highly toxic chemicals that endure in the environment, accumulate in living organisms, and present significant hazards to human health and ecosystems. The Stockholm Convention mandates that parties implement measures to eliminate or regulate the production, use, and release of POPs, as well as manage and dispose of current POPs stockpiles and waste. Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 2000. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989.

7.Right to equality in terms of environment

The Constitution of India contains several provisions relevant to environmental law and the protection of natural resources. These provisions reflect the commitment of the Indian government to sustainable development, environmental conservation, and citizen welfare.

A key constitutional provision related to environmental law is found in Article 48A, which directs the state to protect and improve the environment and to conserve forests and wildlife. This article emphasizes the state's obligation to uphold ecological balance and guarantee environmental safety for both present and future generations.

International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, as modified by the Protocol of 1978 Article 48A of the Constitution mandates that the State shall endeavor to safeguard and enhance the

environment as well as preserve the nation's forests and wildlife. Clause (g) of Article 51A articulates that every citizen of India has the duty to protect and enhance the natural environment, which encompasses forests, lakes, rivers, and wildlife, along with showing kindness towards all living beings. While these provisions are not directly enforceable in courts, they indicate that the Constitution recognizes the importance of nature. The significance of the environment, as underscored by these constitutional provisions, transforms into a fundamental right that permeates various other aspects of the Constitution Article 21 unequivocally guarantees the right to life and personal liberty, serving as a cornerstone for individual freedoms. Meanwhile, Article 14 enshrines the principle that every individual is entitled to equality before the law, along with equal protection of the law. Together, these articles lay a critical foundation for the assertion of a right to a healthy environment, highlighting the urgent need for safeguarding against the detrimental impacts of climate change. In this context, the environment is not merely a backdrop to human existence; it is integral to the exercise of rights and the pursuit of well-being for all.¹³⁶⁹

8 The Constitution of India: Article 14

The right to equality for the marginalized – It has been determined that forests are crucial in mitigating pollution, which greatly impacts the disadvantaged and infringes upon their right to equality. The most vulnerable groups in society are likely to suffer the most from forest depletion, especially since wealthier individuals have greater access to resources than those who are underprivileged. The idea of sustainable development should be viewed from an eco-centric perspective. Primarily, it is the environment that must be preserved, while human development should come afterward .

A multitude of decisions regarding the right to a clean environment exists, with some recognizing climate change as a significant threat,

¹³⁶⁹ Constitution of India, art. 48A.

alongside national policies aimed at addressing climate change; however, it has yet to be clearly stated that individuals possess a right against the negative impacts of climate change. This may 19 Constitution of India, art. 48A be due to the fact that this right and the right to a clean environment are interconnected. As the damage caused by climate change escalates each year, it becomes essential to define this as a separate right. Articles 14 and 21 acknowledge this.

9 Right to equality under Article 14 and right to life under 21 affected

(a) With respect to rights of indigenous people

In case of *Samatha v. State of Andhra Pradesh*, (1997) 8 SCC- The global population is currently facing a critical survival challenge, with their existence as distinct groups and cultures at risk due to the erosion of the economic, social, cultural, and natural resources that have supported their development as unique communities. This threat is particularly apparent in their economic conditions. The Constitution of India aims to safeguard the interests of tribal communities, especially their autonomy and land rights, as outlined in Schedule 5 and 6 of the Indian Constitution. It outlines a detailed framework with guidelines to protect indigenous groups from exploitation and ensure their land rights.

The traditional economies of indigenous peoples are based on their deep connection to and understanding of nature. For many of these communities, land, water, and forests are viewed as part of Mother Earth, with humans holding only the rights to utilize these resources without any ownership; thus, they should not be commodified, sold, or privatized. Therefore, land represents a vital aspect of indigenous identity, embodying not only economic value but also profound spiritual and emotional significance.

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Recent issues

¹³⁷⁰ Sujatha Byravan & Sudhir Chella Rajan, *Providing New Homes for Climate Change Exiles*, 6 Climate Pol'y 248 (2006).

For example –The right to equality can be compromised in ways that are often subtle and challenging to rectify. For example, individuals living in the Lakshadweep Islands may encounter more severe difficulties as sea levels rise and oceanic issues develop, particularly when compared to those residing in Madhya Pradesh. This disparity becomes even more pronounced for forest-dwelling, tribal, and indigenous communities, who are at significant risk of losing not only their homes but also their cultural identities, which are intricately tied to their environments and the resources available to them.

In India, the tribal population in the Nicobar Islands exemplifies this dilemma, as they continue to uphold a traditional lifestyle that remains largely isolated from the broader influences of the country and the world. These indigenous communities often depend on their land in ways that starkly contrast with the reliance of urban populations. Traditional practices such as fishing and hunting, essential for their sustenance, face the threat of climate change, putting their food sources at risk.

1.M.C. Mehta v. Kamal Nath ¹³⁷¹

This Court determined that Articles 48A and 51A(g) must be interpreted alongside Article 21 of the Constitution, which states that no individual shall be deprived of their life and liberty except through a procedure established by law. Any disruption of essential environmental components, such as air, water, and soil, which are vital for "life," would be detrimental to "life" as defined by Article 21 of the Constitution.

2.Virender Gaur v. State of Haryana addressed the environment in these Terms ¹³⁷²

The acknowledgment of the right to a clean environment by this Court emphasizes the State's obligation to manage its authority responsibly while implementing policies that support ecological balance and a pollution-free environment. Article 21 guarantees the right to

¹³⁷¹ *Vellore Citizens' Welfare Forum v. Union of India*, (2000) 6 SCC 213 (India).

¹³⁷² *M.C. Mehta v. Union of India*, (1995) 2 SCC 577 (India).

life as a fundamental right, which encompasses not only the mere existence but also the ability to live with dignity.

3. Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action

this Court recognised that climate change posed a “major threat” to the climate. The implications of climate change on human rights are deeply significant and far reaching. At the heart of these concerns is the understanding that a healthy environment is fundamental to the full realization of the right to life, as emphasized in Article 21. In the absence of a stable and pristine environment, we face a myriad of threats including rising air pollution levels, the surge of vector-borne diseases, unprecedented increases in temperatures, crippling droughts, and the devastation wrought by natural disasters such as violent storms and pervasive flooding. These climate-related challenges pose substantial risks to our health and overall wellbeing.

7 Relationship between climate change and human right

1. Recently, the urgent and intertwined relationship between climate change and human rights has emerged as a crucial issue, garnering significant attention on the global stage. This convergence highlights the pressing necessity for nations to confront the repercussions of climate change through a rights-centered lens. A poignant example of this was the statement made by the UN High Commissioner for Human Rights during the landmark Climate Conference in Paris in 2015. The High Commissioner articulated how climate change poses both direct and indirect threats to a vast array of human rights, profoundly affecting communities and individuals in deep and far-reaching ways.

2. The right to a healthy and clean environment stands as a fundamental pillar within the larger framework of the responsibilities that states owe to their citizens. Countries are duty-bound

to introduce and enforce effective and comprehensive

3. This recognition of human rights within the context of climate change is explicitly highlighted in the preamble of the Paris Agreement. The agreement acknowledges the intricate interrelationship between climate change and a spectrum of fundamental human rights.

T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2012) 3 SCC 277¹³⁷³

discusses a profound transition in environmental philosophy. The judgment highlights that to achieve true environmental justice, it is essential to shift our perspective from an anthropocentric (human-centred) approach to an ecocentric (earth-centred) mindset. This shift is crucial because many established principles in environmental law, such as sustainable development, the polluter-pays principle, and intergenerational equity, are deeply rooted in anthropocentric ideologies.

Conclusion

In contrast, the ideology of ecocentrism presents a more inclusive and holistic approach. It is inherently nature-centred, positing that humans are an integral part of the natural world, where non-human entities possess intrinsic value. Here, human interests do not automatically take precedence; rather, individuals have ethical obligations to non-human life forms regardless of their utility to humanity. Ecocentrism thus champions a life-centred and nature-centred perspective, advocating for a view of the world that encompasses both human and non-human beings in a shared ecosystem.

¹³⁷³ T.N. Godavarman Thirumulpad v. Union of India, (2012) 3 SCC 277 (India).