

CLIMATE CHANGE, DISASTERS AND GENDER RESILIENCE: A LEGAL ANALYSIS FROM INDIA

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Abstract

The impact of climate change and augmented disasters are gendered and Indian women due to the incessant economic and social inequalities and the limited access to participation in decision-making are more vulnerable than men. This paper focuses on the human and social dimensions of climate change, especially the impact of climate change and the consequences of disasters, increasing in their magnitude, on the women in India. It argues for an environmental justice and human rights approach to gender mainstreaming in climate –disaster management through legal mechanisms and litigation strategies. This paper argues that in the climate- disaster discourse, gender issues are generalized and fails to account for the local community views and perspectives. A globally homogenized approach could mask the internal differences that exist between communities and regions, with regard to gender issues and negatively impact the gender inclusive strategies. This paper argues for the adaptation and development process to be not only inclusive but also locally determined.

I Introduction

THE SCIENTIFIC assessment of the intergovernmental panel on climate change (hereinafter IPCC) reports highlights the complex inter-linkage between climate change and disasters.¹ The intersection of climate change and disaster are convoluted with the differential impact felt on the most vulnerable nations and populations.² The fourth assessment report of the IPCC identifies women as predominantly vulnerable and affected by disasters.³

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1 Robert R.M. Verchick, “Disaster Law and Climate Change” in Daniel A. Farber, Marjan Peeters (eds), *Climate Change Law* 234 (Cheltenham: Edward Elgar Publishing, 2016). Field, C. B., *et al.*(eds) *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation: A Special Report of Working Groups I and II of the Intergovernmental Panel on Climate Change* (Cambridge University Press; London, 2012).

2 Dunn, Leith, Gender Climate Change and Disaster Risk Management, Working Paper Series, 7 (Institute of Gender and Development Studies Mona Unit, The University of the West Indies, Kingston, Jamaica, 2013), *available at:* <http://library.fes.de/pdf-files/bueros/fescaribe/10711.pdf>(last visited on Dec. 20, 2019). M.V. Ogra, and R. Badola “Gender and Climate Change in the Indian Himalayas: Global Threats, Local Vulnerabilities, and Livelihood Diversification at the Nanda Devi Biosphere Reserve” 6 *Earth Syst. Dynam.*: 505–523 (2015).

3 IPCC, “Climate Change 2007 – Impacts, Adaptation and Vulnerability Contribution of Working Group II to the Fourth Assessment Report of the IPCC” (IPCC 2007).

This scenario aptly applies to India, which is highly vulnerable to climate and disaster risks. The National Disaster Management Report marks 27 states in India to be disaster prone.⁴ Available evidence from India demonstrates the differences in how men and women are affected by, cope with and respond to the consequences of climate change and disasters.⁵ At the same time, it is imperative to mention that climate change and disasters do not merely have a disproportionate impact on women, but the ecological footprint created by man tends to be much higher than the women.⁶ Thus, the gender climate change disaster inter-linkage is not the only differential in terms of impact but also is in terms of responsibility.⁷

The paper focuses on the human and social dimensions of climate change. Part-I of the paper contextualizes the gender vulnerability about climate change and disaster with specific reference to India. Part II of the paper explores the legislative framework in the context of climate change and disasters and assesses how far the national legal framework has incorporated gender concerns. Part-III advocates gender mainstreaming through the lens of environmental justice supplemented by a human right approach and litigation strategies. Part-IV concludes by arguing for an inclusive right based approach considering the local imperatives governing gender.

II Climate change, disaster and gender vulnerability

As climate change impacts kick in, India is a case in point as a nation seriously threatened by climate change. The Indian women, who already struggle with multiple discrimination and inequality, faces increased threats in the form of declining traditional livelihoods, reduced food security, the threat of malnutrition-related health risks, and increased unemployment, *etc.*, in comparison to men.⁸ The vulnerabilities of Indian women is reflected in economic indicators as lack of access to resources and high dependency on local natural resources, the social vulnerability in their social segregation, the political disparity in terms of dismal participation in decision making, and cultural vulnerability

4 Ministry of Home Affairs, National Disaster Management Report (2011).

5 Jyoti Parikh, Dinoj Kumar Upadhyaya and Tanu Singh, "Gender Perspectives on Climate Change and Human Security in India: An Analysis of National Missions on Climate Change" 1(1) *CADMUS Journal* 180-186 (2012).

6 Julio Godoy, *Men's and Women's Different Impact on Climate Netherlands: Woman Engage a Common Future* (WECF 2011), available at: <http://www.wecf.eu/english/articles/2011/02/gender-climateimpact.php>, (last visited on Dec. 2, 2019).

7 Eric Neumayer and Thomas Plümper. "The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy, 1981–2002" 97 (3) *Annals of the Association of American Geographers* 551-566 (2007).

8 Stellina Jolly and Amit Jain, *Climate Change: Changing Dimensions of Law and Policy* 35 (MD Publishers, New Delhi 2009).

reflected in beliefs and customs.⁹ In the global gender gap index, the country is placed at an overall 87th position.¹⁰ The country figures at a much lower position in terms of HDI with a figure of 131.¹¹ From a long-term perspective, the differential impacts may force women taking up tasks which reinstate the gender stereotypes.¹²

It is observed that a higher number of women than men lost their lives in the ocean tsunami, which hit Andaman and Nicobar in India.¹³ A report by Oxfam highlighted that during disaster, women due to the prevalent social structure, were accustomed to putting the lives of others before their survival the aftermath of disaster witnessed an increased work load for women, as the burden of arranging clean water, food and caring for the family fell on them.¹⁴ Their lack of decision-making and access to resources made them difficult to access relief and rehabilitation support.¹⁵

A survey conducted to analyze the differential impact of gender on disaster in the aftermath of the Tsunami, in south India has documented several consequences including the large number of widowed women who have plunged into depression, orphaned girls who have been victim to sexual harassment, increased domestic violence, a lack of privacy and the genesis of segregation as a practice aimed towards addressing the special needs of women, which increases their fear of

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- 9 Sneh Gangwar, “Integrating Gender Issues in Mitigation and Management of Disaster in India” 4(6) *IJEEM* 613-620 (2013). Vasudha Gokhale, “Role of Women in Disaster Management: An Analytical Study with Reference to Indian Society” Paper presented at the 14th World Conference on Earthquake Engineering, Beijing, China, Oct. 12-17, 2008.
- 10 The Global Gender Gap Report 2016 is published by the World Economic Forum, Cologny, Switzerland, available at: http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf (last visited on Dec. 20, 2019).
- 11 Jyoto Parikh, *Is Gender a Climate Change Issue* (New York: United Nations Development Programme, 2016); *Supra* note 5 at 186.
- 12 *Ibid.*
- 13 Oxfam, “The Tsunami’s Impact on Women” Briefing note 6(Oxfam 2005), available at: <https://policy-practice.oxfam.org.uk/publications/the-tsunamis-impact-on-women-115038> (last visited on Oct. 10, 2019). See also, Sheila Jasanoff, *Beyond Calculation: A Democratic Response to Risk* in Andrew Lakoff (ed.) *Disaster and the Politics of Intervention* 12 (New York: Columbia University Press 2010).
- 14 UN Women, *Time to Act on Gender, Climate Change, and Disaster Risk Reduction. An Overview of Progress in the Pacific Region with Evidence from The Republic of Marshall Islands, Vanuatu and Samoa* Geneva: United Nations (UN Women 2016).
- 15 Helena Molin Valdes, “A Gender Perspective of Disaster Risk Reduction” in Elaine Enarson, P G Dhar Chakrabarti (eds) *Women, Gender and Disaster: Global Issues and Initiatives* 23 (Sage 2009); See also Supriya Akerkar, “Gender Mitigation and Furthering Women’s Rights : Learning from the Tsunami 11(3) *Gender, Technology and Development* 357–388(2007); Rona MacDonald, “How Women Were Affected by the Tsunami: A Perspective from Oxfam” 2(6) *PLOS Med* 178 (2005).

vulnerability.¹⁶ Studies also reveal that before the tsunami in 2004, the early warning given by the government was known to men, but was hardly communicated to the women who had less access to the public sphere.¹⁷ The social and cultural taboo on women's mobility prevented many women from seeking assistance, which ultimately led to their death and grievous injury.

A culture of mimetic isomorphism leads India often, to legislate preventively on subjects, and it may be sufficient to say that disaster management is one such concern where global models, uncertain as they may be, merit discussion towards the possibility of incorporation. The following section will thus, attempt to discuss how far the international legal framework on disaster management and climate change has incorporated gender concerns.

III Disaster management and climate change legal framework: Indian legal framework and adoption of gender concerns

Disaster management legal framework

In the Indian context, the Disaster Management Act, 2005 acts as the peremptory legislation and focuses on the pre-disaster response, rehabilitation, and reconstruction.¹⁸ The Act lays out a comprehensive multi-tier framework on disaster management at the national, state and district level.¹⁹ However, the only provision specifically dealing with gender concerns pertains to the distribution of compensation.²⁰ The Act lays down that while providing compensation and relief to the victims of disaster, there shall be no discrimination on the ground of sex, caste, community, descent or religion. Though the Act has not incorporated explicit gender concerns, the National Disaster Management Guidelines, 2007 calls upon the states for both the participation of women in disaster planning and recognition of women as agents in disaster management.²¹

India's National Policy on Disaster Management, 2009 also recognizes the vulnerability of women and other groups and mandates the inclusion of women in state disaster response forces, in decision-making regarding disaster preparedness, and charges states with providing for the "permanent" restoration of livelihoods for female-headed households, among other marginalized and vulnerable groups.²² The National Disaster

16 Luke Juran, "The Gendered Nature of Disasters Women Survivors in Post-Tsunami Tamil Nadu" 19(1) *IJGS* 1-29, (2012).

17 *Ibid.*

18 Disaster Management Act, 2005 (India), available at: <http://www.ndmindia.nic.in/images/The%20Disaster%20Management%20Act,%202005.pdf> (last visited on Dec. 29, 2019).

19 Rajendra Kumar Pandey, Legal Framework for Disaster Management in India, *ILJ Law Review* 172-190 (2016)

20 *Supra* note 18, S. 61.

21 Elizabeth Ferris, Daniel Petz and Chareen Stark, "Disaster Risk management: A Gender – Sensitive Approaches a Smart Approach" *In The Year of the Recurring Disasters: A Review of Natural Disasters in 2012* 74 (Brookings; London 2013).

22 National Policy on Disaster Management (New Delhi: Government of India 2009).

Management Plan, 2016, prepared as a result of the Supreme Court directions²³ emphasized incorporating gender sensitive and equitable approaches in capacity development, covering all aspects of disaster management at the state, district, and local levels.²⁴

While national legislation is remiss in making overt references to the gender question, the State of Orissa has made special provisions for women and children in cyclone shelters, and Assam, in designing relief camps, provides for special modules on women, children and pregnant women.²⁵ The disaster management experience in India reveals several promising instances where women have actively been involved in disaster management. The experience from Andhra Pradesh illustrates that the women steered the program and attempted to use local resources in disaster management relief.²⁶ Similarly, in Cuttack in India, the women's civil society groups are instrumental and active in disaster management and have successfully undertaken risk mapping, currently employed for urban planning.²⁷ However, in many places, the active role of women was a result of the vibrant civil society and grass root movements rather than the result of the positive legislative intervention and effective implementation. The overall experience of disaster management in India has been lacklustre as pointed out by judicial statements.²⁸

Climate change legal framework

In terms of climate change, the country had adopted the National Action Plan on Climate Change (NAPCC).²⁹ The plan is operationalized through eight national missions. The action plan briefly recognizes the special vulnerability of women about climate change. Section 1. 1 of the plan states:³⁰

The impacts of climate change could prove particularly severe for women. With climate change, there would be an increasing scarcity of water, reduction of yields in forest biomass, and increased risks to human health

23 *Gaurav Kumar Bansal v. Union of India* (2017) 6 SCC 730.

24 National Disaster Management Plan 2016, (New Delhi: National Disaster Management Authority, 2016).

25 Bahadur, Aditya, Emma Lowell and Florence Pichon, Strengthening Disaster Risk Management in India: A Review of Five State Disaster Management Plans. India Environment Portal, (CKDN 2016), *available at*: <http://www.indiaenvironmentportal.org.in/files/file/Strengthening%20disaster%20risk%20management%20in%20India.pdf>, (last visited on Aug.30, 2019).

26 International Recovery Platform, Experience of Post Disaster Recovery from Gender Perspective – Shifting from Vulnerabilities to Capacities (UNISDR; 2007).

27 *Supra* note 21 at 75.

28 *Supra* note 23 at 731.

29 National Action Plan on Climate Change. (New Delhi: Government of India 2008)

30 *Id.*, para 14.

for children, women and the elderly in a household becoming the most vulnerable....., special attention should be paid to the aspect of gender.

Besides this specific reference, the plan refers to:³¹

Protecting the poor and vulnerable sections of society through an inclusive and sustainable development strategy, sensitive to climate change.

The gender aspects can easily be interpreted as a category of the most vulnerable population. However, merely categorizing women as a 'vulnerable group' will have the effect of reinstating the gender stereotype and fail to recognize the important contribution women play and can play in all stages of disaster management.³² In addition, the plan lacks a specific strategy to counteract and promote specific adaptive measures to make them part of the responsive method.

The state level plans on climate change (SAPCC) present an opportunity for the country to incorporate considerations of gender in its approach to tackling climate change. The Kerala State Climate Action Plan in its response mechanism identifies and attempt to address the constraints which are likely to prevent women from participating in the operation and management of forests, related activities; to collaborate with women organizations in implementing the forest policy.³³ The Arunachal Pradesh State Action plan on climate change emphasizes considering the aspiration of people and accommodating local needs; it failed to provide for the differential impact of disasters on gender and the role of women in disaster management.³⁴ India's submission to the two-year Lima Work Programme on gender reveals that the major hurdle in adopting a gender specific approach in climate policy is the lack of gender-segregated data.³⁵

The NAPCC and SAPCC provisions reveal that they have attempted to formulate policies on gender and disaster linkage in climate change, but do not envisage a dedicated

31 *Id.*, para 20.

32 United Nations/International Strategies Disaster Reduction, *Issues of Vulnerability with Specific Reference to Gender in the Asia Pacific* Bangkok, (United Nations/International Strategies Disaster Reduction: Thailand 2015).

33 Kerala State Action Plan on Climate Change, Department of Environment and Climate Change, (Government of Kerala 2014), available at: <http://www.moef.gov.in/sites/default/files/KERALA%20STATE%20ACTION%20PLAN%20ON%20CLIMATE%20CHANGE.pdf> (last visited on Dec. 25, 2019).

34 *Arunachal State Action Plan on Climate Change* (Government of Arunachal Pradesh, 2011), available at: <http://www.indiaenvironmentportal.org.in/files/file/Arunachal-Pradesh-SAPCC.pdf> (last visited on Dec.10, 2019).

35 Views from the Government of India on *Possible Elements and Guiding Principles for Continuing and Enhancing the Two-Year Lima Work Programme on Gender*, under the Subsidiary Body for Implementation Agenda Item no. 16 – Gender and Climate Change, Peru, Lima, Oct. 26, 2016, available at: https://unfccc.int/files/documentation/submissions_from_nonparty_stakeholders/application/pdf/494.pdf (last visited on Oct. 25, 2019).

mission exclusive to disaster management and climate change. This is not surprising given the independent development of climate change and disaster law without exploring the synergy and correlation between the two. The indivisible synergy between climate change and disaster law will determine how effectively legal responses can be weaved to evaluate and address gender concerns. The need of the hour is the coherent interweaving of existing legal and institutional mechanisms to address the challenge of climate change disaster and its interaction with the rights and vulnerabilities of women.

Shortcomings of the legal framework in incorporating gender concerns

Further, to the fragmented development of legal mechanisms, the implementation of climate action plans and disaster management policies reveals that the programs and strategies intended to expand the involvement of the women are envisaged as an expert program without considering the myriad experiences and knowledge possessed by the women at the local level regarding climate and disaster hazards.³⁶ For instance, climate initiatives like LPG connections for women below poverty line- fail to associate women with the energy supply chain or the modern and productive forms of energy at local level.³⁷ Such a strategy based on external considerations alienates the local community about their interaction with nature³⁸ and disasters thus contravening inclusive growth and failing to provide sustainability.³⁹

The major reason for the lack of specificity and incorporation of local knowledge in disaster management is the centralized and top-down model of disaster management. For instance, the disaster management structure envisages a three-tier structure of governance at national, state and at the district level.⁴⁰ The experiences also suggest that states are allocating inefficient resources to establish and operate district disaster management authorities, or to create disaster response and disaster mitigation funds, thereby crippling implementation.

Compliance mechanisms, such as regular meetings and co-operation between the state and district disaster management Act, as directed by the Act, have been derogated from in the name of them being directory and not mandatory provisions. Lastly, the schematic framework for disaster governance has systemically ignored the review and

36 J. Dekens, "Local Knowledge for Disaster Preparedness: A Literature Review" 25(Nepal: International Centre for Integrated Mountain Development 2007).

37 Aparna Roy, "Making Climate Action Count: Mainstreaming Gender in Climate Action to Accelerate Climate Compatible Development" 174 (ORF, Occasional Paper, 2018).

38 Steve Langill, *Indigenous Knowledge. A Resource Kit for Sustainable Development Researchers in Dryland Africa, People, Land and Water Programme Initiative* 34 (Ottawa: IDRC; 1999).

39 Lori A. Thrupp, "Legitimizing Local Knowledge: From Displacement to Empowerment for Third World People" 6(3) *Agriculture and Human Values* 13-24 (1989).

40 Disaster Management Act, 2005.

information dissemination aspects of disaster management, engaging a bare minimum level of stakeholders, thereby effectively choking the law's outreach, especially to the vulnerable communities. Thus, the top-down model of disaster management which look for a one size fit solution for all does not account for the gender disparities and variations prevalent between regions and communities.

In India, the involvement of Panchayats or gram sabha, the basic unit of administration is one chained to a rigid form of competence, not permitting great dynamism. The 73rd Constitutional Amendment created Panchayats and gram sabhas,⁴¹ giving them constitutional status, but a large portion of the Panchayati narrative has been lost in the Indian federal scheme with states only directed towards a sharing of powers with the Panchayats. The aim of Panchayat Raj institutions is to increase the inclusive governance based on the understanding that administration could be handled best at the basic level of governance.⁴² The lack of technical and financial aspects restricts the involvement of Panchayat Raj institutions in disaster relief and rehabilitation operations.⁴³

From a gender mainstreaming perspective, the involvement of Panchayat institutions in disaster management will promote the much-needed equity as women have been given thirty-three percent reservations constitutionally in Panchayat Raj Institutions. The involvement of Panchayats is highly crucial in climate-disaster management. The knowledge of the local communities about population, climate variability, safe location and arrangements for evacuation is imperative in evolving and institutionalizing an effective locally driven climate -disaster management.⁴⁴ The locally driven programs will be the first step in aggregating a gender-segregated -data the lack of which acts as a major hindrance in adopting a gender-specific approach.⁴⁵ The localization also assumes significance since men and women acquire differing perspectives and experiences based on their interactions with nature. At the local level, it is easy to identify not only these general narratives but even the personal narratives which often could be instrumental in evolving an inclusive multipronged strategy for adaptation to climate change and disaster resilience.⁴⁶

41 The Constitution (73rd Amendment Act), India 1992.

42 *Ibid.*

43 Kamal Taori, *Disaster Management Through the Panchayat Raj* 35 (New Delhi; Concept Publications 2005).

44 Ganapathy Palanithurai, *Panchayats in Disaster: Preparedness and Management, Gujarat, Orissa, Andhra Pradesh, and Tamil Nadu with Successful Case Studies* (New Delhi, Concept Publishing Company, 2009).

45 *Supra* note 35.

46 Asmita Tiwari, *The Capacity Crisis in Disaster Risk Management: Why Disaster Management Capacity Remains Low in Developing Countries and What can be Done* (Switzerland: Springer, 2016).

The legal provisions at the national level reveal that though the gender-cognizant language is often incorporated in the context of climate change and disasters, the issue has not been elevated to the level where one can genuinely hope of achieving gender equality and empowerment capable of neutralizing the disproportionate impacts of climate change and disasters on women. Further, acknowledging the gender vulnerability in legal and policy documents is the only attainment, to begin with, the real challenge, perhaps of far greater pertinence, is to translate the policies and strategies into actions especially at the local level. Also, looking for a solution only under the climate and disaster legal framework would not yield the required result as gender vulnerability is affected by the all-pervading inequalities and socio-cultural barriers that manifest in gendered roles constraining the women's decisions governing lives and existence. As a first step, climate and disaster management policy have to address the underlying reasons for the inequalities and find the mechanism to redress the factors contributing to the vulnerability. Swayam Shikshan Prayog (SSP) a policy initiative, was developed in the context of an anti-poverty program, intended to encourage women's participation in a collaborative manner in the field of education, health sanitation.⁴⁷ The documented evidence reveals that training and capacity building program has assisted the women in reducing their vulnerability and contributing to reconstruction in post-disaster scenario especially in the earthquake hit areas of Latur and Bhuj with places focused at making the affected women, participants in the reconstruction process.⁴⁸ Thus, planning for gender mainstreaming in climate change and disasters should address the pervasive social economic and political inequalities faced by women in society.

IV Gender mainstreaming and its application to climate change and disaster

Gender mainstreaming integrates the concerns of gender as a cross-cutting theme across all policies, action, or legislation to address the gender inequalities through an inclusive process. The call for gender mainstreaming is not unique to climate change and disaster. The idea has its gradual development beginning with the Beijing World Conference on Gender which acknowledged the role of integration.⁴⁹ However, in spite of the active role played by civil society and women's groups gender mainstreaming has not always been successful in removing and reducing the gender gap.⁵⁰

47 R. B. S. Verma, H. S. Verma and Nadeem Hasnain, *The Indian State and the Women's Problematic: Running with the Hare and Hunting with the Hounds* 222-250 (New Delhi: Serial Publications; 2008).

48 Findings and Recommendations of the First Climate Resilient Kerala Consultations, "Building a Climate Resilient Kerala" (Thiruvananthapuram; Thanal, 2016).

49 Report of the Fourth World Conference on Women, United Nations (Geneva: United Nations Publications; 1995).

50 Margaret Alston, "Gender Mainstreaming and Climate Change" 47 *Women's Studies International Forum* 287-294 (2014).

Several reasons ranging from lack of clarity to lackluster implementation as the gap between the global agenda and local imperatives still guided by the deep gender division persists.⁵¹ However, the epoch of climate change and consequent disasters offers the possibility of a real paradigm shift in gender mainstreaming due to its all subsuming nature and opens up the possibility of gender mainstreaming from the local level to the global level. The Paris Agreement with its critical tool of Nationally Determined Contributions (hereinafter NDC) could prove to be significant towards achieving this dynamism. Out of the 190 NDC submitted, 64 countries, all belonging to the non-annexed segment, have included references to gender.⁵²

Gender mainstreaming brings a host of advantages. Firstly, it acknowledges the differential impact of climate change and disaster on women and helps to strategize a gender approach which can lead to holistic attainment of gender equality.⁵³ However, the effectiveness of gender mainstreaming depends on how comprehensively it can filter in the overall complex scenario of women empowerment.⁵⁴ There are different modalities and mechanics of gender mainstreaming in laws and policies. One of the methods of gender mainstreaming is to look at the issues with a gender sensitivity which aims at understanding and considering the societal and cultural factors involved in gender-based exclusion.⁵⁵ Gender responsiveness complements the sensitivity approach and attempts to overcome the gender biases and inequality through sustained policies and steps.⁵⁶ The point is that for an effective gender mainstreaming the emphasis should not only be on understanding women's inequality and participation to overcome that inequality; the approach has to be comprehensive enough to acknowledge the multifaceted role of women as a victim and also as active agents of change. Hence, gender mainstreaming cannot be achieved by merely incorporating a gender language in a statute; the need is to look at the strength and effective intent of the language it carries towards implementation.

51 Rekha Mehra, Geeta Rao Gupta, *Gender Mainstreaming: Making it Happen* 16 (Washington DC, International Centre for Research on Women 2006).

52 *Gender and Climate Change: An Analysis of Intended Nationally Determined Contributions*, (Women Environment Development Organization, 2016).

53 Fenella Porter, Caroline Sweetman, *Mainstreaming Gender in Development: A Critical Review* 56 (Oxfam 2005).

54 *Ibid.*

55 Cecile Jackson, C. "Social Exclusion and Gender: Does One Size Fit All?" 11(1) *European Journal of Development Research* 125-146 (1999).

56 L.Aguilar, M. Granat, and C. Owren, *Roots for the Future: The Landscape and Way Forward on Gender and Climate Change* 28 (Washington ; IUCN and GCCA 2015).

Environmental justice and gender mainstreaming

In this context, environmental justice and climate justice could be a useful framework for ensuring that policies and laws especially consider the differential impact of climate change and disaster on women. The concept of environmental justice emphasizes the equal distribution of environmental goods and harms.⁵⁷ The core concern of environmental justice is operationalized through encompassing distributive, procedural, corrective and social justice as crucial components.⁵⁸ The climate change and disaster linkage reveal severe distributional, procedural, corrective and social injustice and inequalities on gender.⁵⁹ Though women have played a major role in the grassroots environmental movements evidenced through the rich literature across the world,⁶⁰ the focus of the environmental justice movement has primarily been on the distributional component of race, class, and poverty.⁶¹ Additionally, there have been few publications illustrating gender within the environmental justice research, though gender remains a major component of injustice.⁶²

Multiple reasons could be ascribed to the dichotomy of women occupying a centre stage in the environmental movement yet fails to attain prominence as far as the objective environmental justice is concerned. *Firstly*, at the formal level of decision making, environmental movements are dominated by men. This has majorly to do with women's lack of access to democratic and equitable control over decision-making reflected in procedural justice. *Secondly*, it is also seen that generally environmental movements emphasis on capacity building and skill development rather than challenging the very basis of social structures.⁶³ Not discounting the significance of the capacity building,

57 Gordon Walker, *Environmental Justice: Concepts, Evidence and Politics* 46 (London Routledge, 2012). See also Jedidiah Purdy, "The Long Environmental Justice Movement" 44(4) *ELQ* 809-864 (2018); Ole W. Pederson, "Environmental Principles and Environmental Justice" (12) *ELR* 26-49 (2010); Carmen Gonzalez, "Environmental Justice and International Environmental Law" in Shawkat Alam, J. H. Bhuiyan, T. M.R. Chowdhury, E. Techera (eds) *Routledge Handbook of International Environmental Law* 77-98 (London; Routledge 2013).

58 Carmen Gonzalez, "Environmental Justice, Human Rights, and the Global South" 13 *Santa Clara JIL*, 151-195(2015). Sheila Foster, "Environmental Justice in an Era of Devolved Collaboration" 26 *Harvard Env L. R.* 459-488 (2002).

59 Karen Bell, "Bread and Roses: A Gender Perspective on Environmental Justice and Public Health" 13 (10) *Int. J. Environ. Res. Public Health* 1005-1018(2015). Bina Agarwal, "The Gender and Environment Debate: Lessons from India" 18 *Feminist Stud* 119-158(1992).

60 Smita Narula, *The Story of Narmada Bachao Andolan: Human Rights in the Global Economy and the Struggle Against the World Bank*, (New York University Public Law and Legal Theory Working Papers 2008).

61 *Ibid.*

62 Tracy Perkins, "On Becoming a Public Sociologist: Amplifying Women's Voices in the Quest for Environmental Justice" in S.K White., J.M White, *et.al.* (eds) *Sociologists in Action on Inequalities: Race, Class and Gender* 88-92 (Los Angeles ; Sage 2015).

63 Karen Bell, *supra* note 59 at 1007.

for a lasting solution for gender neglect, the environmental justice movement should highlight the neglected participation and voice of the women through intense struggles arguing for legal empowerment going well beyond the law reforms and seeking a shift from the socio-cultural structural exclusion and inequality.

The environmental justice movement in India has not focused much on gender vulnerability and concerns. For instance, even when the indigenous Adivasi women spearheaded the struggle against felling of forests in Chhattisgarh, India⁶⁴ the movement did not highlight the special concerns and vulnerabilities of women. The gender concerns get subsumed under the other broader categories of caste, religion, and class. However, the history of Indian environmental justice movement offers enough scope for encompassing a gender perspective as the Indian environmental justice movement, for the most part, has ingrained the broad concept of social justice at the core. For instance, the Chipko Movement questioned the paradigm that the environmental damage is caused by poverty and highlighted the deep concern exhibited by the marginalized communities in the protection of the environment.⁶⁵ It is this thread; the environmental movement could focus as the women are not mere victims of climate change and disasters but could be active agents of change and protection. Promoting environmental justice is an apt opportunity for the evolution of gender mainstreaming as at its foundation, environmental justice is about legal transformations aimed at curbing abuses of power that result in the poor and vulnerable suffering disproportionate impacts environmental hazards and lacking equal opportunity to decision making. A gender perspective is essential in the context of environmental justice as the women not only functions in an inadequate environment but also bears disproportionate environmental disadvantage which often goes unnoticed and recognised.⁶⁶

The environmental justice can be promoted through several mechanisms, the strong, active local movement being the primary one supplemented by a human right interpretation and litigation.

Human right paradigm in gender mainstreaming

The human right paradigm is a reliable apparatus to integrate gender mainstreaming, and both can operate in a complementary and mutually reinforcing way.⁶⁷ Since the human right principles are an already established framework in existence, if the

64 Sulakshana Nandi, Samir Garg, "Indigenous Women's Struggles to Oppose State-Sponsored Deforestation in Chhattisgarh, India" 25(3) *Gender and Development* 387-403(2017).

65 Shinya Ishizaka, "Reevaluating the Chipko Movement in India" 2(1) *The South Asianist* 9-27(2006).

66 Karen Bell, *supra* note 59 at 1016.

67 Stephen Humphreys, *Human Rights and Climate Change* 124 (Cambridge, UK: Cambridge University Press 2010).

differential impact of climate change can be traced to the consequences of policies and laws violative of women's rights, the states can be held accountable and steps can be taken to include gender sensitive measures. The concept of human right changes the contours of discourse by focusing on the plight and right of women, and imposes an obligation on the state to afford protection to such groups and offers a legal basis on which protection could be sought.⁶⁸ The three-tier obligation concerning human rights including the right to respect, protect and fulfil can form the core of gender mainstreaming by seeking to analyze the social and structural inequalities which lie at the heart of problems and redress discriminatory practices and unjust distributions of power by undertaking affirmative actions. Applying a human rights standard will directly promote justice by protecting and amplifying the concerns of the most vulnerable and marginalized communities and is justified since climate change and disaster spells human catastrophe.⁶⁹ Further, the multilateral environmental agreements with a state-centric focus on the rights and duties fail to account for the individual agonies and deprivations. The human right approach may help to broaden the democratic base of international law by elevating an individual to the centre stage of climate and disaster concerns.⁷⁰ At the national level, the human right approach may detangle societal power asymmetry by articulating the voice of the most neglected sections of the society.⁷¹

In terms of legal provisions, multiple conventions ranging from the Universal Declaration on Human Rights,⁷² the International Covenant on Civil and Political Rights, 1976 and the International Convention on Economic, Social and Cultural Rights, 1966⁷³ and several conferences⁷⁴ have highlighted and stressed on the significance of equality and non-discrimination. Initially, the human right framework emphasized on overcoming discrimination rather than on the acknowledgment of specific women's rights. However, gradually, the mandate of women's rights was accepted as human rights. In this context, the prominent mechanism remains the Convention on the Elimination of Discrimination Against Women (CEDAW) which elevated the status of women's rights to that of a separate, stratified set of human rights.⁷⁵ The Convention

68 *Ibid.*

69 Margaux J. Hall, and David C. Weiss, "Avoiding Adaptation Apartheid: Climate Change Adaptation and Human Rights Law" 37(2) *YJIL* 309-366 (2012).

70 *Ibid.*

71 *Ibid.*

72 Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948).

73 International Covenant on Civil and Political Rights, UN Doc. A/6316 (1976); 999 UNTS 171.

74 International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966, A/RES/2200.

75 UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 1979, A/RES/34/180.

mandates signatory parties to “take all appropriate measures to eliminate discrimination against women in the political and public life”⁷⁶ a reinforcing of the essential tenet of equality in the socio-logical construct. It also focuses on specific vulnerabilities and rights of women concerning access to agricultural recourses,⁷⁷ sanitation and water *etc.*⁷⁸

In the context of disaster and climate change, the past decade has seen growing awareness of the relevance of international human rights law to the prevention, response, and recovery from disasters. The International Law Commission has adopted a draft articles on the protection of persons in the event of disasters which affirms that “persons affected by disasters are entitled to an adequate and effective response to disasters, and reduction of the risk of disasters with respect for their human rights.”⁷⁹ The United Nations Human Rights Council (HRC) devoted a special session to human rights issues arising from the Haitian earthquake of 2010. However, none of these legal documents explicitly refer to gender vulnerability or the protection of women’s rights. About climate change, in 2011 the HRC drafted another resolution on climate change and human rights that referred explicitly to gender.⁸⁰

There are many entry points for the interlink age between human rights law, gender, climate change, and disasters. Due to the gendered effect of climate change, human rights that are at risk or are violated through climate change policy can be used to protect women’s rights. Applying a human right lens to protect gender interests in the climate- disaster context can operate in multiple ways. An interesting hypothetical to be looked at is thus, imagine, in the wake of extreme drought caused by climate change, the adaptation policies envisaged by the government cover concerns of change in agricultural patterns, compensation, and risk insurance. Herein, if the adaptation policies do not account for the unique vulnerabilities of women about adequate participation in decision making, access to financial assistance to cover costs for food, health, *etc.*, the situation could leave the women more vulnerable. A government, in such circumstances, would have its policies unable to stand the threshold of effectiveness and is violative of the basic principle of non-discrimination and equality as it should have paid particular attention to the needs of a state’s most vulnerable citizens, despite adopting adaptive measures.

The work of CEDAW gathers particular prominence in this context. In 2009, the committee requested members to ensure gender responsiveness in climate change and

76 *Id.*, art 7.

77 *Id.*, art 14(g).

78 *Id.*, art 14(h).

79 International Law Commission, Draft Articles on the Protection of Persons in the event of Disasters (Geneva, Switzerland: International Law Commission 2016).

80 United Nations Human Rights Council, Human Rights and Climate Change. Office of the Commissioner for Human Rights 2011).

disaster management, emphasizing on women's participation.⁸¹ In 2018, the committee released the much-awaited general recommendation no. 37 on gender-related dimensions of disaster risk reduction in the context of climate change.⁸² The general recommendation is the first document adopted by a human rights treaty body that directly and authoritatively interprets the agency between international human rights obligations and climate change, striving for an integration of the former into the latter. It further highlights the need to ensure that 'mitigate and adapt' climate change policies be designed and implemented in a gender responsive manner by the human rights principles of substantive equality and non-discrimination, participation and empowerment, accountability, access to justice, transparency and the rule of law.⁸³ Though the general comments are soft law, they nevertheless are significant in arriving at an authoritative interpretation of treaty norms. It is hoped that, that the recommendation would provide the much-needed impetus in facilitating a more consistent and human rights-based response by the state parties to envisage a framework entrenched in gender sensitivity and responsiveness to address climate change and manage the disaster.

In the context of India, the country is a signatory to CEDAW⁸⁴ and other international human right instruments. In addition, the Constitution of India, strongly entrenched in the principle of equality and non-discrimination provides for specific affirmative actions for women.⁸⁵ These are the core principle highlighted by the General comment of CEDAW to elevate the concerns of women to the centre stage of the climate-disaster policy framework. Also, the National Policy for Women 2016 has also emphasized the adoption of gender-responsive measures to deal with climate change and disaster management with specific reference to participation and empowerment.⁸⁶ It is sufficient to conclude that the Indian legal framework has enough hooks and mechanisms to incorporate gender concerns. It, thus, is hoped that the country evolves a participatory bottom-up approach involving local communities in identifying specific gender challenges which could lead to more sustainable and appropriate outcomes, to which effect, a strong emphasis on gender awareness, substantive analysis, and inclusive engagement is necessary.

81 CEDAW, Statement of the CEDAW Committee on Disaster Risk Reduction, Gender and Climate Change, (2009), *available at*: [https://www.ohchr.org/documents/HRBodies/CEDAW/Statements/Statement Gender Climate Change.pdf](https://www.ohchr.org/documents/HRBodies/CEDAW/Statements/Statement%20Gender%20Climate%20Change.pdf) (last visited on Dec.10, 2019).

82 CEDAW, General Recommendation no. 37: Gender-related Dimensions of Disaster-Risk Reduction in the Context of Climate Change, (Geneva, Switzerland: CEDAW 2018).

83 *Ibid.*

84 B. Khanna, "CEDAW and the Impact on Violence against Women in India"¹⁶ *UW B Policy Jour*1-12 (2013).

85 Constitution of India, Government of India (1950).

86 Ministry of Women and Child Development, National Policy for Women 2016: Articulating a Vision for Empowerment of Women (Ministry of Women and Child Development 2016).

Litigation and gender mainstreaming

One of the strongest mechanisms through which the implementation of the human rights paradigm of gender mainstreaming could be affected is by strong litigation-based access to justice legal apparatus. Litigation could be used to highlight the multiple human right violations as a result of climate change and disaster, with a mandate to further human right protection by espousing states inaction and consequent violations of human rights. At the national level, in the wake of the L'Aquila earthquake, the judiciary in its inspection of causative factors had observed the need for authorities to be cognizant of environmental risk in the discharge of their duties.⁸⁷ In India, the concept of public interest litigation (hereinafter PIL) has been instrumental in strengthening the core of fundamental rights and broadening the implementation of human rights through a collective perspective in environmental protection.⁸⁸

In *Bipinchandra*,⁸⁹ the court dealing with the rehabilitation of the victims of the Bhuj earthquake, held that right to relief and rehabilitation is a guaranteed right under article 21 of the Constitution of India.⁹⁰ The case of *Gaurav Kumar Bansal*,⁹¹ highlighted the unprecedented flood and landslide disaster that occurred in the State of Uttarakhand in 2013, with the Supreme Court directing the centre to formulate a national plan for disaster management. The court also directed the National Disaster Management Authority to write to chief secretaries of states, to re-invigorate state and district level disaster management, strengthening implementation.

The petitioners in *Vasundhara Pathak Masoodi v. Union of India*⁹² highlighted the disastrous consequences of the 2014 floods in the Jammu and Kashmir. The petition alleged that the government violated its duties by not taking adequate measures to ensure the immediate rescue, relief, and rehabilitation of the affected persons. The court issued 'interim orders' concerning how the relief and recovery operation is to be carried out. The petition filed by *Swaraj Abhayan* in the context of drought, emphasized the right to

87 Cartlidge, Edwin. "Italy's Supreme Court Clears L'Aquila Scientists for Good" *Science Magazine* (Nov. 20, 2015), available at: <https://www.sciencemag.org/news/2015/11/italy-s-supreme-court-clears-l-aquila-earthquake-scientists-good> (last visited on Dec. 10, 2019).

88 Gitanjali N. Gill, "Human Rights and the Environment in India: Access through Public Interest Litigation" 14 *Environ't L. J.* 200-218 (2012). See also, Stellina Jolly, "Application of Solar Energy in South Asia: Promoting Intergenerational Equity in Climate Law and Policy" 7 *IJPL* 20-24(2014). Stellina Jolly, "A Legal Analysis of Linking Human Right Approach to Access to Water and Sharing of Trans-Boundary Rivers in South Asia" in B. Kaul, and A. Jha (eds) *Shifting Horizons of Public International Law* 135-157 (New Delhi: Springer 2018).

89 *Bipinchandra J. Divan v. State of Gujarat* 2002 AIR 2002 Guj 99.

90 Stellina Jolly "Interrogating the Pedagogy of State Responsibility and Individual Rights in Disaster Law" in A. Singh(ed) *Disaster Law: Emerging Thresholds* 143-159 (London: Routledge 2017).

91 *Supra* note 23 at 732.

92 *Vasudha Pathak Masoodi v. Union of India* 2014, SCC Online 705.

effective governance, ensuring accountability. The Supreme Court went into great detail on the status of implementation of Disaster Management Act, 2005 and directed the Central Government to establish a National Disaster Mitigation Fund (NDMF).⁹³This direction was given although section 47 of the Disaster Management Act, 2005 uses the term ‘may’ for the creation of the fund. The court interpreted the term ‘may’ as not giving the government absolute discretion in setting up the fund but as only indicating some extended timelines.

One awaits the decision of the National Green Tribunal in *Riddhima Pandey v. Union of India*,⁹⁴ where the plaintiff, a nine-year-old, asks of the government, several vital questions. The petition asks the court to order the government to include climate change in the issues considered by the environmental impact assessments, the preparation of a national greenhouse gas inventory and the preparation of a national carbon budget, to help assess emissions for particular projects. Whilst the petition highlights the vulnerability of children as a part of its submissions, one trusts the judgment to pave the way towards the identification of other vulnerable groups, including a particular emphasis on gender-based vulnerability. The judicial statements reveal an active role played by the judiciary in implementing the disaster management laws and to ensure the minimum protection to people during the disasters. The cases also reveal that judiciary has reacted with sensitivity to the effects of climate change and disasters on human rights to provide an actionable rights violation. However, none of these cases has highlighted gender-based discrimination as a root cause for the violation of rights. This is not to be interpreted as the lack of attention paid by the judiciary to the gender causes. The fact is that most of the petitions were drafted in general language and did not highlight the special concerns of women and get subsumed with other vulnerable groups in society. For Instance, in a case involving displacement as a result of dam construction in the tributary of Narmada, the court stated that women who are included in the definition of “displaced persons” will be given those benefits under the rehabilitation policy which are to be given to “displaced persons”. It is this thread the strong environmental movements should pick up and highlight though the mechanisms of litigation.

A review of jurisprudence shall indicate a shift in the judicial attitude, will be required to protect the rights of marginalized women. Observations of the court, though complex and often intertwined with the cognizance of other vulnerable group, has seldom stressed upon the concerns of women, though there are certain examples. The apex court has observed, in cases of mining, the obligation of the local authorities to

93 *Swaraj Abhiyan v. Union of India* 2016(12) SCALE 481.

94 ELAW.org. (2017, March); *Riddhima Pandey v. Union of India*, available at: <https://www.elaw.org/petition-riddhima-pandey-v-unionindia-march-2017> (last visited on Dec. 30, 2019).

pay heed to the welfare of women.⁹⁵ It has further, taken note of the role of women self-help groups, organized for the protection of the environment. Individual and community narratives emerging through litigation could prove to be a powerful tool in implementing, refining and crystallizing gender mainstreaming at all levels of climate-disaster management.

V Conclusion

The climate change nemesis, coupled with the frequency and ever-increasing intensity of disasters, create implications not least on an environmental level. Environmental disasters, snowball into social disasters, often putting an enormous burden on the development trajectory of the country. Integrating a gender-sensitive aspect to the entire phase of climate change-disaster management is one of the most efficient mechanisms to address not only disasters but also to promote overall development. Gender-sensitive development interventions, considering the intricate socio-economic reasons of gender disparity, appear increasingly efficient in synthesizing a framework to increase the adaptive capacity of communities to deal with disasters. Climate change and disaster legal framework at the national level has incorporated gender concerns, and this can provide excellent entry points for bringing a holistic approach to gender mainstreaming. A right based framework and adequate access to justice mechanism to promote environmental justice could be instrumental in crystallizing an all-inclusive gender mainstreaming and putting it into effective practice. For an effective right based gender mainstreaming mechanism the core basic principles should be followed carefully: participation and inclusion, non-discrimination and accountability.

As there are no one-size-fits-all approaches, any adoption of gender perspective cannot take a uni-dimensional approach with global and national focus and strategies. A successful disaster response mechanism has to be locally driven, and the special knowledge and perspectives of women at the grass root level has to find its integration in all phases of disaster governance. Such a locally driven program can address the internal differences in gender disparities within and between communities and region. When local stakeholders and resources lead disaster management, new local capacities and resources will emerge. Further, a locally driven program will have better receptivity among the people as based on socio-economic practices.

The incorporation of the special local knowledge acquired by the women through the generation and their participation could be catalytic in evolving a disaster management policy, which is accepted and truly sustainable. The first step in this direction has to be the active involvement of the Panchayat Raj institutions in disaster management. While the aim of the policies and strategies will be to reduce the vulnerabilities and increase the coping abilities of the women, efforts should be undertaken to address the primary

95 *Samaj Parivartan Samudaya v. the State of Karnataka* 2016 SCC 498.

socio-political and economic reasons for the inequalities and seek a mechanism to redress the factors contributing to the inequalities/ vulnerability. This is significant given the fact that the international community, through the millennium development goals and the sustainable development goals have recognized women's equality and empowerment as the primary means to promote the development and achieve all other goals.