

UNDERSTANDING POLYCENTRIC CLIMATE CHANGE : ALTERING THE DISCOURSE FROM HUMAN RIGHTS TO RIGHT TO LIFE

Abstract

The climatic and weather conditions in a particular area play a crucial role in shaping various aspects of a community's lifestyle, economy, architecture, shelter, and culture. The consequences of climate change are far-reaching, disrupting access to essential resources and undermining the enjoyment of human rights. As a polycentric problem, climate change encompasses environmental, economic, social, and ethical dimensions, requiring cooperation and coordination among multiple actors and decision-making centres. This research aims to explore the intricate nature of the climate change problem and emphasize the need to understand climate change as a factor violative of fundamental right to life. By recognizing the connection between climate change, human rights and right to life, efforts can be made to better address the needs of climate-vulnerable populations in India and around the world, promoting the balance of multiple goals such as reducing emissions, protecting the environment, promoting economic growth, and ensuring social equity.

I Introduction

ALTHOUGH THE United Nations¹ and national governments recognize that climate change can impact human rights,² there is less agreement on the corresponding obligations of governments and private entities to address this issue. Over the past few decades, there has been much debate on the relationship³ between human rights and the environment. Climate change is a significant threat to human rights, endangering essential rights such as health, food, shelter and an adequate standard of living for people and communities worldwide.

In 2015 Flavia Pansieri noted that⁴ “Human-induced climate change is not only an assault on the ecosystem that we share. It also undercuts the rights to health, to food,

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- 1 M. Grady Jackson, Gwen Parker, Sanjay Ranchod and Tauna Szymanski, “Foreword: Inside the 2000 United Nations Climate Change Conference” 20 *Stan Envtl L J* (2001) at [xiii].
 - 2 John H. Knox, “Linking Human Rights and Climate Change at the United Nations”, 33 *Harr. Envtl. L. Rev.* 477 (2009).
 - 3 Gudmundur Alfredsson and Alexander Ovsioyk, “Human Rights and the Environment” 60 *Nordic J Int'l L* 19 (1991).
 - 4 28th Session of the Human Rights Council, Address by Flavia Pansieri United Nations Deputy High Commissioner for Human Rights to the Full-Day Discussion on Human Rights and Climate Change. Available at: <https://www.ohchr.org/en/statements/2015/03/address-ms-flavia-pansieri-united-nations-deputy-high-commissioner-human-rights> (last visited on Dec. 10, 2023).

to water and sanitation, to adequate housing, and for the people of small island states and coastal communities even the right to self-determination.” Hence it is increasingly pertinent to acknowledge the connection between climate change and human rights in climate-related activities and processes.

The climatic and weather conditions in a particular area play a crucial role in shaping various aspects of a community’s lifestyle, economy, architecture, shelter, and culture. These conditions have a direct influence⁵ on factors such as food production, cultural practices, health and well-being, natural resource utilization, and the development of industries, transportation, and trade within a region. The consequences of climate change on human life are far-reaching and difficult to comprehend fully. When the climate is disrupted, it has the potential to cause significant disruptions and impacts. The present era, is witnessing first-hand effects of climate change that future generations will inevitably have to endure.

The harmful effects of climate change include sudden-onset events that directly threaten human lives and safety, as well as more gradual forms of environmental degradation that will undermine access to essential resources such as clean water, food, and other key resources that support human life. Consequently, climate change will significantly affect the enjoyment of human rights for individuals and communities worldwide.⁶ The objective of present paper is to explore the nature of climate change problem, its intricacies and to state that time has arrived to interlink and understand climate change as a right to life⁷ to better attend the needs of climate vulnerable population in India and all around the world.

II Climate change as polycentric problem

Climate change is a global issue⁸ that affects every country, and there is a growing consensus among scientists that it poses significant risks to human societies and natural systems. Many efforts are underway to reduce greenhouse gas emissions,⁹ energy regulation¹⁰ and mitigate the impacts of climate change. But these efforts will be successful only when the true elements of the problem are identified. As a problem it is environmental problem, economic problem, social problem and ethical problem

5 Simon Dietz, “The Impacts of Climate Change: Perspective from the Stern Review” (2007) 13 *Brown J World Aff* at 173.

6 Amy Sinden, “Climate Change and Human Rights”, 27 *J. Land Resources and Env’tl. L.* 255 (2007).

7 Sam Adelman & Bridget Lewis, ‘Rights-Based Approaches to Climate Change’ 7 *TEL* 9(2018).

8 John Gummer, “Climate Change: Global Threat, Global Challenge” 15 *Nat Resources and Env’t* 156 (2001).

9 Alan Carlin, “Global Climate Change Control: Is There a Better Strategy than Reducing Greenhouse Gas Emissions” (2007) 155 *U Pa L Rev* 1401.

10 Ranidipa Ghosh, “Renewable Energy: Recourse to Control Human Induced Climate Change” 7 *GNLU JL Dev & Pol* 105(2017).

faced by the entire world. When all these four characteristics of climate problem are intertwined it evolves as a polycentric issue. Simply said polycentricity of climate change means that its control will require balancing multiple goals, such as reducing emissions, protecting the environment, promoting economic growth, and ensuring social equity. Achieving these goals requires cooperation and coordination among multiple actors and decision-making centres.

Climate change and its polycentric impacts on India

Climate change can lead to significant economic impacts¹¹ such as damage to infrastructure, decreased agricultural productivity, increased healthcare costs, and loss of tourism revenue. In the bigger picture, climate change is expected to have significant economic impacts on India,¹² a country that is already vulnerable to natural disasters and environmental stressors.

Firstly, climate change is expected to reduce agricultural productivity, particularly in regions that are already vulnerable to water scarcity and drought. A study by the Indian Council of Agricultural Research¹³ found that a 2^o C increase in temperature could lead to a 4-5% reduction in crop yields, with the greatest losses expected in rain-fed crops such as maize, sorghum, and millet this could lead to food shortages, rising food prices, and increased poverty and inequality. *Secondly*, India is already a water-stressed country,¹⁴ with uneven distribution of water resources across different regions. Climate change is expected to exacerbate water stress, with some regions experiencing more frequent and severe droughts, while others face more frequent and severe floods. A report by the World Bank¹⁵ estimated that the economic impact of water scarcity in India could be as high as 6% of GDP by 2050. This could lead to significant economic losses in agriculture, industry, and tourism.

Thirdly, India has a long coastline, and many of its major cities and economic centres are located in coastal regions. Climate change is expected to lead to sea-level rise, which could increase the risk of flooding and storm surges, damage coastal

11 Richard Cunningham, David Terry *et. al.*, “Climate Change and Economy: Impacts, Risks, and Strategic Thinking for the Future” 44 *Can.-U.S. L.J.* 72 (2020).

12 Vaibhav Chaturvedi, “The Costs of Climate Change Impacts for India: A Preliminary Analysis”, (2015) New Delhi: Council on Energy, Environment and Water, *available at*: <https://www.ceew.in/publications/costs-climate-change-impacts-india> (last visited on Nov. 10, 2023).

13 A.R Sharma and R Kumar and Singh, “Climate change and Indian agriculture: Impacts, adaptation and mitigation.” Indian Council of Agricultural Research (2011) New Delhi.

14 Jeet Singh and Jasleen Kaur, “India’s Water Crisis: Challenges, Solutions and Barriers” *Rajiv Gandhi Institute for Contemporary Studies*, (2019), *available at*: http://www.rgics.org/wp-content/uploads/Working-Paper_Indias-Water-Crisis.pdf (last visited on Dec. 1, 2023).

15 World Development Report 2006: Equity And Development, *available at*: <https://documents1.worldbank.org/curated/en/435331468127174418/pdf/322040World0Development0Report02006.pdf> (last visited on Dec. 1, 2023).

infrastructure, and threaten the livelihoods of millions of people who depend on coastal ecosystems. The rising sea levels and variable monsoon patterns are two of the major concerns having caused 16% GDP loss since 1991. More than four million people were displaced due to disasters in India 2019.¹⁶ About 35 million people will be at risk due to annual coastal flooding by the middle of the Century,¹⁷ and the number can go up to 45-50 million by the end of the Century. The risk is getting higher for coastal cities like Mumbai. The sea level damages in Mumbai alone by 2050 are pegged 49-50 dollars billion and could increase up to three-fold by 2070.¹⁸

Fourthly, India is the world's third-largest energy consumer,¹⁹ and energy demand is expected to continue to rise in the coming decades. As, climate change is expected to lead to increased temperatures, which could increase demand for cooling and air conditioning. This could increase energy demand and exacerbate air pollution, which is already a significant health and economic hazard in many Indian cities. A study by the Energy Policy Institute at the University of Chicago²⁰ found that air pollution from coal-fired power plants and other sources causes deep loss of life expectancy. *Fifthly*, Climate change is expected to have significant impacts on public health in India,²¹ particularly through the spread of vector-borne diseases such as dengue fever and malaria. This will increase healthcare costs and reduce workforce productivity, leading to significant economic losses.

Lastly, above said deliberations illustrate how climate change is likely to exacerbate existing social and economic inequalities in India. The poor and vulnerable sections of the society are likely to be the most affected, while the rich and powerful may be better able to adapt to the changing conditions. This can lead to a loss of social cohesion and trust, with implications for the long-term sustainability of the Indian society.

III Climate change problem and appeal of human rights

AR5 found that “people who are socially, economically, culturally, politically, institutionally or otherwise marginalized are especially vulnerable to climate change

16 Outlook Business, 'Rising Sea Level Could Cause \$50 Billion Loss to Mumbai, Says UN Body On Environment', (2022), *available at*: <https://www.outlookindia.com/business/climate-change-could-cause-50-billion-loss-to-mumbai-alone-says-un-body-on-environment-news-184760> (last visited on Dec. 10, 2023).

17 *Ibid.*

18 *Ibid.*

19 World Energy Outlook Special Report, India Energy Outlook 2021, *Available at*: <https://www.iea.org/reports/india-energy-outlook-2021> (last visited on Dec. 10, 2023).

20 Ken Lee and Michael Greenstone, Air Quality Life Index | September 2021 Annual Update. *Available at* https://aqli.epic.uchicago.edu/wp-content/uploads/2021/08/AQLI_2021_Report.EnglishGlobal.pdf (last visited on Dec. 1, 2023).

21 S.K. Dash, Akhilesh Gupta et al., (ed.) Climate Change and Human Health, A Report of the DST's National Knowledge Network Programme on Climate Change and Human Health, *available at* : dst.gov.in/dst-strives-climatechange (last visited on Dec. 1, 2023).

and also to some adaptation and mitigation responses.” Polycentricity of climate change as studied above, unveils it as multiscale and multidimensional problem. Being and environmental, economic, social and ethical problem as a phenomenon it is a problem which in any given scenario will have different actors having different interests, preferences, and goals, and there is no single actor with the authority or ability to control or coordinate their actions. Climate change involves a large number of actors, including governments, businesses, civil society organizations, and individual citizens. Each of these actors has a role to play in addressing climate change, whether through reducing emissions, investing in renewable energy, or advocating for policy change. Polycentricity of climate change seeks multiple, independent decision-makers who are not subject to a centralized authority. It requires collaboration and cooperation among a wide range of actors and decision-making centres, as well as innovative and context-specific policy solutions that take into account the multiple goals and scales involved.

Altogether, the polycentric nature of climate change makes it a complex and challenging problem to address and requires a polycentric policy instrument. From this angle governments have a responsibility to respect, protect, and fulfil basic human rights violated by the human rights, while individuals and civil society have a role to play in holding governments accountable for human rights violations, advocating for the realization of human rights and participating constructively for realizing and securing rights for all. It is often claimed and appealed that by recognizing the human rights dimensions of climate change,²² policymakers can better understand the impacts of climate change on people’s lives and design policies and measures that protect and promote human rights in the face of a changing climate. Integrating human rights in climate actions will necessitate higher levels of ambition and improve mitigation and adaptation strategies by making them more effective and inclusive. A human rights-based approach²³ addresses cross cutting social, cultural, political and economic problems, while empowering persons, groups and peoples, especially those in vulnerable situations. This can make considerable contributions to climate change policies, making them less myopic and more responsive, sensitive, and collaborative.

IV Climate change and violation of human rights

Climate change is increasingly being recognized as a human rights problem²⁴ because it has significant impacts on the enjoyment of human rights,²⁵ particularly for the

22 Sofia Gruskin and Madhury Ray, “Climate Change and Human Rights: Roles, Responsibilities and Actions” 23 *Hum Rts Defender* 14(2014).

23 Daniel Bodansky, “Introduction: Climate Change and Human Rights: Unpacking the Issues” 38 *Ga J Int’l & Comp L* 511(2010).

24 Stephen Keim, “Climate Change and Human Rights” 19 *J Juris* 305(2013).

25 Gustav Lanyi, “Climate Change and Human Rights: An Unlikely Relationship” 37 *Alternative LJ* 269 (2012).

most vulnerable and marginalized populations. International law has achieved two notable accomplishments first, defining the human rights²⁶ necessary for a life of dignity, freedom, and equality. Second, establishing rules and institutions for protecting the global environment.²⁷ Initially, the relationship between these two areas of law was unclear as they were developed separately and at different times. However, in the last twenty years, it has become increasingly evident that human rights and environmental protection are fundamentally interconnected. Here are some ways in which climate change relates to violation of human rights.

Right to food

Climate change is having profound impact on agriculture and food security.²⁸ It is affecting food production and distribution systems, leading to food shortages and price increases. The right to food is recognized as a human right,²⁹ and governments have an obligation to ensure that their citizens have access to adequate and nutritious food. Article 11 of the IESCR identifies right to food,³⁰ as human rights and ensures governments responsibility. Climate change poses a significant threat to food security, affecting crops, livestock, forestry, fisheries, and aquaculture. The impact of climate change on food security can result³¹ in reduced incomes, eroded livelihoods, trade disruptions, and adverse health impacts, leading to grave social and economic consequences.

According to the Intergovernmental Panel on Climate Change (IPCC), agricultural productivity in developing countries is projected to decline by up to 50% by 2020 due to climate change. Climate change is expected to aggravate the issue of urban food insecurity in India, particularly³² among low-income groups living in informal settlements. These settlements are often situated in flood-prone and landslide-prone areas and are highly vulnerable to extreme weather events, such as wind and water hazards.

26 Juan E. Mendez, "The 60th Anniversary of the UDHR" 30 *U Pa J Int'l L* 1157(2009).

27 Pierre-Marie Dupuy, "Soft Law and the International Law of the Environment" 12 *Mich J Int'l L* 420 (1991).

28 Jonathan Verschuuren, "The Paris Agreement on Climate Change: Agriculture and Food Security" 7 *Eur J Risk Reg* 54 (2016).

29 Graham Frederick Dumas, "A Greener Revolution: Using the Right to Food as a Political Weapon against Climate Change" 43 *NYU J Int'l L & Pol* 107(2010).

30 *Ibid.*

31 Carmen G. Gonzalez, "Climate Change, Food Security, and Agrobiodiversity: Toward a Just, Resilient, and Sustainable Food System" 22 *Fordham Envtl L Rev* 493(2011).

32 Malancha Chakrabarty, "Climate Change and Food Security in India", ORF Issue Brief No.157, 2016.

Right to water

Presently, a significant proportion of the world's population,³³ some 3 in 10 people worldwide, or 2.1 billion, lack access to safe, readily available water at home, and 6 in 10, or 4.5 billion, lack safely managed sanitation, according to a new report by WHO and UNICEF. Additionally, about 884 million people do not have access to improved water sources, while 2.6 billion people lack improved sanitation facilities, and over 1.1 billion people still practice open defecation. The lack of access to safe water and sanitation has grave consequences as it is estimated that around 1.6 million people, mostly children under the age of five, die each year from diseases related to water and sanitation. Climate change is impacting³⁴ the availability and quality of water resources, particularly in regions that are already water-stressed.

The right to water is also recognized as a human right,³⁵ and governments have a responsibility to ensure that all individuals have access to safe and clean water. The 2030 Agenda for Sustainable Development, adopted by the United Nations General Assembly in September 2015, consists of 17 Sustainable Development Goals (SDGs). One of the key goals under this agenda is SDG 6, which aims to ensure universal access to clean water and sanitation and sustainable management of water resources.

This goal highlights the importance of ensuring access to safe and affordable drinking water and improving sanitation and hygiene practices for all, especially for marginalized communities. December 1979, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has reference of water within its text. Article 14(2)(h) of CEDAW provides:

States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development. (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication

Convention on the Rights of the Child. Article 24(2) states:

States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ... to combat disease and malnutrition, including within the framework of primary health care, inter alia, the application of readily available technology and through the provision of

33 The Joint Monitoring Programme (JMP) Report, Progress on drinking water, sanitation and hygiene: 2017 update and Sustainable Development Goal baselines, *available at*: <https://www.who.int/news/item/12-07-2017-2-1-billion-people-lack-safe-drinking-water-at-home-more-than-twice-as-many-lack-safe-sanitation> (last visited on Dec. 10, 2023).

34 Laura Westra, "Climate Change and the Human Right to Water" 1 *J Hum Rts & Env't* 161(2010).

35 Vicente Carlos S. Lo, "Right to Water, Right to Life" 55 *Ateneo LJ* 1042 (2011).

adequate nutritious foods and Clean Drinking Water, taking into consideration the dangers and risks of environmental pollution.

Right to health

The IPCC's Fifth Assessment Report highlights³⁶ that climate change is expected to increase the risk of injury, disease, and death due to heat waves and fires, under nutrition due to decreased food availability, lowered work capacity and productivity, and greater incidence of food- and water-borne diseases and vector-borne diseases.³⁷ Studies from WHO³⁸ suggest that globally, climate change has already been linked to approximately 400,000 premature deaths and is expected to cause an additional 250,000 deaths due to malnutrition, malaria, diarrhoea, and heat stress alone. Moreover, unmitigated climate change could lead to³⁹ a reduction of approximately 23% in average global incomes by 2100 and exacerbate global income inequality. Climate change can impact human health directly,⁴⁰ through extreme weather events or changes in temperature, and indirectly, by affecting natural systems such as agriculture, resulting in crop failures, expansion of disease vectors, and displacement of populations. These factors can contribute to increased human vulnerability to diseases, injuries, diminished mental and occupational health, and threats due to resource scarcity and population movement. Within the precincts of self-determination and sustainability the right to health is a human right,⁴¹ and governments have a duty to protect and promote the health of their citizens.

Right to shelter

Under the right to shelter, individuals should have access to safe, habitable, and affordable housing, free from discrimination. Governments are generally tasked with ensuring the realization of this right and are expected to take appropriate measures to address homelessness,⁴² provide social housing programs, and prevent forced evictions. The right to shelter is an essential element in promoting social justice and equality, as it contributes to the overall well-being and security of individuals and communities. Recognizing and protecting this right is crucial for creating inclusive societies that prioritize the dignity and basic needs of all individuals. The Universal Declaration of

36 IPCC AR5, Climate Change 2014: Synthesis Report.

37 IPCC, Climate Change 2014: Impacts, Adaptation, and Vulnerability.

38 WHO, Quantitative Risk Assessment of the Effects of Climate Change on Selected Causes of Death, 2030s and 2050s (2014).

39 M. Burke, S.M. Hsiang and E. Miguel, "Global non-linear effect of temperature on economic production", 527 *Nature*, 235-239 (Nov. 12, 2015).

40 Chuan-Feng Wu, "Challenges to Protecting the Right to Health under the Climate Change Regime" 23 *Health & Hum Rts J* 121 (2021).

41 Jonathan M. Mann, Lawrence Gostin, *et. al.* (eds.), 'Health and Human Rights' 1 *Health & Hum Rts* 6 (1994).

42 James K. II Langdon and Mark A. Kass, "Homelessness in America: Looking for the Right to Shelter" 19 *Colum JL & Soc Probs* 305(1985).

Human Rights, adopted by the United Nations in 1948, emphasizes⁴³ the right to housing as part of the broader right to a standard of living. Additionally, the International Covenant on Economic, Social and Cultural Rights, ratified by many countries, including those in the European region, explicitly recognizes the right to housing as a fundamental human right. Climate change impacts can damage housing infrastructure, particularly in areas prone to extreme weather events. Climate change-induced events such as floods, storms, rising sea levels, and droughts can lead to the displacement of communities and individuals. People may be forced to leave their homes and seek shelter elsewhere due to the destruction or uninhabitability of their dwellings.⁴⁴ This raises concerns about protecting the right to shelter for those who are forcibly displaced.

Cumulative right to a healthy environment

Climate change is degrading ecosystems and natural resources,⁴⁵ leading to a loss of biodiversity and ecosystem services. The right to a healthy environment is recognized as a human right, and governments have a responsibility to protect and conserve the environment for present and future generations. Stockholm Declaration⁴⁶ adopted in 1972 recognized that humans have the fundamental right to an environment of a quality that permits a life of dignity and well-being. Subsequently, in the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992, Principle 1 of the Rio Declaration on Environment and Development also recognized the right to a healthy environment as a fundamental human right. Further, the United Nations Human Rights Council adopted a resolution in 2012 that affirmed the existence of a right to a healthy environment and called for the appointment of a special rapporteur on the issue. In 2021, the Human Rights Council adopted another resolution recognizing the right to a safe, clean, healthy, and sustainable environment as a human right.

The right to a healthy environment has been incorporated into the constitutions of several countries, including Costa Rica,⁴⁷ Ecuador⁴⁸ *etc.* The courts in various jurisdictions have also recognized the right to a healthy environment, and the right has been invoked in a number of legal challenges.

43 Emily Ponder, “Gentrification and the Right to Housing: How Hip Becomes a Human Rights Violation” 22 *Sw J Int’l L* 359 (2016).

44 Roger Zetter and Camillo Boano, ‘Planned Evacuations and the Right to Shelter during Displacement’ 41 *Stud Transnat’l Legal Pol’y* 165 (2010).

45 Fabian Schuppert, “Introduction: Justice, Climate Change, and the Distribution of Natural Resources” 22 *Res Publica* 3 (2016).

46 Proclamation Para 1, The United Nations Conference on the Human Environment, 1972.

47 The Constitution of Costa Rica 1949, art. 50.

48 The Constitution of Ecuador, 2008, art. 74.

Supreme Court of Costa Rica⁴⁹ found that the government had violated the right to a healthy environment by granting a mining concession without conducting adequate environmental impact assessments. Inter-American Court of Human Rights⁵⁰ found that the Argentina government had violated the right to a healthy environment of the indigenous people by failing to protect them. Supreme Court of India,⁵¹ recognized the right to a healthy environment as a fundamental right under the Indian Constitution and held that the polluter must pay for environmental damage.

V Normative framework of human rights and climate change

Under the International Legal Framework UDHR⁵² is a significant document in the human rights timeline and is forever recognized as a landmark achievement. It was created by a diverse group of legal and cultural representatives from various parts of the world and was proclaimed by the United Nations General Assembly in Paris on December 10, 1948, as a shared standard of accomplishments for all nations and individuals. The Declaration outlines essential human rights that are to be safeguarded worldwide for the first time. It recognises the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.⁵³ Later the two covenants after UDHR *i.e.*, ICCPR and IESCR further enhanced the commitment of UDHR as they carried forward the mandate of human rights and complete the triad. The declaration entitles everyone with all the rights and freedoms set forth in it. It very clearly mentions that “Everyone has the right to life, liberty and security of person”. Under article 22 “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” Article 28 of UDHR ensures “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”.

Article 1 of ICCPR speaks for right to self-determination and likewise article 1 of the IESCR too speaks for self-determination. Similarly, and respectively article 3 of UDHR and Article 6 of ICCPR speak for protection and availability of the right to life. Article 11 of IESCR ensures government responsibility towards availability of adequate standard for living of which food, health, clothing and shelter are inclusive parts. The collective understanding of above legal provisions though not directly but

49 *Infinito Gold Ltd. v. Costa Rica*, ICSID Case No. ARB/14/5.

50 *Indigenous Communities Members of the Lbaka Honbat Association v. Argentina*, 2020

51 *Vellore Citizens Welfare Forum v. Union of India* on Aug, 28, 1996.

52 Hurst Hannum, “The UDHR in National and International Law”, 3 *Health & Hum Rts* 144 (1998).

53 United Nations, Universal Declaration of Human Rights, United Nations, available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited on Dec. 10, 2023).

within constructs of human rights are interconnected when we analyse prejudices of climate change impacts on human life. The UDHR, as well as the ICCPR and the IESCR, were created in response to the tragic events of World War I and II. They established human rights as a new normative order. However, climate change is different in that it represents an ongoing and impending human tragedy. Failing to address it would be a significant political failure and a failure of humanity. Climate change challenges us to think differently about what it means to live as part of an ecologically interdependent human community.

Assessing climate legal regime and human rights

Over the past three decades, it has become increasingly clear that there is a close connection between human rights and environmental protection. In fact, the two are fundamentally interdependent: a healthy environment is essential for people to fully enjoy their rights. But this relationship has not been acknowledged and addressed clearly under the 'International Climate Change Regime'. It is only in 2015 that climate change is interlinked in with human rights.

Paris Agreement acknowledges:

That climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity

But whether such acknowledgement is emphatic enough, is a matter of concern and analysis. This is for two reasons firstly, the term 'human rights' finds space only once in the entire document. Second the term human rights are placed corollary or ancillary to right to health, rights of indigenous peoples, migrants and children's, person with disabilities and right to disabilities *etc.*

This reflects that either the international concerns are either buoyant or they do not want a clear identification due to multilateralism prevalent in the international political relations and preference of trade over the environmental concerns. On the parameters of acknowledging climate change as a human right issue, the United Nations Framework Convention on Climate Change 1992 (UNFCCC) and the Kyoto Protocol (KP) do not come out strong because, altogether there is no mention of human rights anywhere in these international multilateral climate change agreements. The instrument purely misses the entire paradigm of human rights, this is reason good enough to understand why the human rights concerns with reference to climate change meet a frugal depiction.

The muted depictions of human rights in the present day international legal regime seems to create a differentiation between environmental concerns and climate change

which may further lead to dilution of or weak policy responses to a universal problem which has its genesis in the failed environmental approach and weak environmental regime both at international level and domestic level. Such is the claim because, had it not been the case climate change would not have existed at all.

The UNFCCC, the Kyoto Protocol, and the Paris Agreement at the best aim to halt the deterioration⁵⁴ of the climate system for the benefit of current and future generations. However, they do not explicitly provide protections for human rights, humanitarian aid, or remedies for individuals or communities affected by climate change. Instead, these agreements are intended to anticipate, prevent, or minimize the causes of climate change and mitigate its adverse effects through consensus-driven, welfare-based approaches among participating states.

VI Reframing the human rights policy approach and climate considerations

To be more accurate, under the umbrella of the ‘Right to Life’⁵⁵ a range of basic human rights *i.e.*, food, water, home, livelihood, health, development and self-determination are threatened. After dual world war, the above laid rights were promised by the community of the States at United Nations to their citizens, through the triad of UDHR,⁵⁶ ICCPR,⁵⁷ IESCR.⁵⁸ That promise is yet to be fulfilled and when majority of the States are struggling to fulfil them⁵⁹ the new roadblock to development and

54 Maryna Medvedieva, Iryna Sopilko, *et. al.*, (eds.), “Fragmentation and Synergies in International Climate Change Regime” 21 *J Legal Ethical & Regul Issues* 1(2018).

55 Ana Beridze, ‘The Right to Life in the Context of Climate Change’ (2021) *J Const L* 187 (2021).

56 UDHR art. 3 Everyone has the right to life, liberty and security of person. Art. 8 Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. *Available at*: Universal Declaration of Human Rights | United Nations (last visited on Dec. 10, 2023).

57 ICCPR art. 6(1) Every human being has the inherent right to life. Art. 1(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development, *available at* [cpr.pdf \(ohchr.org\)](https://www.ohchr.org/) (last visited on Dec. 10, 2023).

58 IESCR 1 reads: All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Art. 2(1) Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures, *available at*: International Covenant on Economic, Social and Cultural Rights | OHCHR (last visited on Dec.20, 2023).

59 Lucas Kitzmueller, Brian Stacy and Daniel Gerszon Mahler, “Are we there yet? Many countries don’t report progress on all SDGs according to the World Bank’s new Statistical Performance Indicators”, Aug. 10, 2021, World Bank Blog. *Available at*: <https://blogs.worldbank.org/opendata/are-we-there-yet-many-countries-dont-report-progress-all-sdgs-according-world-banks-new> (last visited on Dec. 10, 2023).

peace in the shape of anthropogenic climate change has arrived. The limited attention given to human rights in the context of climate change can be partly attributed to the challenges of multilateral diplomacy, hinder the adoption of more robust measures. As a result, the current approach may fall short in addressing the full extent of the harm caused by climate change. The complexity of global climate change and the disagreements surrounding its causes and effects have made it challenging to establish a comprehensive system of international climate governance. However, what has received less attention is how climate change highlights the disconnects within and between international environmental law and other areas of international law.

Climate change can be seen as a catalyst for uncovering and addressing the institutional deficiencies and disconnections that have hindered efforts to create integrated systems of international law and policy. While the interconnection between environmental problems and other legal matters is not a new concept, the failure to acknowledge these connections in the context of climate change undermines the effectiveness of existing agreements and limits the international community's ability to find solutions to new challenges.

To address these issues, it is crucial to recognize and integrate the interconnections between environmental concerns and other areas of international law. This will require a coordinated and collaborative effort to develop more comprehensive and effective legal frameworks that can address the complex challenges posed by global climate change.

VII The Human rights flow from the right to life

The impact of climate change is raising concerns about the effectiveness and adaptability of social and legal systems. It calls for a comprehensive and strategic approach to utilize the rule of law in addressing the causes and consequences of climate change.⁶⁰ Despite the presence of various legal and administrative institutions tasked with implementing both voluntary and binding environmental regulations, there have been difficulties in achieving collaboration and action among stakeholders, which is crucial in tackling urgent climate change challenges.⁶¹ The international climate law, which is built upon the foundation of emphasizing principles such as intra and intergenerational equity⁶² and common but differentiated responsibilities within the framework of international rule of law, is currently experiencing a state of change and uncertainty.⁶³

60 Cinnamon Carlarne, Climate Change, Human Rights, and the Rule of Law, 25 *UCLA J. Int. L. Foreign Aff* 11 (2020).

61 Daniel Bodansky, *The Art and Craft of International Environmental Law* (Harvard University Press, 2010).

62 Jacqueline Hoswell, "Climate Change and the Voiceless: Protecting Future Generations, Wildlife, and Natural Resources" 61 *Nat Resources J* 157 (2021).

Despite intensification of climate change issues and when vast human rights challenges are laid bare, the efforts to challenge and control climate change have faltered.⁶⁴ The safe climate is vital to the right to a healthy environment and is of absolute necessity to human life and wellbeing.⁶⁵ Though environmental rights are incrementally finding common space in constitutions around the world, this idea is still young. We need to learn more about the impact of integrating environmental rights into national systems, shaping substantive outcomes and rule of law.⁶⁶ For this new learning we need to understand that there is necessity of interlinking recognized human rights and the emerging concept of right to a healthy and environment. This will generate closer links between human rights and climate governance.

Finding solutions for better climate change policy and governance

The question of whether such interlinking will support the development of a new understanding of human rights with specific reference to ‘human right to a healthy environment’, or do we simply the better institutional coordination is still up for debate and requires further investigation. As per human rights understanding it is important for governments to recognize and protect the rights of those most vulnerable to the impacts of climate change, such as marginalized communities and indigenous peoples, who often have limited access to resources and decision-making power.

This requires need to develop proactive policies and programs through the strengthening of legal frameworks that ensure that these rights are respected and upheld. The right to life narrative⁶⁷ is a constructive, purposive, and harmonious understanding of human rights that encompasses all dimensions of human rights. As climate change is going to violate basic human rights of every individual in one way or the other, the right to life narrative can help us better understand climate change as a human rights issue and take prudent steps towards mitigation and adaptation.

63 Eloise Scotford, *Environmental Principles and the Evolution of Environmental Law*, (Oxford: Hart Publishing, 2017).

64 John H. Knox, *Human Rights Principles and Climate Change*, (Oxford Handbook of International Climate Change Law, 2017).

65 David R. Boyd (Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment), Rep. on Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, U.N. Doc. A/74/161, (last visited on Dec. 10, 2023).

66 Chris Jeffords and Joshua C. Gellars, “Constitutionalizing Environmental Rights: A Practical Guide”, 9 *J. Hum. Rts. Prac.* (2017).

67 Svitlana Kravchenko, “Right to Carbon or Right to Life: Human Rights Approaches to Climate Change”, 9 *VT. J. Envtl. L.* 513 (2008).

Understanding right to life as prospective principle towards a workable climate policy

Although the linkages between the environment and human rights have been debated for years,⁶⁸ it is widely recognized that a clean, healthy, and functional environment is integral to the enjoyment of human rights.⁶⁹ Therefore, the international community has united through Multilateral Environmental Agreements⁷⁰ (MEAs) like UNFCCC and Paris Agreement to prevent behaviours that harm the planet and its residents and protect human rights. Consequently, environmental protection and human rights principles can be incorporated into domestic environmental laws and MEAs to strengthen them and contribute to the ongoing realization of human rights.⁷¹

Climate change in itself is an outcome of the failure of international environmental law or domestic laws but this does not mean the end of either the international environmental law framework or the efforts to combat climate change. Recognizing the limitations of this relationship allows us to make the most effective use of international environmental law to tackle climate change and other environmental challenges. It also prompts us to re-evaluate our approach to addressing climate change in the future.⁷² Ensuring the fundamental right to life is the converging point in safeguarding human rights. Consequently, the architects of the UDHR accorded paramount importance to safeguarding human life and explicitly acknowledged the universal entitlement to the right to life. In 1948, the United Nations endorsed the UDHR, while reaffirming this principle through the ICCPR in 1966. Within the scheme of international law right to life has been recognized as basic human right since inception. The articles 3,6 and 11 of UDHR, ICCPR and IESCR respectively unite on the axis of right to life which is central to the jurisprudence of human rights in various national and regional narratives in within the four walls of the ‘modern constitutions’ and precedents from the apex court in various domestic disputes.

All the human rights in special context to Indian jurisprudence seem to flow from the ‘Right to Life’ as a principal doctrine. Article 21 of the Indian Constitution states that, “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The apex court of India has widened the definition of

68 Janusz Symonides, “Human Right to a Clean, Balanced and Protected Environment” ‘20 *Int’l J Legal Info* 24.

69 Noralee Gibson, “The Right to a Clean Environment” (1990) 54 *Sask L Rev* 5(1992).

70 Markus Vordermayer, “The Extraterritorial Application of Multilateral Environmental Agreements”, 59 *Harr. Int. L.J.* 59 (2018).

71 Svitlana Kravchenko, “Right to Carbon or Right to Life: Human Rights Approaches to Climate Change” 9 *VT. J. Emt. J.* 513 (2008).

72 Cinnamon Carlarne, “Delinking International Environmental Law and Climate Change” 4 *Mich. J. Emt. L. and Admin. L.* 1 (2014).

article 21 of Constitution of India Act, 1950 by incorporating the aspect of right to clean environment.

In the case of *Subhash Kumar v. State of Bihar*,⁷³ the Indian Supreme Court interpreted article 21's "right to life" provision as encompassing the right to a clean environment. The court stated that the right to life is a fundamental right under the Constitution and includes the right to enjoy pollution-free water and air for a fulfilling life. Citizens have the right to seek relief through the Constitution to address water or air pollution that may harm the quality of life. The decision's implications are significant when applied internationally, especially in countries that recognize the right to life in their constitutions.

The Indian courts' leadership in recognizing environmental rights is noteworthy, especially in light of the Stockholm Declaration because the Indian judiciary has pioneered the idea of interlinking environmental concerns with right to life in the similar way as that of the declaration which reads as following:

Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights - even the right to life itself.

If the Indian interpretation is applied globally, the explicit right to a clean environment could potentially become customary law. Providentially the understanding is gathering support internationally in various countries for example *Urgenda Foundation v. State of the Netherlands*.⁷⁴ In the present case a Dutch environmental group, the Urgenda Foundation, and 900 Dutch citizens in the year 2015, sued the Dutch government to require it to do more to prevent global climate change citing right to life which was accepted by the Hague Court of Appeal in 2018. Despite wide acknowledgment of Urgenda case the right to life narrative is not finding its place in the international discourse, which it actually deserves and is needs to be adopted sooner than later.

VIII Conclusion

The discussion highlights climate change as an unparalleled human security challenge and acknowledges deficiencies in the current international approach. While there is

73 AIR 1991 SC 420.

74 [2015] HAZA C/09/00456689.

widespread agreement on the importance of integrating human rights into policy measures, the practical implementation of human rights in a meaningful, legal manner presents significant challenges. Despite the consensus on the urgency of addressing climate change, proposed solutions vary considerably. Bridging the substantial gap in understanding is paramount, as perspectives on climate change differ greatly. The consensus to mitigate climate change challenges is clear but the solutions are non-convergent. To resolve climate change problem there is still a large gap to be fulfilled as major understanding with reference to climate change is differential. There exists a dichotomy of climate issues and environmental issues, whereas both are the side of the same coin i.e., Unsustainable Development. This dichotomy requires a solution. Resolving this dichotomy is crucial, and the Right to Life emerges as a potential guiding principle for achieving a balanced approach to climate action.

The Stockholm Declaration of 1972 holds a significant place in history as the first global recognition of the environmental crisis, predating the acknowledgment of climate change and its association with the right to life. To ensure a comprehensive and just discourse on climate change, it is imperative to prioritize the right to life as the primary lens through which to study and resolve climate-related issues. The deviation from the right to life narrative following the Stockholm Declaration must be rectified. Recognizing climate change as a polycentric problem emphasizes the necessity for cooperation and coordination among diverse stakeholders and decision-making centres. Addressing the multifaceted dimensions of climate change, including environmental, economic, social, and ethical aspects, requires holistic approaches that integrate various perspectives and expertise.

By acknowledging the interconnectedness of climate change, human rights, and the fundamental right to life, efforts can be focused on addressing the needs of climate-vulnerable populations. This approach ensures that climate action is not only environmentally sound but also equitable and just, promoting the well-being of present and future generations. Central to this endeavour is the recognition that climate change infringes upon the fundamental right to life, necessitating urgent action to mitigate its impacts and protect human well-being. Conclusively, addressing climate change is not merely a matter of environmental conservation but a fundamental issue of human rights and global justice. By recognizing the interconnectedness of climate change, human rights, and the right to life, we can better understand the complexities of this challenge and work towards solutions that promote the well-being of present and future generations. Through concerted efforts and collective action, we can strive to achieve a more sustainable, equitable, and resilient world for all.

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