

2023

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Dr. Pooja Sangwan

Recommended Citation

Dr. Pooja Sangwan, 'India's Response to International Law and Policy Framework on Global Warming and Ecological Sustainability' (2023) 2 IJHRLR 181-197.
Available at www.humanrightlawreview.in/vol-2-issue-6/.

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INDIA'S RESPONSE TO INTERNATIONAL LAW AND POLICY FRAMEWORK ON GLOBAL WARMING AND ECOLOGICAL SUSTAINABILITY

Dr. Pooja Sangwan¹

ABSTRACT

In the past few decades, India has responded with various policy developments and regulations over the matter of global warming environmental protection and various initiatives launched for ecological sustainability in accordance with Sustainable Development Goals 2030. After the Stockholm conference, the major attention of the nation was on global environmental politics which was further regulated with various principles as a cornerstone for international environmental law and its development. In this research paper, the author has discussed some of the crucial aspects of the environmental justice system in India and how the preamble, directive principle of state policies, fundamental rights, other aspects of judicial activism, and major legal principles hold the key structure of our environment protection. The author has also observed some of the major international policy frameworks which were formulated for the protection and development of climate change along with India's major significance upon climate change and the programs initiated for the sustainability of climate with special reference to the greenhouse effect and global warming. The author has also reviewed landmark cases that have played a vital role in developing international law and policy regulations for the protection and implementation of policies and regulations.

KEYWORDS

Climate Change, Sustainability, Ecological, Protection, International Law.

¹ Assistant Professor, Department of Law, Maharaja Surajmal Institute, Janakpuri Delhi (GGSIPU).

I. INTRODUCTION

The environment was earlier treated as a free entity and any individual or any organization was free to use the resources produced in the natural environment. However, the concept of ownership changed the procurement of natural resources as well as the utilization of the environment. Environmental governance and regulation emerged which was under the hands of the government of the respective nation. International bodies are also established to govern the usage and protection of the natural environment at the global level.

On the international front, the Stockholm Conference in 1972 was the first UNCHE conference to center its attention on the problem of global environmental politics. This conference formally launched global efforts to safeguard ecosystems and added it to the agenda of international law and policy. The core theme of the conference stipulated that sustainable development and environmental preservation are interwoven concepts. The Declaration contains 26 guiding principles that are regarded as the cornerstone of the current international environment. The right to a clean and healthy environment is promulgated as a basic human right.²

UN Human Rights Council also reiterated to have a healthy and clean environment as a basic tenant of human right. This was established through the adoption of resolution 48/13 on 8th October 2021. This resolution is known to be the most effective and apt for the present condition in which we are living since every aspect of our lives is determined by the environment surrounding us, and a clean environment becomes a very crucial aspect of our lives. The UN General Assembly opined that accelerating decline of natural resources due to climate imbalances and unregulated human interventions are the most pressing

² Jane Márcia Mazzarino, Luciana Turatti & Sabrina Thais Petter, *Environmental Governance: Media Approach on the United Nations Programme for the Environment*, 33 Environmental Development 100502 (2020).

issues threatening mankind. A clean and healthy atmosphere is essential for living a quality life. Only if someone has access to clean water to drink, fresh air to breathe, and other necessities will they be able to maintain their health. In light of this, it is crucial for a person to be surrounded by a clean environment in order to live a respectable and healthy life.³ Therefore, the right of the population to have access to viable ambience is a vital component of leading a respectable life, and its violation will be regarded as a breach of the fundamental right to life.

II. ENVIRONMENTAL JUSTICE SYSTEM IN INDIA

The Environmental justice in India can be traced in consonance with the Stockholm declaration and Indian Constitution adapted the changes in tune with the international obligations. The idea of social justice enshrined in the preamble imbibes the fair standard of clean environment. The Environment (Protection) Act, 1986 defines environment as “*environment includes water, air and land and the interrelationship which exists among and between air, water and land, and human beings, other living creatures, plants, micro-organism, and property*”.⁴

III. PREAMBLE

The people of India “*solemnly resolve*” to establish India as a “socialist” nation, according to the Preamble of the Indian Constitution. This shows that our Constitution entitles us to a socialist social structure. attempting to address and resolve society's problems first, rather than focusing on personal issues. What is best for the general population is crucial in this situation.

One of the biggest societal concerns is the presence of pollutants in the atmosphere that are beyond the permissible limit. It has taken a toll on

³ Barry E. Hill, Steve Wolfson & Nicholas Targ, *Human Rights and the Environment: A Synopsis and Some Predictions*, 16 Geo. Int'l Env'tl. L. Rev. 359 (2003).

⁴ The Environment (Protection) Act 1986, § 2(a), No. 29, Acts of Parliament, 1986.

the basic health thereby causing a serious threat to the very survival of human beings. Socialism is the primary goal of the Preamble, and it is the state's duty to carry it out by enacting strict regulations to protect the environment of all sorts of pollution. The state also has a duty to ensure that all living things have access to a good level of life and a pollution-free environment.

IV. DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of state policy are geared at constructing a welfare state. One of the imperatives of a welfare state is to ensure a healthy environment for its citizens. According to Article 47, it is the fundamental obligation upon the state to ensure the food security while raising the level of nutrition thereby improving the standard of living of subjects public health. Improvement of the agriculture sector and animal husbandry through innovative scientific methods is also a core component stipulated under directive principles of state policy.

The 42nd Constitutional Amendment Article 48-A was added to the Constitution with the intention of providing for enhanced environmental protection and preservation measures. It calls upon the state to derive a mechanism for forest and wildlife conservation. The state must take appropriate action to enhance the environment in addition to acting as a protectionist. Article 48 -A states that “*the state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country*”⁵. In *Kinkeri Devi v. State*⁶, “the Himachal High Court held that Articles 48-A and 51-A(g) of the Constitution require both the state and its citizens to protect the environment and work to improve it, as well as to preserve and safeguard the nation's forests, flora and fauna, rivers, lakes, and all other water resources.”

⁵ INDIA CONST. art. 48A.

⁶ *Kinkeri Devi v. State*, A.I.R. 1988 H.P. 4 (India).

V. FUNDAMENTAL RIGHTS

Part III of the Indian Constitution provides fundamental rights, which are crucial for each person's development and the intrinsic entitlement to human beings. Without the right to a healthy environment, it is impossible for a person to develop and reach their full potential. Article 21, 14 and 19 of constitution are interpreted widely to combat environmental degradation and ensure effective measures for pollution free environment.

No individual “*shall be deprived of his life or personal liberty unless in accordance with the method prescribed by law*” as stated under Article 21 of the constitution. After the *Maneka Gandhi*⁷ verdict Article 21 has occasionally been given a liberal interpretation, “It was held that Right to life under Article 21 is inclusive of right to pollution free environment. It is the basic facet of a dignified life in the contemporary scenario. The right to live with dignity includes the right to a healthy environment”. In the case of *Rural Litigation and Entitlement Kendra v. State*⁸, “the constitutional right to live in a healthy environment was first acknowledged (Popularly known as Dehradun Quarrying Case). In the first case of its sort addressing environmental concerns and ecological balance in India, the Supreme Court ordered that unlawful mining be stopped in accordance with the Environment (Protection) Act of 1986”. “The Supreme Court interpreted Article 21 of the Constitution's fundamental right to life to include the right to live in a pollution-free environment in *M.C. Mehta v. Union of India*⁹.”

The right to a good environment and the right to live in peace are the collective outcome of Article 19 and 21 of constitution. The Kerala High Court ruled in *PA Jacob vs. The Superintendent of Police Kottayam*¹⁰, “that article 19 (1)(a) with the definition of free expression does not include the

⁷ *Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 597 (India).

⁸ *Rural Litigation and Entitlement Kendra v. State*, A.I.R. 1988 S.C. 2187 (India).

⁹ *M.C. Mehta v. Union of India*, A.I.R. 1987 S.C. 1086 (India).

¹⁰ *PA Jacob v. The Superintendent of Police Kottayam*, AIR 1993 Ker 1 (India).

right to utilize loudspeakers or sound amplifiers. As a result, Article 19(1)(a) of the constitution allows for the control of noise pollution brought on by loudspeakers.”

VI. JUDICIAL ACTIVISM

A surge of environmental cases came from Public Interest Litigation under Articles 32¹¹ and 226¹² of the Indian Constitution. The Supreme Court has made significant pronouncements pertaining to environmental protection. The court noted that “the Precautionary Principle” and “the Polluter Pays Principle” are crucial components of “Sustainable Development” in *Vellore Citizens Welfare Forum vs. Union of India*¹³.”

The constitution has given Panchayats the authority to perform actions like forestry, environmental preservation, water management, soil conservation, and promoting ecological aspects at the local and village levels.

VII. LEGAL PRINCIPLES

The supreme court has introduced some of the powerful legal principles which are essential in deciding environmental law cases and for environmental jurisprudence. Some of the important principles are discussed below.

A. Polluter Pays Principle - This maxim's fundamental tenet is “*if you make a mess, it becomes your obligation to clean it up*”. The polluter pays principle, places more focus on the remedial strategy to remedy ecological harm produced by any individual or group of individuals than it does on the “*blame*”.¹⁴

¹¹ INDIA CONST. art. 32.

¹² INDIA CONST. art. 226.

¹³ *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 S.C.C. 647 (India).

¹⁴ Margaret Rosso Grossman, *Agriculture and the Polluter Pays Principle: An Introduction*, 59 Okla. L. Rev. 1 (2006).

B. Precautionary Principle - The precautionary principle is outlined in Rio Declaration Principle. In light of this, applying the precautionary principle is crucial for environmental protection. According to this concept, the absence of complete scientific certainty cannot be used as an excuse for failing to provide cost-effective procedures if there is a likelihood of significant harm or irreparable environmental damage.

Another judicial decision based on the precautionary principle was made in *M.C. Mehta v. Union*, “often known as the Taj Mahal Case. A public interest lawsuit was brought in this instance, stating that environmental contamination is to blame for the Taj Mahal's degradation. The case was forwarded by the court to the expert committee for technical advice. on the basis of the committee's report. This structure is a well-known landmark across the world. The companies in the Taj Trapezium Zone (TTZ) used coal or coke as their industrial fuel, which resulted in effluent emissions. The Taj Mahal, in addition to being a cultural landmark, was determined by the court to be an independent industry. As a result, it was ordered that all businesses operating in the TTZ switch to natural gas as a replacement for coke or coal as an industrial fuel. If they are unable to do so for any reason, they must cease operations and may relocate as per the court's instructions”.¹⁵

C. Public Trust Doctrine - This concept is based on the idea that some resources, such as air, water, and other necessities for daily existence, are of such tremendous significance to the general population that giving them to private ownership is wholly unreasonable. These resources should be made freely available to every member of society, regardless of their standing in life, as they are a gift from nature. According to this principle, the government must safeguard resources so they can be used by the general public

¹⁵ *M.C. Mehta v. Union of India*, A.I.R. 1987 S.C. 1086 (India).

rather than being used by an individual for personal financial benefit.

D. Sustainable Development - The Cocoyoc Declaration featured the first official usage of the phrase sustainable development. After then, it gained further momentum as a result of the Stockholm Declaration, which affirmed that there is only one environment in the world and that man is both the source of and the destroyer of that environment. The Brundtland study also provided a definition of sustainable development, stating that it is the best use of resources for both current and future generations. Equity between generations is so essential. The preservation of resources is necessary for both current and future generations.¹⁶

Thus, these are some of the important principles which guide the decision-making by the constitutional benches with reference to environmental cases.

VIII. INTERNATIONAL POLICY FRAMEWORK ON CLIMATE CHANGE

The most urgent environmental issue of global, national, and local significance has emerged as climate change. Greenhouse gases (GHGs), which come from a number of industrial operations are the primary culprits behind climate change.¹⁷ The majority of GHGs are carbon emissions from various industrial sectors. High concentrations of GHGs in the atmosphere surround the globe and trap its radiation, preventing heat from escaping. Additionally, it interferes with the water and weather cycles that link the oceans and land. The majority of the world has seen erratic and severe weather occurrences that have a negative impact on food production, human health, and wild biodiversity. More and more, climate

¹⁶ Mohammadhadi Hajian & Somayeh Jangchi Kashani, *1 - Evolution of the Concept of Sustainability. From Brundtland Report to Sustainable Development Goals*, 1 SRM 1-24 (2021).

¹⁷ OAR US EPA, *Overview of Greenhouse Gases*, (2015), <https://www.epa.gov/ghgemissions/overview-greenhouse-gases> (last visited Aug 17, 2023).

change is being connected to these many different effects.¹⁸ In addition to changes in local land use that result in deforestation, land degradation, and environmental pollution, high carbon-emitting commercial activities also involve these factors.

Since the middle of the 1970s, “*there have been discussions on a global scale about climate change and global warming. The Intergovernmental Panel on Climate Change (IPCC), whose purpose is to compile scientific data about climate change, was founded under the auspices of the United Nations (UN) only in 1988.*¹⁹ *The IPCC's initial assessments from 1990 and 1992 provided convincing evidence of temperature increases and linked those increases to rising GHG emissions.*²⁰ *Since then, the UNFCCC (1992) and the Kyoto Protocol (1997) have acknowledged that industrialized countries are largely responsible for the current high levels of GHG emissions in the atmosphere as a result of more than 150 years of economic activity.*”

One of the three framework treaties of the Rio Earth Summit, along with the UN Convention to Combat Desertification and the Convention on Biological Diversity, is the UNFCCC. The UNFCCC is a comprehensive international agreement that obligates all of its members, including India, to reduce their GHG emissions in accordance with the idea of “common but differentiated responsibilities (CBDR)”. Discussions at the 1992 Rio de Janeiro Earth Summit revolved around this idea. It acknowledged that, despite the fact that some nations bore a greater share of the blame for climate change, the entire international community needed to help cut emissions and deal with the problems brought on by the phenomenon. The

¹⁸ Tom DiChristopher, *Climate Disasters Cost the World \$650 Billion over 3 Years — Americans Are Bearing the Brunt: Morgan Stanley*, CNBC (2019), <https://www.cnbc.com/2019/02/14/climate-disasters-cost-650-billion-over-3-years-morgan-stanley.html> (last visited Aug 17, 2023).

¹⁹ IPCC — Intergovernmental Panel on Climate Change, <https://www.ipcc.ch/> (last visited Aug 17, 2023).

²⁰ Otto Spijkers, *Intergenerational Equity and the Sustainable Development Goals*, 10 *Sustainability* 3836 (2018).

agreement mandates that nations act “*in line with their common but distinct obligations and respective capabilities*” and “*on the basis of equality*.”²¹ In actuality, the CBDR has served as a focal point around which the global climate negotiations have come together.²²

IX. INDIA’S NATIONAL POLICY FRAMEWORK ON CLIMATE CHANGE

The policy mechanism mitigation and adaptation of climate change can be understood through the three approaches in international climate policy discussed earlier: multilevel governance, sub-national actions, and co-benefits. These are brought together in the elements that form the rubric of India’s policy framework: India’s INDCs, the NAPCC, and the State Action Plans.

X. INTENDED NATIONALLY DETERMINED CONTRIBUTIONS

The UNFCCC’s Paris Agreement required national governments to finalize their specific national commitments that will help achieve the terms of the agreement. The main focus lies on conscious efforts to stabilize the global temperature rise below 2 degrees Celsius. India finalized its INDC document in October 2015.²³ The document specified the national context which requires the national government to balance development priorities with environmental protection.²⁴

There are eight commitments in the INDC document. Some of these are values that citizens and others can adopt are concrete targets.

²¹ Lau Øfjord Blaxekjær & Tobias Dan Nielsen, *Mapping the Narrative Positions of New Political Groups under the UNFCCC*, 15 *Climate Policy* 751 (2015).

²² Mizan R. Khan & J. Timmons Roberts, *Adaptation and International Climate Policy*, 4 *WIREs Clim Change* 171 (2013).

²³ Chukwumerije Okereke & Philip Coventry, *Climate Justice and the International Regime: Before, during, and after Paris*, 7 *WIREs Clim Change* 834 (2016).

²⁴ Gill-Chin Lim, *Theory and Practice of EIA Implementation: A Comparative Study of Three Developing Countries*, 5 *Environmental Impact Assessment Review* 133 (1985).

- The First two commitments encourage sustainable living encompassing traditional values system as well as adopting a climate-friendly path in economic development.²⁵
- The third, fourth, and fifth commitments are specific contributions to be achieved by 2030. These includes the obligation to reduce the emission intensity, enhance the renewable energy sources, and carry out a massive afforestation drive to pacify environmental degradation.
- The last t three contributions are about investments and funds. This includes enhancing investments and focus in agriculture and health sectors while preserving the coastal areas and water resources and deriving a planned mechanism for disaster management. For this, there is a call for new and additional funds from both domestic sources and the international community to help bridge the resource gap for joint and collaborative research and development on new climate technologies.

XI. NATIONAL ACTION PLAN ON CLIMATE CHANGE

The Prime Minister's Council for Climate Change (PMCCC) was established in 2007 with the objective of coordinating an action plan to assess the impacts of climate change and implement measures for climate adaptation and mitigation. In June 2008, the council launched the NAPCC²⁶ which acknowledged that the plan was designed on the approach of co-benefits.

The 2008 plan presented eight national missions which would direct the government's activities on climate adaptation and mitigation. According to the NAPCC, this would be a mix of ongoing government initiatives, program revisions, and a new set of actions that would allow for “*multi-pronged*,

²⁵ Sheeraz Ahmad Alaie, *Policies as Instruments in Promoting Sustainable Development: Limiting the Climate Change Issues in India*, 1 *Politics of Climate Change* 201 (2022).

²⁶ Jesse C. Ribot, Arun Agrawal & Anne M. Larson, *Recentralizing While Decentralizing: How National Governments Reappropriate Forest Resources*, 34 *World Development* 1864 (2006).

long-term, and integrated strategies for achieving key goals in the context of climate change”.

- National Solar Mission which looks “*to increase the share of solar power in the overall energy mix of the country. The ultimate objective is to make solar power competitive with coal and another fossil fuel-based energy. It emphasized international cooperation for technology and increasing domestic manufacturing capacity including through government funding*”.
- National Mission for Enhanced Energy Efficiency introduces “*four new mechanisms. This includes a market-based certification mechanism to enhance cost-effectiveness and improvements in the efficiency of energy-intensive industries and facilities, pushing for a shift in energy-efficient appliances, financing of demand-side management in all sectors requiring energy, and development of fiscal instruments to promote energy efficiency*”.
- National Mission on Sustainable Habitat aims “*to promote energy efficiency as a central component of urban planning. This is to be achieved in three ways: developing the Energy Conservation Building Code for energy efficiency in large and new commercial buildings, improving public transport, and introducing urban waste recycling into urban planning*”.

XII. CLIMATE CHANGE LITIGATION IN INDIA

In India, there are a few strategic or climate change-related lawsuits. In the majority of cases, failure to implement emission standards or execute compensatory afforestation measures has resulted in recourse being sought under domestic environmental regulations. Such cases make no allusion to climate change in their justifications.

Climate change has been a major concern in two instances before India's National Green Tribunal (NGT). In the first instance, the NGT made

significant observations on the Rohtang Pass' fragility as a result of climate change and global warming after becoming suo-moto aware of its deterioration. The NGT ordered officials in the Himachal Pradesh state to take many steps in February 2014 to address severe environmental problems brought on by excessive tourism in Rohtang Pass. The Rohtang Pass in the Himalayas, which is regarded as the “crown jewel of Himachal Pradesh,” has seen significant damage as a result of pressures and improper tourism management.²⁷

XIII. CONCLUSION

The UN Human Rights Council declared that a clean, healthy, and sustainable environment is a human right. This was established through the adoption of resolution 48/13 on 8th October 2021. This resolution is known to be the most effective and apt for the present condition in which we are living since every aspect of our lives is determined by the environment surrounding us, and a clean environment becomes a very crucial aspect of our lives. The UN General Assembly opined that climate change and environmental degradation were the most pressing issues threatening humanity's future. A clean and healthy atmosphere is essential for living a quality life. India has been a signatory to a myriad of international agreements pertaining to environmental preservation. India is required to adopt these provisions and implement them in the nation as a signatory to such international agreements. This is expressly mentioned in Article 51(c) of the Indian Constitution, which states that the state will promote adherence to treaty commitments and international law.

In order to facilitate national efforts on climate change, the Paris Agreement compelled national governments to either enact new laws and regulations or review, update and enhance their already-existing ones. In response to the international policy discourses on climate change, various

²⁷ *Court on Its Own Motion v State of Himachal Pradesh & Ors*, CWPIIL No. 15 of 2010.

countries have developed climate policies, passed new legislation, and altered their domestic environmental regimes throughout the past three decades of international climate talks. In order to implement the programs and schemes resulting from climate policies and plans, national governments have set up ministries and departments. Apart from the effective legislative and administrative measures a robust framework is required to ensure the active participation of relevant stakeholders to combat the menace of environmental degradation.

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