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# Climate Change Justice through Climate Change Litigation

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KEERTY DABAS<sup>1</sup>

## ABSTRACT

*Human rights are internationally recognised guarantees essential for survival and a meaningful life . These guarantees are being violated and threatened due climate change related harms. Since impact of climate change are felt disproportionately across nations, groups , people and communities , it also gives rise to issues of “equity and justice” . The Climate justice approach seeks to address this concern. The paper examines the issue of climate change through concept of ethics and justice , tracing the relation between human right and climate change the role that human rights can play to achieve it. It further explores role of climate change litigation , as a legal tool to secure and protect the human rights of people that are violated due to climate related harms.*

**Keywords:** *climate change, climate change justice, human rights.*

## I. INTRODUCTION

*“Anthropogenic Climate Change is the defining issue of our time and we are at a defining moment”<sup>2</sup>.*

The fifth assessment report of the Intergovernmental Panel on Climate Change , IPCC<sup>3</sup> ( herein after AR5) brought in a better understanding of science behind accelerated climate change and clarified the role of human influence on the same. . It unequivocally stated that “*climate change is real and human activities are the its main cause*”<sup>4</sup> , and that “*people who are socially, economically, culturally, politically, institutionally or otherwise marginalized are especially vulnerable to the threats of climate change.*”<sup>5</sup>

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<sup>2</sup> United nation Secretary-General António Guterres remarks in his 2018 climate change summit speech , <https://www.un.org/sg/en/content/sg/statement/2018-09-10/secretary-generals-remarks-climate-change-delivered>

<sup>3</sup> The Intergovernmental Panel on Climate Change (IPCC) was set up by the World Meteorological Organization (WMO) and United Nations Environment programme to provide a platform for credible source of scientific information.

<sup>4</sup> The Intergovernmental Panel on Climate Change (IPCC), “*Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*” , Stocker, T.F., D. Qin, G.-K. Plattner, and P.M. Midgley (eds.), 2013, Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 1535 pp, doi:10.1017/CBO9781107415324; available at : <http://www.ipcc.ch/report/ar5/wg1/>

<sup>5</sup> *Ibid.*, also see IPCC Working Group II, “*Climate Change 2014, “Impacts, Adaptation, and Vulnerability, Summary for Policymakers*”, p. 6.

How pervasive human activities are on our environment was recently witnessed in dramatic way when the world went into lockdown due to covid -19 pandemic, all commercial and public activities came to a halt and what we saw was clear skies, less pollution, cleaner air and wild taking over the urban spaces<sup>6</sup>.

The pandemic was a stark reminder that risk and vulnerability are intrinsically linked together and whenever there is a disaster whether economic ( for example demonetization) , environmental ( floods , drought) or health emergency like covid-19, it's the people who are at the bottom , socially and economically vulnerable , who bear the most burden and get most exposed to harms that ensue.

The adverse effects of climate change, global warming is also slowly creeping in and manifesting themselves in our daily lives. It manifests itself in form of rising sea level , rising temperature, onset of “extreme weather” conditions such as prolonged droughts, erratic monsoons, floods, bushfires, and extreme heatwaves across the globe.

Climate change is also a climate justice crisis because of its disproportionate effects on nations, communities and groups who are comparatively more vulnerable and marginalized. It has been concluded that “those who have contributed the least to greenhouse gas emissions will be the ones who bear the greatest burden; the poorest people, in the poorest countries, their children, and all our children”.<sup>7</sup> The risk is amplified by their inability to efficiently adapt to climate change impacts and bear the cost of loss damage and mitigation in comparison to the well off counterparts.

It also negatively impacts the realization of basic human rights of communities such as right to life , health , development , clean drinking water etc as it impacts s their economies, livelihood , threaten food and water security , causes displacement resulting in climate refugees and have grave effects over human health and life .

By interlinking human rights and climate change, one can address the climate justice concerns. This is increasingly been adopted in global climate litigation where by using right based approach, more and more people are reaching the courts, raising issue of violation of human rights and seeking remedy and redress against their governments , multinational corporations. Using litigation as tool, and huma right based approach , demanding that their governments do

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<sup>6</sup> Nature Reclaims Public Spaces During Lockdown, *The Reuters*, (Apr 22, 2020), <https://www.reuters.com/news/picture/nature-reclaims-public-spaces-during-loc-idUSRTX7EJ1H>

<sup>7</sup> Office of the High Commissioner for Human Rights, OHCHR, “ *Understanding Human Rights and Climate Change*”, submission of the OHCHR to the 21st Conference of the Parties to the UNFCCC, (Nov 26, 2015) available at: <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Discussion6March2015.aspx>

more. Climate justice can also act as a yardstick by which “fairness and inclusiveness” of any climate related policy and law can be assessed.<sup>8</sup>

The research paper seeks to present a brief overview of this inter connectedness between human rights and climate change justice, and further explores how its being adopted in climate litigation.

## II. HUMAN RIGHTS, ENVIRONMENT, AND CLIMATE CHANGE

Humans have certain basic rights which are inherent to them, they are universally recognized, interdependent and cannot be waived or taken away. Rights such as right to life, food, water, livelihood etc are vital for survival of human beings and have been encapsulated through contemporary human right instruments which give them legal protection, lay down guidelines to promote and ensure full realization of these rights.<sup>9</sup>

Whether environment and human rights are interlinked? is a question as absurd as saying that humans can survive without clean water to drink and clean air to breathe.

The Stockholm Convention on Environment (1972) recognised that there is “*a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.*”<sup>10</sup>. The term environment is not to be taken in narrow sense but rather as “the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property”<sup>11</sup>. It is important that one goes beyond life and liberty narrative and capture the essence of human growth and development by recognizing that human beings are integral part of the planetary ecosystems, and their development cannot be sustained in isolation without protecting the environment surrounding them. This relationship gets translated as translated as fundamental “*right to healthy environment*” in many world constitutions.<sup>12</sup> The United Nations General Assembly recognised “*the right to safe and clean drinking water*” and sanitation as a human

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<sup>8</sup> Jeremy Baskin, “*The Impossible Necessity of Climate Justice*”, Melbourne Journal of International Law, pp424 (2009).

<sup>9</sup> Main instruments which form the human right treatise are: The UN Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the UN Declaration on the Right to Development, see, <https://www.ucl.ac.uk/global-governance/sites/global-governance/files/ggi-explainer-human-rights-regime.pdf>

<sup>10</sup> Declaration of the UN Conference on the Human Environment (“Stockholm Declaration”), 1972, Principle 1. <http://www.publicinternationallaw.in/sites/default/files/salient/12-Int'l%20Environmental%20Law/01-Stockholm%20Declaration.pdf>; <https://undocs.org/en/A/CONF.48/14/Rev.1>

<sup>11</sup> The Environment (Protection) Act, 1986, s.2(a)

<sup>12</sup> For example see, constitution of India, art.21; The right to a healthy environment has been included in more than 100 world constitution; see, UNEP, *Environmental Rule of Law: First Global Report*, (2019)

right that is essential for the full enjoyment of life and all human rights.”<sup>13</sup>

Climate change and global warming is impacting our natural resources, ecosystems, ocean systems and human settlements. It also exaggerates the harms which ensue from environmental degradation, such as air pollution. Extreme weather, frequent flood, droughts, increasing water shortages, desertification, sea level rise is threatening food and water security, livelihoods of people, thus undermining realization of our human rights. It has been estimated that a global temperature increase of 2 degree Celsius will expose around 400 million people to the risk of hunger and malnutrition.<sup>14</sup> Global temperature rise can “leave 1 to 2 billion people without having enough water to meet their needs.”<sup>15</sup> Rural communities who live in dry and arid regions will get effected the most, for example, women might have to walk longer to fetch water, water shortages can also lead to increase in water conflicts. Consequentially incumbering upon our “*human right to food and clean water*”.

Climate change tiggers “extreme weather events”- such as heatwaves, wildfires, sudden and frequent cyclones, floods etc. According to WHO data, more than 1,66,000 people have died due to extreme temperatures between 1998-2017 and it is projected that from the year 2030 onward additional 2,50,000 deaths may result in each year from climate-sensitive diseases.<sup>16</sup> “Extreme temperatures and heatwaves in India have already resulted in deaths of 6000 people since the year 2010, with 2000 deaths in the year 2015 alone”.<sup>17</sup> A recent study shows that “by the year 2100, around 1.5 million more people are projected to die each year as a result of climate change and heatwaves in India”.<sup>18</sup> For example, very recently Canada was hit by an intense heatwave, temperatures reached 50 degree Celsius, which resulted in death of 200 people and caused several<sup>19</sup> wildfires. Thus climate change posses direct threat “*right to life*”<sup>20</sup> itself. Then there is issue of air pollution (which gets aggravated due to carbon emissions and smog) “contributes substantially to premature mortality and disease burden globally.”<sup>21</sup>

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<sup>13</sup> United Nations General Assembly, *The human right to water and sanitation*, 64/292 (2010), Art. 1.

<sup>14</sup> The World Bank, *World Development Report 2010: Development and Climate Change* (2010), pp. 4 – 5.

<sup>15</sup> *Ibid*

<sup>16</sup> World Health Organization, *Health topics: Heat Waves*, [www.who.int/health-topics](http://www.who.int/health-topics)

<sup>17</sup> Government of India Ministry of Earth Sciences, reply to question raised in Lok Sabha, February 6, 2019, [https://moes.gov.in/writereaddata/files/LS\\_English\\_06022018\\_617.pdf](https://moes.gov.in/writereaddata/files/LS_English_06022018_617.pdf).

<sup>18</sup> Tata Centre for Development and Climate Impact Lab, “*Climate Change and Heat-Induced Mortality in India*,” (2019). see, “*India Heat Wave, Soaring Up to 123 Degrees, Has Killed at Least 36*”, New York Times, 13<sup>th</sup> July 2019.

<sup>19</sup> See, Jeannette Muhammad, “*Canada Battles More Than 180 Wildfires With Hundreds Dead In Heat Wave*,” NPR News, (June 2021).

<sup>20</sup> *Supra* note 3, IPCC, AR5 at p. 19.

<sup>21</sup> Cohen, Aaron J et al., “*Estimates And 25-Year Trends Of The Global Burden Of Disease Attributable To Ambient Air Pollution: An Analysis Of Data From The Global Burden Of Diseases Study 2015*”, *Lancet* (London, England) vol. 389,10082: 1907-1918 (2017) (J, 2017).

More recently, Covid -19 has also brought the “relationship between climate change, human health and infectious diseases”<sup>22</sup> into light, particularly in vector-borne and water-borne diseases where climatic factors (warm temperature and rainfall) are an important determinant of survival and transmission of these diseases. Hence, “changes in their transmission patterns are a likely consequence of variations in weather patterns and temperatures often triggered by climate change”.<sup>23</sup> According to World Bank reports, climate change and related extreme weather events can cause “health impacts that are likely to increase due to high rates of malnutrition, and “heat-amplified levels of smog that could exacerbate respiratory disorders.”<sup>24</sup> adversely affecting “*human right to health*”.

The “*right to development*” is also threatened by climate related harms and “limiting the effects of climate change is necessary to achieve sustainable development and equity, including poverty eradication.”<sup>25</sup> In 2015, world adopted 17 targets that came to be known as “sustainable development goals (SDGs)”<sup>26</sup>. These targets are interdependent goals aimed to streamline development initiatives in a more sustainable and inclusive way. Goal-13 relates to climate change, which recognises the importance to address climate crisis and threat it poses to achievement of all other SDGs. Thus, combating climate change becomes imperative in order to move towards more sustainable future.

“Simply put, climate change is a human rights problem and the human rights framework must be part of the solution.”<sup>27</sup>

### III. CLIMATE CHANGE JUSTICE

*“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”*<sup>28</sup>

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<sup>22</sup> See World Health Organization, “*Climate change and Human Health: Risk and Responses*”,

<sup>23</sup> Daniela Curseu et al, “*Potential Impact of Climate Change on Pandemic Influenza Risk*”, Global Warming: Engineering Solutions , (2009). Pp. 643–657.

<sup>24</sup> The World Bank Group , “*Turn Down The Heat Report Series*”, Potsdam Institute for Climate Impact Research and Climate Analytics (2013-14), p. 24.

<sup>25</sup> *Supra* note 3, IPCC, AR5 at p. 17.

<sup>26</sup> UN Department of Economic and Social Affairs , (2015) “Sustainable Development” goals, 2030 Agenda; [www.sdgs.un.org](http://www.sdgs.un.org).

<sup>27</sup> *Supra* note 7 , UNHRC

<sup>28</sup> Paris Agreement to the United Nations Framework Convention on Climate Change, (Dec. 12, 2015), T.I.A.S. No. 16-1104.

The concept of “climate change justice” consciously recognise disproportionate impact of climate change on countries, individuals, groups, and communities. It requires us to focus on moral and ethical challenges climate risk bring, and approach the problem through the lens of “equity and justice.” It essentially “*seeks to combine the climate change discussion with human rights in a way that is equitable for the most climate-vulnerable groups.*”<sup>29</sup>

The fundamental issue of justice forms the core of global climate change debate and politics. The developed north nations grew their economies through a carbon intensive, fossil fuel driven industrialization during 1800’s , unbridled by a duty to protect the environment and natural resources, all at the cost of other nations. They are the largest carbon emitters historically and some continuing to contribute up until present. This is pitted against the voices of the developing south nations, who advocate the same right to development in order to bring out millions of their citizens out of poverty and provide them adequate standard of living. They also demand that the developed countries bears the cost of degrading the environment , reparations for causing climate change. Moreover , the global north is more capable to adapt to the climate risk vis vis their less developed counter parts as these nations struggle with inherent challenges related to poverty , social vulnerability , limited access to resources , rising population etc.

The small island nations have lately objected to the goal of limiting the global warming to “well below 2 degree Celsius”<sup>30</sup> and advocate for enhanced commitments and demand keeping the global temperature well below 1.5 degree Celsius. This is rightly so, since their economies are largely dependent upon tourism , ocean resources , fragile marine systems , ecosystems which are threatened by sea level rise. The interests of these nations are often overlooked in climate politics discussions. Despite their small carbon footprint and contribution, they will struggle to secure suitable future for their citizens.<sup>31</sup>

To address these “ justice and equity “ concerns of nations . UNFCCC adopted the principle of CBDR- RC or Common but Differentiated Responsibilities and Respective Capabilities<sup>32</sup> . It recognizes the common obligations of states towards addressing climate change but only to extent of and subjected to “specific national and regional development priorities, objectives and circumstances.”<sup>33</sup> . The UNFCCC recognized the real needs of developing and least developed nation such as poverty eradication, social development and took into consideration their

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<sup>29</sup> International Bar Association, “*Achieving Justice and Human Rights in an Era of Climate Disruption*” Climate Change Justice and Human Rights Task Force Report (2014)

<sup>30</sup> Supra note 29 , Paris agreement , article 2

<sup>31</sup> Adelle Thomas , Rose Martyr-Koller, “*Climate change and small islands: more scientific evidence of high risks*”, Climate Analytics , ( 2020) .

<sup>32</sup> UNFCCC, article 3 and article 4(1)

<sup>33</sup> *Ibid.*

economic incapacities to meet the challenges of climate change.<sup>34</sup> The developed nations were asked to assume leadership in reducing emissions, contribute in developing legal framework and policies along with funding adaptation and mitigation projects in developing nations.

The 1997 “Kyoto protocol”<sup>35</sup> under UNFCCC framework specified legally binding obligations and mechanisms to control the GHG emissions of industrialized countries (annex1 countries) however the developing nations ( non-annex 1 countries) just had to cooperate in efforts to mitigate climate change. The Kyoto protocol failed to achieve its goal due to protest of developed nations who refused to bear responsibility of mandatory carbon emission cuts,

The 2015 Paris agreement watered down the commitments removed the division among nations. Even though it acknowledged the issue of justice and equity in climate change discourse, it puts no legally binding obligations on countries developed or otherwise and only calls for voluntary national commitments towards affirmative climate actions.

Parallel injustices are arising at ground level, since climate change is all pervasive in nature, it does not affect one country or one region rather it’s the people who are at the forefront. Again those who are marginalised and vulnerable will face higher risks. Be it women, children, indigenous communities, tribals, people placed lowest in income groups, farmers , fishermen who depend upon fragile ecosystems for livelihood, those below poverty line , migrants , people who have been excluded from social economic progress etc are more exposed than others to damage from climate hazards .

For example, in n Mumbai it’s the people who live in urban slums that are more susceptible to floods flights are more frequent a large portion off their income goes towards loss and damages.<sup>36</sup> Thus “people who are socially, economically, culturally, politically, institutionally or otherwise marginalized are especially vulnerable to climate change”<sup>37</sup>

To address these concerns at municipal level , “Right based approach” to climate crisis will be integral in identifying the right holders and the corresponding duty bearers, identify entitlements and obligations, and by using principles and standards off human rights treaties as a guide will help strengthen the climate change policies and legal framework. This approach will be significant in creating “less myopic, more responsive, sensitive and collaborative climate

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<sup>34</sup> *Ibid.* Article 4(7),

<sup>35</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change, (Dec. 11, 1997) 2303 UNTS 162 .

<sup>36</sup> Stacey Stecko and Nicole Barber, “*Exposing Vulnerabilities: Monsoon Floods in Mumbai, India*” , Global Report on human settlements ; See , Roli Srivastava , “*Unequal risk: How climate change hurts India's poor most*” , Thomson Reuters Foundation (8 June 201)

<sup>37</sup> IPCC, AR5 at p. 54.



policies, while empowering vulnerable people and groups”<sup>38</sup>.

Here, the human rights of “*information, transparency, participation and accountability*”<sup>39</sup> also play an important role by facilitating the realization of human right. Climate justice requires that the states should ensure informed participation of stakeholders, particularly of those who are marginalized, giving them an opportunity to voice their concerns and participate in the decision-making process in a meaningful way. In fact, “*Participation is a basic human right in itself, and a precondition or catalyst for the realization and enjoyment of other human rights.*”<sup>40</sup>

Participation of stakeholders will also help in “recognition of diverse interests, circumstances, social-cultural contexts and expectations, which can benefit decision-making processes and ultimately, enabling an effective and rights-based approach to tackling the threat of climate change.”<sup>41</sup>

#### IV. CLIMATE CHANGE JUSTICE THROUGH CLIMATE LITIGATION

There are multiple views as to what climate justice entails and how to achieve the same within the climate regime. One way it is being extensively used is to determine who should be held responsible for climate change, who bears what duty against whom? More and more people are reaching the courts to seek this answer through litigation.

As distinguished from general environmental litigation cases, a specific climate related litigation petition can be defined as that “which raise issues of law or fact regarding the science of climate change and climate change mitigation and adaptation efforts”<sup>42</sup>.

We have already established that how human rights and climate change are interlinked and climate related harms are violating human rights of millions of people. Thus, it’s the obligation of states to protect these basic rights of people by reducing their carbon emissions, take affirmative actions to combat climate change etc. This forms the chief narrative of human rights-based climate change litigation petitions. Role and enthusiasm of courts is essential in this legal innovation.

Activists and petitioners are using “rights based litigation” as a regulatory instrument in order to hold their governments responsible for their inaction towards climate change mitigation invoking established environmental law principles such as “duty of care”, “polluter pay”, or the

<sup>38</sup> UNFCCC, Conference of the Parties (COP) Report on its sixteenth session, (2010), FCCC/CP/2010/7/Add.1.

<sup>39</sup> United Nations Economic Commission for Europe, (UNECE), The Aarhus Convention on “Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters” (1998)

<sup>40</sup> United Nations General Assembly, “Report of the Special Rapporteur on extreme poverty and human rights”, A/HRC/23/36: (2013)

<sup>41</sup> IPCC, AR5, p. 19

<sup>42</sup> United Nations Environment Programme, “*The Status of Climate Change Litigation: A Global Review*” (2020)

“public trust doctrine”.

Since 2015, climate litigation has slowly proliferated in various judicial and quasi-judicial forums across jurisdictions including international forums and courts. While majority of cases are concentrated in the global north i.e. the USA and Europe, similar cases are being filled in countries like India, Indonesia, Philippines, Nepal, Canada, Brazil, Argentina etc. Thus a knowledge pool of arguments and legal strategy has been created which is being replicated to other jurisdictions. As of year 2022 there are over two thousand climate change litigation globally and out these around 123 human rights based climate cases have been filed globally in jurisdictions other than US<sup>43</sup>

As early as 2005, the Inuit/skimo people, an indigenous community living in Alaska, Arctic region and Greenland, brought a petition against US government in the inter-American human right commission. They alleged that US is in violation of the 1948 American Declaration of the Rights and Duties of Man, as it fails to curb their carbon emissions which are destroying the Inuit habitat. Global warming and Depleting ice is a threat to cultural rights, traditional knowledge and way of life of Inuit people who rely on hunting in extreme cold temperatures. The petitioner requested the commission to make recommendations to the US government to limit its emissions and respect the obligation it has towards the indigenous communities. US has been by so far, the largest GHG emitter and polluter, which during that time backed out of the international commitments it had under UNFCCC. The petition however was not accepted stating that the information was insufficient to characterize the acts as violative of human rights. The *Urgenda foundation case 2015*<sup>44</sup> is a one the first landmark case wherein the Dutch supreme court took note of human right violation that climate inaction causes. In this case the Dutch citizens dragged their government to court for its insufficient measures to tackle climate crisis. The court cited principle of sustainable development and held that the Dutch government has a “duty” to reduce its carbon emissions, keeping in line with its obligation to protect human rights. It also directed the Dutch government to increase its carbon emission reduction targets according to Paris agreement goals, holding it legally accountable for its international and national climate commitments.

In *Juliana v. USA*<sup>45</sup>, similar petition was brought by the young plaintiffs against US government, calling them out for violating their right to life, property and liberty by promoting fossil fuels

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<sup>43</sup> Sabin Center for Climate Change Law and the Grantham Research Institute on Climate Change and the Environment, see, <https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2022/>

<sup>44</sup> *URGENDA FOUNDATION V. STATE OF THE NETHERLANDS* (2015) HAZA C/09/00456689

<sup>45</sup> *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020)

. it was alleged that the actions of government were in contravention of its fiduciary duty to preserve atmosphere. The petition was dismissed in this case.

In United Kingdom, climate inaction was alleged to be in breach of European convention of human rights<sup>46</sup>. In Indonesia, the government was sued for violating human rights of children and vulnerable communities by failing to minimize the climate risk<sup>47</sup>. In Pakistan, Lahore high court held the government in violation of fundamental rights of its citizens due to the delay in formulating climate law<sup>48</sup>.

In International forum, the UN committee on human rights recently passed a decision in favour of petitioner seeking asylum in new Zealand on ground of risk to his life due to environmental conditions and climate change. The committee observed that climate change poses serious threat to the ability to enjoy right to life specially when entire country ( in this case Kiribati ) is at risk of submerging in water due to sea level rise. Even though the threat to life is not immediate, however degraded environment conditions puts the life at risk before the risk is realised and incompatible with living conditions needed for dignified life. Hence the sending states have a duty to not to send the asylum seekers back to states where their life will be endangered due to climate harms.<sup>49</sup>

### **(A) Climate Change Litigation: Perspectives from India**

India is one of the most vulnerable countries when it comes to climate change but it also a strong advocate of right to development of global south who have to fulfil basic need of their people. This puts India into a very difficult position and creates a constitutional crisis. When climate change happens and manifest itself, our rights which are guaranteed by the constitutions are going to be affected. climate change litigation will provide a power of” collective bargain” to people to seek protection of our constitutional rights. Moreover we already have all the ingredients and tools at hand i.e. comprehensive jurisprudence related to public interest litigation, locus standi, an innovative and active judiciary .

Indian Judiciary is known for its exceptional and innovative role that it plays specially when it comes to protection of “fundamental rights” of its citizens. It already paved way to turn article 21 of the Indian constitution<sup>50</sup> -the right to life into an all-encompassing bundle of rights which

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<sup>46</sup> Plan B Earth v. Sec’y of State for Bus., Energy & Indus. Strategy [2018] EWHC 1892 CO/16/2018

<sup>47</sup> Complaints To The National Commission On Human Rights Of The Republic Of Indonesia “Negligence Of The Climate Crisis Is A Violation Of Human Rights” *Indonesian Youths And Others V. Indonesia*, 2022

<sup>48</sup> Leghari v. Pakistan, (W.P. No. 25501/2015), Lahore High Court Green Bench, Order of 4 Sept. 2015

<sup>49</sup> Ioane Teitiota v. New Zealand (advance unedited version), CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7 January 2020, available at: <https://www.refworld.org/cases,HRC,5e26f7134.html> [accessed 23 June 2023]

<sup>50</sup> The Constitution of India, art 21.

are necessary to live a quality and meaningful life. The Supreme Court of India impliedly read right to health, right to livelihood into it.

“Greening” of human right to life have already been done to address environmental justice thus reading into article 21 “right to wholesome, clean, pollution free environment”<sup>51</sup>. The supreme court of India through several landmark decisions read into domestic environmental law jurisprudence the integral “principles of sustainable development”<sup>52</sup>, “the precautionary principle”<sup>53</sup> and the “polluter pays principle”<sup>54</sup>, : doctrine of public trust”<sup>55</sup>, “absolute liability principle”<sup>56</sup> etc.

The Duty “protect and improve the environment”<sup>57</sup> is a constitutional directive given to states under article 48A of the Indian constitution. India being welfare state owes “a duty to its citizens to safeguard the forest and wildlife of the country.”<sup>58</sup> Article 51(A) (G) of Indian constitution imposes “duty onto its citizens to protect the natural environment and have compassion for its living creatures”<sup>59</sup>.

In 2010, India also established a National Green Tribunal to effectively handle cases related to environmental protection. Tribunal can also give decisions on substantial questions related to environmental matters<sup>60</sup>, and while deciding any case it has to be guided by principles of “principles of sustainable development, precautionary principle”<sup>61</sup>.

This rich jurisprudence in environmental law was developed in over last 30 years, however, the environmental laws that were created were not formed while keeping climate change which is more contemporary in nature. However, it’s important to see if our right to life under article 21 is flexible enough to include a “*right to climate protection*”.

The climate litigation is in nascent stages but it is still finding its space in Indian courts.

In *Ridhima Pandey vs Union of India (2017)*, the 9 year old plaintiff filed a petition in wake of Uttarakhand floods before National Green Tribunal of India claimed that Indian government

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<sup>51</sup> In *Subhas Kumar vs. The State of Bihar* 1991 SCR (1) 5, the Court held that right to life guaranteed by Article 21 includes the “right to the enjoyment of pollution-free water and air”.

<sup>52</sup> *Vellore Citizen Welfare Forum Vs. Union of India* AIR 1996 SC 2715

<sup>53</sup> *Ibid.*

<sup>54</sup> *Indian Council for Enviro-Legal Action Vs. Union of India* AIR 1996 SC 1447

<sup>55</sup> *MC Mehta Vs. Kamalnath* 1997 (1) SCC 388

<sup>56</sup> *MC Mehta Vs. Union of India*: AIR 1987 SC 1086 (Oleum Gas case).

<sup>57</sup> The Constitution of India, Art.48A

<sup>58</sup> Art 48A of the Indian constitution is unenforceable directive principle for state, *Sachinand Pandey v. state of west Bengal* 1987 AIR 1109, the supreme court interpreted it as imposing “an obligation” on states to protect environment

<sup>59</sup> The Constitution of India, art.51(A)(G)

<sup>60</sup> National Green Tribunal act 2010, s.14,20

<sup>61</sup> *Ibid.*

needs to take greater and more ambitious action against climate change keeping in mind its commitments under the Paris Agreement. Thus invoking “public trust doctrine” and principle of “intergenerational equity” to support the claim.<sup>62</sup> Where the court did noted the negative impact of climate change on fundamental rights , however , it didn’t hold the government responsible for violation of the same.

*In re Court on its own motion v. State of Himachal Pradesh (2013)*<sup>63</sup>, the court was deciding violation of right to wholesome environment under article 21 by Himachal government by failing to protect a fragile ecosystem like Rohtang pass form tourist and vehicular traffic. The claim succeeded. The court reasoned its decision by linking it to climate change and its effects on Himalayan ecosystem and highlighted the need to tackle global warming by putting in place measures to protect such areas from emissions s, black carbon and deforestation.

There are several other climate litigation cases where the petitioners are suing the government on various issues related to Environmental impact assessment, renewable energy, or clean development mechanisms etc<sup>64</sup>. However, results are mixed and lack the robust understanding of legal doctrines and their implications on climate action. With most of the litigation remains more mainstream with raising issues such as air and water pollution, climate change remains at the fringe.<sup>65</sup>

The courts have so far mostly acknowledged the impacts of global warming and climate change without passing concrete directions or any mitigation or adaptation measure when it comes to human right based litigation. The issue of climate change justice still arise within our domestic fora and article 14 of Indian constitution which guarantees “equal protection of law”<sup>66</sup> can be invoked in future litigations to seek more equitable sharing of burden of climate change risks at national level.

## V. CONCLUSION

The scale of climate change crisis and addressing the issues of adaptation, mitigation , its impact on individuals and climate justice gap remains largely unresolved and existing mechanisms fail to address the same.

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<sup>62</sup> NGT, Ridhima Pandey vs UoI, Application No. 187/2017 (Jan. 15, 2019)

<sup>63</sup> In re Court on its own motion vs State of Himachal Pradesh and others , A. No. 237/2013 (THC) (CWPIIL No. 15 of 2010)

<sup>64</sup> See, Hanuman Laxman Aroskar v. UoI & Others, MANU/SC/0444/2019; NGT, Society for Protection of Environment & Biodiversity v. Union of India Application No. 677/2016 ; Hindustan Zinc Ltd. v Rajasthan Electricity Regulatory Commission, (2015) 12 SCC 611.; NGT, Sukhdev Vihar Welfare Residents Association v. Union of India Application No. 22 (THC)/2013

<sup>65</sup> Ghosh, S. (2020). Litigating Climate Claims in India. AJIL Unbound, 114, 45-50. doi:10.1017/aju.2020.5

<sup>66</sup> The Constitution of India, art 14

However, by integrating human rights with climate change, one can provide a concrete remedy to protect the people from climate related harms and address issues of equity and justice. Climate change justice perspective can guide the existing as well a future climate related policies, measure and decreasing both at international and national level. It can shift focus from quantifiable targets to more ground level realities.

Litigation cases also play important regulatory role, people are able to direct the governments to adopt carbon reduction policies, align the commitments, domestic policy with the international obligations under Paris Agreement, do more to ensure that people, communities, society, become more climate resilience. Thus it can prove to be an innovative tool to integrate the concept of climate change justice in climate change regime.

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