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The Paris Agreement: A Critical Analysis

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ABSTRACT

Environmental law is relatively a new notion and the need to protect it dawned on humankind very recently. Environmental conditions are deteriorating rapidly and this very statement can be backed by numerous scientific evidences. Population boom, industrial development, resource extraction, and technological advancement are few of the contributing factors into environmental degradation and as a result forests and wildlife are disappearing, snow caps are melting raising the level of water and massive desertification occurring. It is a basic economic principle that human needs and wants are unlimited but resources to meet these needs are limited. This means that it is impossible to satisfy human needs as we ask for more and more. We have thrived in achieving technological advancement by pawning off Mother Nature. Melting polar ice caps, ozone layer depletion, rising temperature, etc., has been discovered to be the after effects of the devil-may-care approach adopted by States worldwide when it comes to environmental protection. As a step towards protecting the environment, the Paris Agreement was signed by both developing and developed States. This paper intent to discern the background and various events that led to the signing of the Paris Agreement. The researcher also aims to understand the scope and objective that the Paris Agreement is determined to achieve and how various States have responded to the growing need of environmental protection. The paper also sets out to comprehend the various legislations made by India in pursuant to various international conventions that the country is party to.

Keywords: *Environment, Environmental Protection, Global Warming, Paris Agreement, Global Warming*

I. INTRODUCTION

The 26th President of the United States of America Theodore Roosevelt has rightly emphasized in his speech to the Senate and House of Representatives on his Seventh Annual Message to the Senate in 1907 on the topic of Conservation of Natural Resources “to waste and destroy our natural resources, to skin and exhaust the land instead of using it so as to increase its usefulness, will result in undermining in the days of our children the very prosperity which we

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ought by right to hand down to them”.² It is remarkable that President Roosevelt made this remark about environment in the early 1900s when the term “sustainable development” was not even coined. According to Merriam-Webster dictionary the term environment means “the circumstances, objects, or conditions by which one is surrounded”.³ This definition is nebulous since the word has been given an extensive meaning. Section 2(a) of the Environment Protection Act, 1986 defines environment as “environment includes water, air and land and the relationship which exists amongst and between water, air and land, and human beings, other living creatures, plants, micro-organism and property”. Atmosphere can be defined as the gases that envelopes the earth. The earth’s atmosphere consists of five layers that extends from the earth’s surface- Troposphere (0-12 Km), Stratosphere (12-24 Km), Mesosphere (50-80 Km), Thermosphere (80-700 Km) and Exosphere (700-1000 Km). The first layer of the atmosphere i.e., the troposphere is where all the gases exist.

Industrial Revolution took off in the beginning of the 18th century which saw setting up of plethora of industries. As a reaction to this breakneck expansion of industries there was an influx of population upsurge due to improved standard of living. For these industries to operate in full capacity energy is required and the source to these energy were found in natural resources. In order to meet the increased demands of the rising population, industrialists began to exploit various natural resources, especially burning of fossil fuels, in such a way that could satisfy the corporate greed. For millions of years earth’s seasonal cycle was intact even though there were fluctuating. Just into 200 years of the industrial revolution have resulted in serious rising of temperature. This resulted in experiencing abrupt climatic conditions such as flash floods and extreme cold in the arctic regions. The reason for the increase in temperature is the gases released into the atmosphere known as the Greenhouse Gases. These gases are those which trap heat from the sun which in turn would result in increase in temperature on the earth’s surface which is known as the greenhouse effect.

II. GREENHOUSE GASES

Greenhouse is a building structure with walls and roofs principally out of transparent materials to grow off-season crops. The structure ensured that the crops would not receive inordinate amount of chill or heat. The greenhouse provides a safe environment for the crops to grow in any climatic conditions, especially during the winters, by providing adequate climatic conditions for it to flourish. Greenhouses allows sunrays through its glass during the daytime

² Theodore Roosevelt, *The Conservation Of Natural Resources*, PBS (Jan., 30, 2021, 12:04 PM), <https://www.pbs.org/weta/thewest/resources/archives/eight/trconserv.htm>

³ Merriam-Webster, (Jan., 30, 2021, 12: 06), <https://www.merriam-webster.com/dictionary/environment>.

where the plants absorb these and convert the same to heat. The temperature drops considerably during the night time. However, the greenhouse will remain warm as the glass walls trap heat during the daytime. During the 17th century glass was used to make the structure and roof of the greenhouse owing to the fact that it was cheap as chips. In modern day most of the greenhouses are constructed with fibreglass which is less susceptible to shattering. Greenhouses are extensively used in arctic nations to meet the scarcity of tropical fruits and vegetables like the avocados, pineapples, cucumbers, tomatoes, etc.

The atmosphere is an amalgamation of water vapour and various gases. 78% of the earth's atmosphere is covered with nitrogen, 21% of oxygen, 0.4% of carbon dioxide, and the remaining 0.96% contains other gases. It was in the early nineteenth century where scientists started to put two and two together to figure out the effect of gases in the atmosphere with heat. Scientists like Joseph Fourier who pronounced that earth would be one big frozen ball without the greenhouse gases. With the onset of industrial revolution steaming full ahead in the mid-nineteenth century that Eunice Newton Foote and John Tyndall carried out separate experiments that led them to believe the properties of various gases when they react with sunlight. Their experiments concluded with the fact that these gases could have large scale impact on the atmosphere and compared their research with that of a greenhouse and hence, the greenhouse effect.

According to the United States of America's (USA) Environmental Protection Agency's (EPA) 2018 report the following are the composition of the greenhouse gases in the atmosphere: 81% carbon dioxide (CO₂), 10% methane (CH₄), 7% nitrogen oxide (N₂O), and finally 3% of fluorinated gases like the chlorofluorocarbons (CFCs). So in a nutshell greenhouse effect is the process when the sun's light enters the earth's atmosphere, radiates back from the surface and the greenhouse gases absorb this heat which in turn increases the average temperature of earth. These gases can store these radiated heat for years and even centuries. If there is no greenhouse gases in the atmosphere the sunlight entering the earth would reflect back to space. There is a long believed misconception regarding greenhouse gases that the mere existence of these gases are detrimental for the environment. Greenhouse gases are crucial to maintain the earth's surface temperature because without these gases the earth would be a frozen planet. Environmental complication arises when the amount of these gases escalate substantially causing that would eventually trap more heat than necessary posing severe hazard to living beings. In other words, these gases are necessary evils for sustaining life in earth.

III. GLOBAL WARMING

We often use the terms climate change and global warming synonymously. However, these two words are distinct as global warming forms part of climate change. Climate change refers to a much broader term which encompasses not only the impact of rising temperature but also the effect of rising levels of greenhouse gases and its adverse effects resulting in drastic change in climatic conditions which features extreme weather conditions like changing rain patterns, drought, melting ice caps, migration of wildlife from one habitat to another, etc. Naturally occurring events like volcanic eruptions, El Niño, solar wind also results in global warming. But these makes up only 2 percent of the total factors. It is evident from the numerous studies conducted by the scientists that the major reason for the cause of this imbalance in the amount of greenhouse gases is the capricious human activities. The year 2020 witnessed a series of changed climatic conditions where the year has been featured to be one of the warmest in the history and numerous artic regions witnessed a drop in temperature experiencing the coldest ever.

India holds the 3rd spot among countries that emits CO₂ with a disturbingly high figure of 2597.36 million tonnes (MT) just behind USA and China which contributes 5107.26 MT and 11,535.20 MT respectively. India contributes about 6.83 percent in the global CO₂ emissions whereas USA and China contributes about 13.43 percent and 30.34 percent respectively.⁴ The main contributing factor to the global CO₂ emissions is the energy sector of their respective countries. The energy sectors of countries accounts about 73 percent of the total greenhouse gas emissions in the world. Products like heat and electricity are the leading factors that makes the energy sector to top the list. Another set of reasons are the increase in the sales of fuel driven vehicles and residential buildings as well. The second sector adding to the pile is the agriculture sector with 12 percent and the third in the list is extensive land use and deforestation which amounts to 6.5 percent. Shockingly, the top ten emitters accounts for the two-third of the total global emissions.

IV. UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)

The adoption of Paris Agreement is considered to be one of the greatest achievement for the international community especially advocates of environmental protection. This agreement was one of the most highly regarded document that was accepted widely by world nations. The

⁴ European Union, *Joint Research Centre: Edgar- Emissions Database for Global Atmospheric Research* (Jan., 31, 2021, 10.23 PM), <https://edgar.jrc.ec.europa.eu/overview.php?v=booklet2020>

United Nations Framework Convention on Climate Change (UNFCCC) is an environmental treaty which was signed by 154 States at the United Nations Conference on Environment and Development which is largely known as the Earth Summit was held at Rio de Janeiro in 1992. The goal of the Convention is to deter the environmental impacts caused by humans as laid down under Article 2 of the Convention. The parties to the Convention realized that there is an urgency to tackle the menace of rising greenhouse gases and to coordinate with member countries to stabilize the situation. The Intergovernmental Panel on Climate Change (IPCC) was relegated with the task of studying and submit relevant scientific revelations and pertinent data to aid their claims about the impact of human induced environmental repercussions. IPCC suggested in their studies that in order to maintain a suitable living habitat it is required to maintain a global average temperature of less than 2°C and if possible to contain it at 1.5°C. Lamentably, UNFCCC had hard time keeping the said global average temperature level.

V. KYOTO PROTOCOL

The global community had accepted the fact that the set goals for the environment which became fruitless is a tedious task and requires to weigh in variety of factors like the socio-economic conditions of the countries, industrial expansion, and the most important reason why this ambitious Convention bore no fruit was the inequality among member States, especially the financial inequality. In order to curb the problem of disparity, in 1997 the Kyoto Protocol was signed at Kyoto, Japan that categorized member States to ‘developed’ and ‘developing’ States. The main lacunae in the Kyoto Protocol is that it only sets emission reduction targets to only the developed States. Developing States like India has been contributing to the greenhouse gas emission in an alarming state and it has been exempted from any binding targets to attain. A significant greenhouse emitting State like the United States abstained from being a signatory to the protocol on the grounds that India and China have been excluded from the list of developed States as they both form the top ten States that contribute towards greenhouse emissions globally.

VI. DOHA AMENDMENT

The first commitment period extended from 2008-2012 showed a promising progress in by the EU members whereas other countries failed to achieve their targets. The first commitment period had 35 States that had binding targets. The second commitment period was agreed to be carried out in the Doha Amendment to the protocol known as COP 18 was held at Doha, Qatar that would eventually extend from 2013-2020. Canada pulled out of the protocol in 2012 so that they could slip away with the penalty that they had to face for not taking necessary action

at national level to achieve the target set for developed States. Leading countries like Russia, Japan, New Zealand, Ukraine, etc., who were part of the first commitment period wilfully abstained from participating in the second commitment period. The Doha Amendment required the ratification of 144 States and it only received 124 ratifications making the second commitment period a washout.

VII. PARIS AGREEMENT

Conference of the Parties (COP) has been enumerated in Article 7 of UNFCCC which states that the COP is the supreme decision-making body of the Convention.⁵ The duties of COP is to ensure the performance of the Convention and to make necessary adjustments as required to stay on top of the issues pertaining to the environment. Paris Agreement was outlined at COP 21 of the UNFCCC which was held at Paris, France in 2015. UNFCCC convened the largest climate meeting in the history where 196 members of UNFCCC attended it which is almost all the States in the world. This states that the Paris Agreement falls under the ambit of UNFCCC. Member States of UNFCCC was keen on formulating a legally binding comprehensive document that would further the agenda of environment protection. For this purpose COP 17 was held at Durban, South Africa known as the Durban Platform in 2011. They decided to work on this document and present it to for ratification by 2015 which mandates all the States especially those States that refused to be part of the Kyoto Protocol. The Paris Agreement was accepted by 196 States on 12, December 2015 and entered into force on 4, November 2016.

A. SCOPE

Paris Agreement has been drafted after a series of failed attempts. According to Vienna Convention, 1969 Paris Agreement is a treaty and it is legally binding on all parties. The implementation process of the Paris Agreement requires the member States to draft a Nationally Determined Contributions (NCDs) that lays down the action plans the States intend to take to reduce the greenhouse gas emissions in their respective States. Most of the countries have showcased their intention of reducing emissions by 2025 or 2030 in the NCD. This requires a member State to formulate a legislation in the national level for the effective implementation of the treaty. It has to be noted that the Paris Agreement has been devised under two principles- precautionary principle and principle of common but differentiated responsibilities. The precautionary principle has been used for developing environment

⁵ United Nations Framework Convention on Climate Change, *United Nations Climate Change: Conference of the Parties (COP)*, 03 Feb., 2020, 08:48 PM), <https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop>

legislation at national level.

India in its NCD has stated that it will effectively work towards eliminating poverty while reducing greenhouse gas emissions. India has also stated that it will take every possible measures to reduce greenhouse gas emission to 35% by 2030. For the purpose of achieving its target on time it is imperative that the necessary financial means are available to the member States, especially developing countries. India estimates that it would require more than \$2 trillion for it to achieve its NCD. For this the fellow member States should work hand in hand and create a synergy by way of technology transfer and necessary fund to be allocated to developing States by the developed States. The developed countries are obligated to donate a minimum sum of \$100 billion to developing countries in such a way that developing countries will not face the issue of financial hardships.

A review mechanism has also been incorporated under the Paris Agreement that mandates a meeting of the member States to convene together every five years to ensure that the States adheres to their initial promise to the other States. The member States reviews the progress made by each other and formulates plans to achieve their plans more efficiently and effectively. This process ensures transparency and accountability which was absent in the Kyoto Protocol and Doha Amendment.

B. OBJECTIVES

The following are the objectives or goals of the Paris Agreement:

- a) One of the most sought after goals and a long term goal that the States require to work together is to maintain the average global temperature to 2°C and if possible to keep it below 1.5°C. The rising level of temperature would result in global warming and could be devastating to all life forms. One of the major issue would be the melting of ice caps as a result of global warming which would eventually result in rising sea water. This would result in flash floods occurring periodically. With the increase in temperature numerous health risks such as heat strokes and skin cancer.
- b) The second objective of the treaty is that the States should effectively immediately switch to environment friendly alternatives. The States should be resilient towards making necessary requirements that furthers the need of a State to reduce greenhouse emission at all cost. An example of this is switching to solar electricity, electric vehicles, etc.

- c) Lastly, financial aid is substantial to reach these goals. For this purpose the States has to keep a steady flow of income that would be devoted for the purpose of achieving reduced greenhouse gas emissions.

VIII. DRAWBACKS OF PARIS AGREEMENT

- a) One of the objectives of Paris Agreement is to keep the average global temperature within 2°C or possibly within 1.5°C. Climatologists have claimed that the average global temperature set at 2°C would still have catastrophic effects. The NDCs submitted by the States are not exactly in conformation with the 2°C limit. Scientists have warned that by 2030 the total greenhouse gas emissions should be halved and by 2050 it should be at zero and later on it should descend towards negative. However, the current rate of greenhouse gas emission is not sufficient to meet these on time.
- b) Another setback of the Paris Agreement is that it does not tax on carbon. This means that there should be a global tax on carbon so that it will shoot up the cost of coal which most countries use for energy production discouraging the States from relying on it more and forcing the hand of the States to switch over to renewable source of energy.
- c) No punitive measures for States that does not adhere to the goals of the treaty. This is evident when Donald Trump, the former President of the United States decided to back out of the Paris Agreement abruptly and stopped paying the contribution. No mechanism is in place to condemn such attitudes.
- d) Industries which possess a threat to the environment survives upon investments. Investments helps flourish these industries and taking it away crumbles it. There is absolutely no provision in the treaty that discourages investment into industries that harm the planet.

IX. SUGGESTIONS AND RECOMMENDATIONS

- a) One of the best way to curb carbon emissions is to impose taxes on carbon products like coal. Time and again we have been told that these will adversely our planet and still we still tend to ignore it. Imposing tax would make the coal costlier for the States to acquire.
- b) A regulatory body should be created under the treaty that would scrutinize and hold States responsible for their irrationality towards the treaty. Any State that performs in contravention to the goals set by this treaty should be held accountable. States should be constantly monitored about the progress they made in their respective States and should assist the States in formulating a legislation to be operated in their State.

- c) Political lobbying has led to legislators giving out colossal amount of subsidies to industries that primarily deals with fossil fuels. The State should no longer permit the use of fossil fuels for energy production and for other purposes if we are to achieve the carbon emission target as set by the agreement. Instead, subsidize renewable energy industries allowing corporates to switch to renewable energy sector seamlessly.
- d) Investment should be redirected to industries that are committed towards achieving sustainable development such as electric car industries, eco-friendly product industries, etc., and should make tax exemptions to attract more investors to invest in such industries.

X. CONCLUSION

As mentioned earlier, human needs are unlimited and to meet these unlimited needs industries turn towards cheaper but environment unfriendly methods. It is high time that we take a stand in favour of environment and work towards mitigating the greenhouse gas emissions. Scientists have warned us about the repercussions that ensues if we do not act now. It is imperative that we strive for sustainability so that the planet could maintain life for the future generations. Treaties like the Paris Agreement should be respected and States should strive to achieve the goals under it after making necessary changes as the researcher has stated. Reducing greenhouse gas emissions is a collective effort and we must all take steps to make insatiable changes to our existing way of life. Making the right move today can make a better day for tomorrow.
