



AN ANALYSIS OF LAWS REGARDING CLIMATE CHANGE: A TRANSNATIONAL LAW PERSPECTIVE

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ABSTRACT

“In spite of a lack of environmental care in the Indian Constitution, India has established a number of important environmental legislation since its independence, despite the lack of environmental concern in the Indian Constitution. However, environmental legislation in India is being developed piecemeal and in response to specific events that have occurred. In the development of Indian environmental legislation, these may be found. The 1972 United Nations Conference on the Human Environment in Stockholm paved the way for future environmental and climate change legislation. On that basis, the Indian parliament adopted many laws and placed environmental measures in the Constitution, such as Articles 48 A and 51 A. (g). Climate change is now having a subtle but profound effect on Indian society. There has been recent progress toward passing a climate change bill under the country's current legislation, while at the UN Lima summit, member nations agreed on cutting Earth-warming greenhouse gas emissions. This year, on the 147th anniversary of Mahatma Gandhi's birth on October 2, 2016, India approved the National Determined Contribution (NDC). Basic climate change law features are explained in this article, with an emphasis on those topics that are likely to be essential for some time to come and on main drivers of climate change law development. Environmental, energy, corporate, and international law all play a role in the development of the evolving climate change legislation. Any attempt to combat climate change raises questions regarding the correct role and relationship of state and federal governments. What follows will serve as a basic overview of an increasingly complicated and dynamic field.”

Keywords: Fossil Fuels, Kyoto Protocol, IPCC, Climate Change, Environment.

INTRODUCTION

“An increasing number of people in India are concerned about climate change. Climate change is clearly posing a concern. One of the primary causes of climate change is human activity, and India is one of the nations that will bear the brunt of its effects. India's economic and social development would also be affected. The United Nations Framework Convention on Climate Change (UNFCCC) is the primary reason why India participates in multinational climate change discussions.³”

“Climate change is putting additional strain on India's social, economic, and ecological systems as a result of the country's growing industrialization and urbanization. Environmental rules have been taken into consideration in India. Legislations to safeguard the environment have evolved throughout time, as have laws aimed only at punishing offenders. Because of this realization, the nation's goal for laws has shifted from punishment to prevention. Environmental laws have been enacted by the central and state governments in India in order to address the issue of global warming and India's development goals.⁴”

“Climate change affects people, animals, plants, and trees in India for a variety of reasons. India's agriculture, environment, and water levels are anticipated to be affected by these variables. There has been a noticeable decrease in monsoon rainfall and an increase in the frequency of severe rains since 1950, according to research on changes in rainfall patterns.⁵ In the event of a sudden shift in the monsoon, enormous swaths of India might be hit by massive floods. The dry year is projected to be dryer, while the wet year is likely to be wetter. Due to India's already-warm temperature, extreme heat is also a big problem. Droughts have also been a significant cause with long-term implications. Droughts are the primary cause of more than half of India's annual crop losses, and as a result, agricultural yields plummet.”

“Climate change is also endangering the stability of Indian rivers, particularly the Brahmaputra and the Ganges, due to glacier melt. Because of the monsoon rain and melting snow from glaciers, rivers in India's Himalayas are

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³ MushkatRoda, “*International Environmental Law in the Asia Pacific Region: Recent Developments*” 20 California Western International Law Journal, 30, (1989-90).

⁴ Retrieved From: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2822161/> Retrieved on 12 May 2022.

⁵ P. R. Shukla, SubodhSharma, P. VenkataRamana, (2002), “*Climate Change and India: Issues, Concerns and Opportunities*”, Tata McGraw Hill, New Delhi, India.



becoming more prone to floods, which has a substantial influence on irrigation and food production in these regions.⁶

“In India, climate change has a variety of effects on human health. There are a lot of escalating situations in India where impoverished individuals are likely to be afflicted due of malnutrition and child stunting. Humans are affected by climate change in a variety of ways.⁷”

❖ Food insecurity has a negative impact on health.

“Indian crops and agriculture might be affected by a rise in rainfall and temperature. Flash floods are devastating crops every year because of excessive rainfall. This poses a concern to nations like India, where malnutrition is already a serious issue.”

❖ Health consequences of increasing sea levels

“Floods are a significant cause of mortality and injury owing to rising sea levels. In addition, saltwater intrusion may affect the supply of freshwater. Agricultural losses are a result of this, which has a negative impact on nutrition.”

❖ Extreme weather may have a negative impact on health.

“People are dying, being displaced, or being injured as a consequence of an increasing number of natural catastrophes. Storms, floods, and droughts induced by climate change have killed tens of thousands of people, and these natural catastrophes also have a negative impact on humans and the environment.”

❖ Effects of glacier retreat on human health

“Snowmelt may lead to a change in the time of spring because of the increase in temperature. Flash floods may occur when snow melts too quickly. This might have a negative impact on the amount of freshwater available for human consumption and other uses.⁸”

ENVIRONMENT AND CONSTITUTION OF INDIA

“In the past, our Constitution of India did not have any provisions for environmental protection. In spite of this, there were certain environmental measures in the legislation relating to agricultural and animal husbandry management, public health, and preservation of national treasures. Article 47 of the Indian Constitution stipulates that the major responsibility of a state is to enhance nutrition, the condition of life of its citizens, and public health. It is clear from this that environmental preservation and improvement are part of improving public health, since public health cannot be guaranteed without environmental protection.”

“Ecology and environment were introduced to India's constitution for the first time after the 42nd Amendment to the Constitution of India. An excellent decision was made by officials when they included environmental protection and citizen responsibilities as constitutional amendments. Article 49-A was introduced to the Constitution in section IV, which refers to the fundamental principles of governmental policy. Under the constitution, the state has the authority to conserve and develop the environment, as well as to protect the country's forests and animals.⁹”

Fundamental Rights

“Part III of the Indian Constitution establishes fundamental rights for all citizens, including the right to freedom, equality, and a decent standard of living. A duty to safeguard and maintain the environment is imposed on the current generation as well as on those to come. The Supreme Court and the several High Courts of the nation have given a wider meaning of “life” under Article 21, despite the fact that it does not directly refer to climate. The courts have ruled that the right to life necessitates the right to exist in a setting that promotes human flourishing. With that in mind, it follows that the core human right to life also entails a right to live free from environmental degradation and imbalances. The existing state of the world's society and political system should be of primary legal significance. Legal frameworks need to instill environmental ethics, profound ecological concepts and eco-centricity to create a sustainable socioeconomic framework. Because technological and scientific advancements have damaged the balance of existence, the task is very difficult.¹⁰”

⁶ K.N. Ninan, SatyasibaBedamatta (2012), “*Climate Change, Agriculture Poverty and Livelihoods: A Status Report*”, Working Paper 277, The Institute for Social and economic Change, Bangalore.

⁷ Natural Resources Defense Council (NRDC) “*Renewable Energy Is Key to Fighting Climate Change*” (accessed 05-05-2022).

⁸ India: taking on Climate Change. Twenty Recent Initiatives Related to Climate Change. Ministry of Environment and Forests, Government of India. 1 September 2009.

⁹ Ministry of New and Renewable Energy, Government of India < <http://mnre.gov.in/mission-and-vision-2/mission-and-vision/>> (accessed 29- 05-2022)

¹⁰ Ministry of Environment, Forest and Climate Change (MoEFCC), “*India's Intended Nationally Determined Contribution: Working Towards Climate Justice*”, p. 29. accessed on 22-05-22.

Directive Principles of State Policy

“As stated in our Constitution's Article 48-A, the State is tasked with protecting the environment, including the country's forests and animals, as well as other natural resources. A dedication to ecology is a constitutional obligation in India, as stated in the Directive Principles. The “Public Trust Doctrine” is the basis for the State's constitutional commitment to safeguard and promote the natural environment.”

“This country's forests and animals have been granted legal protection and development under Article 48-A of the Constitution, which provides instructions for governmental policy. As long as the ideals outlined in Article IV of the Constitution remain at the heart of national decision-making.¹¹”

“As a result, environmental and forestry issues, as well as rural animals, have now become the formal responsibility of the state. Executive and legislative arms of government use policy and necessary legislation to enforce the Directive's principles, but the judiciary also puts them into practice via judicial activism.¹²”

Fundamental Duties

“By merging Article 51A(g) into a new section, Section IV-A of basic obligations, in the 42nd constitutional amendment, the government was not only responsible for protecting and developing the environment but it was also obligated to do so at the individual level.

“As outlined in Article 48A, the State has a constitutional mandate to safeguard and enhance the environment. Failure to comply with the pointer or the responsibility is nothing short of a breach of basic law that the State and every individual are obligated to safeguard and uphold. 17A Forests and 17B Wildlife Protection are two more constitutional amendments.”

Constitutional law and policies regarding climate change

“Article 21 of the Indian Constitution protects citizens' liberties against both the direct and indirect effects of climate change. Life, livelihood, and health are all essential rights protected by the Indian Constitution, and climate change might have a substantial influence on India's economic growth. Both hazards and possibilities exist while pursuing constitutional remedies. Climate change may not only be strategically helpful, but may also be India's sole feasible option for paying victims for their loss and more significantly, preventing further Greenhouse Gas (GHG) emissions. Under Article 32, writ jurisdiction should be sought only if there is a substantial danger of climate-related offenses.¹³”

“In the colonial period, environmental control began with land-related law and has expanded to include extensive legislation in areas such as water, air, landscape, and wildlife under the Environmental (Protection) Act of 1986. There are certain policies made by the government for climate change in India, to protect the environment.¹⁴ The policies are to be discussed below:”

National Policies

“Many more national policies oversee environmental protections in addition to the Constitutional obligation, such as a 1992 pollution policy and a 1992 strategy and policy statement for environmental conservation. National Pollution Abatement Policy, 1992, encourages the employment of economic tools in addition to traditional emissions prevention and control measures.”

National Environmental Policy, 2006

“Indian climate change policy is outlined in this policy, which emphasizes the concept of mutual but distinct responsibility between different countries, as well as the country's main vulnerabilities to climate change, such as the impact on water supplies and forests as well as the effects on agriculture and health. Legislation governing environmental protection is generally based on the belief that environmental conditions must be maintained in order to safeguard public property.¹⁵”

¹¹ H.A.C. Prasad, J.S. Kochher, (2009) “*Climate Change and India: Some Major Issues and Policy Implication*” working paper No. 2, department of Economics Affairs, Government of India.

¹² Intergovernmental Panel on Climate Change (IPCC) “*Special Report on Renewable Energy Sources and Climate Change Mitigation*” (2011).

¹³ Intergovernmental Panel on Climate Change (IPCC), Third Assessment Report, Climate Change 2001: Impacts, Adaptation, and Vulnerability, 2001 (accessed 08-05-2022).

¹⁴ B Machol& S Rizk “*Economic Value of U.S. Fossil Fuel Electricity Health Impacts*”, Environment International, 52 75–80 (2013) (accessed 22-05-2022).

¹⁵ Climate Change and India: Towards Preparation of a Comprehensive Climate Change Assessment, Ministry of Environment & Forest, Government of India, October 2005.



LEGAL PROVISIONS IN OTHER LEGISLATIONS

“Industrialization creates a schism between environmental protection and economic development. Between the two, an idea for a sustainable development solution is hatched. Its goal is to promote economic growth while minimizing negative impacts on the environment and maintaining ecological equilibrium. India, a developing nation, is particularly concerned about this. Despite the fact that environmental security has risen to the top of the legislative priority list in the new century, India has enacted more than 200 laws, both before and after independence, addressing environmental preservation and conservation. ‘Beneficial’ legislation adopted in accordance with Article 48A of the Constitution of India should be recognized as environmental law. The court has a duty to interpret the law in a way that protects the environment.¹⁶”

1. The Forest Conservation Act, 1980

“The Forest (Conservation) Act of 1980 was passed by the Central Government after it was alarmed by India's increasing deforestation and the resulting environmental deterioration. In order to conserve and maintain woods, this law was enacted. Rather than protecting forests, the law restricts the state's ability to de-reserve land for future generations. When the legislation was changed in 1988, reserved forest states must get permission from the central government before using forest land for non-forest purposes, assigning forest property to a private person or firm, or clearing forestland for replanting reasons from the central government. Under the Act, an advisory council advises the center on these approvals.”

“A forest that has been reserved cannot be de-reserved by any government or other body. Forest land may only be used for forest uses with prior consent from the national government. As a consequence of deforestation, the ecology is damaged, causing global warming. This Act was established to prevent this.¹⁷”

2. The Air Prevention and Control of Pollution Act, 1981

“Similar to the Water Act of 1974, the Air Act's structure is based on the same principles. Central and state water pollution control boards established under the Water Act were extended to include air pollution management in the 1981 Air Prevention and Control of Pollution Act. States that don't already exist were obliged to establish air pollution boards. From Sections 19 to 31 A of the Air Act of 1981, methods to prevent and manage air pollution are provided for this aim in order to decrease pollution and battle climate change warnings.¹⁸”

3. The Environment Protection Act, 1986

“This law was passed in the aftermath of the Bhopal Gas Disaster of 1984, which claimed the lives of over 3000 people. Under the canopy of the Environment Protection Act, several national and state bodies formed under prior laws such as the Water Act and the Air Act are able to coordinate their work under one roof. Legislation that gives the executive branch broad authority and expresses a fundamental legislative policy goal of environmental protection.”

“This Act gives the Central Government the authority to safeguard and enhance the quality of the environment by regulating emission and discharge regulations; controlling the location of industries; managing hazardous waste; and preserving public health and welfare. There is environmental pollution when a substance from the environment is present in an amount that might affect the atmosphere, whether it is a solid, a liquid, or a gas.”

“Any and all measures necessary or expedient to safeguard and improve air quality, as well as monitor and reduce water pollution, are authorized under Section 3(1) of the Environment Protection Act. Pollutants may only be released or released from the sky in accordance with the Environmental Protection Act, Section 7. The Environment (Protection) Rules of 1986 were drafted by the government to implement this requirement (EPR).”

“The Ecomark Program, established in 1991 by the Department of Climate, Forests and Wildlife, is also outlined in this legislation. The scheme's goals are to provide producers with the tools they need to produce environmentally friendly products, to recognize and reward those that take serious steps to reduce their influence on the environment, and to raise consumer awareness. Environmentally vulnerable places are periodically protected by central government notifications issued under the EPA.”

4. The Factories Act, 1948

“The major goal of this The Factories Act, 1948 was to safeguard the welfare of employees not only in their working conditions in the factories but also in their employee perks. Both environmental protection and employee health are protected by this legislation. As a result of this legislation, all liquid effluents generated during the production process, as well as gasses and fumes, must be treated before being disposed of.”

¹⁶ Rahul Choudhury, “NGT issues notice to MoEF&CC and CPCBon Climate Change Petition”, ERC, (May 29, 2022) <http://archiveercindia.org/index.php/latest-updates/erc-desk-update/1780-ngt-issues-notice-to-moef-ccand-cpcb-on-climate-change-petition>.

¹⁷ J. Sathaye, P.R. Shukla and N. H. Ravindranath, (2006), “Climate change, sustainable development and India: Global and national concerns”, Current Science, February 2006, Vol.90 (3), 314-325.

¹⁸ Retrieved from: https://eprints.lancs.ac.uk/CHANGE_AND_ITS_IMPACT_ON_INDIA_A_COMMENT.pdf Retrieved on: 01-05-2022.



“Hazardous processes are defined in the Act as any process or operation in which, unless careful care is taken, the raw materials used therein or the intermediate or finished goods, byproducts, waste, or effluent will cause material disability of the individuals engaged in health or result in the contamination of the general environment, but since the 1987 amendment as a post-independence law has shown clear concomitant connotations. The Factories Act of 1987 was amended shortly after the Supreme Court's judgement in the Shriram Gas Leak Case and the tragedy of Bhopal to include additional requirements pertaining to hazardous industrial practices.¹⁹”

5. The Companies Act, 2013

“Corporate Social Responsibility (CSR) has been made mandatory by the Companies Act, 2013 Act, which ensured stricter requirements and new incentives for companies to engage in environmental and renewable energy problems. It is recommended that firms prioritize CSR efforts that are more closely connected with the industry. CSR initiatives may be funded by enterprises having a net worth of at least \$500 million, or a turnover of at least \$1 billion or a net profit of at least \$5 million. There is a timetable in the guidelines outlining the many duties that corporations may do as part of their CSR efforts. Pollution control and prevention; waste management and recycling; sustainable use of natural resources (such as land and water) are outlined in the document. Encouraging the adoption of environmentally friendly energy technology and implementing sustainable industrial practices to combat climate change.”

“Consequently, India was one of the first nations to include social welfare expenditure in the definition of a company's statutory business activities. To address some of India's most urgent economic, social, and environmental concerns, The Climate Group thinks that this new provision will help create a more sustainable environment.²⁰”

INDIAN NETWORK FOR CLIMATE CHANGE ASSESSMENT

“In addition, the government has made initiatives to increase the ability of institutions to conduct climate change research and to conduct relevant evaluations. More than a dozen research institutes have already joined forces to create the Indian Climate Change Assessment Network, which is charged with doing research on climate change science and how it affects India's economy in various locations. For example, it has helped the Ministry compile its GHG Pollution Inventories and conduct more frequent scientific reviews at predetermined intervals.”

State action plans on climate change

“Under the guidance of the federal government, state governments are developing State Action Plans on Climate Change in order to strengthen institutional capacity and implement sectoral initiatives to combat climate change. India's natural resources will be restructured and its people's lives would be badly affected. A country like India, whose economy relies so heavily on natural resources and climate-sensitive industries like agriculture, water, and forestry, is in for a severe test because of the dire forecasts of climate change.”

“As a result of these factors, India's economic and social progress and efforts to eradicate poverty are guided by the country's unique resources, as well as by a long tradition of civilized living that values the environment and the maintenance of a healthy ecological balance.”

“Indian states have been requested by the MoEF to develop action plans outlining their strategies for dealing with the effects of climate change adaptation and mitigation. Each of the states should have a climate change action plan that is aligned with the goals of the National Action Plan on Climate Change.²¹”

LANDMARK JUDGEMENTS

1. In the case, **“Virender Gaur v. State of Haryana**,²² the Hon'ble Court noted that The right to life is guaranteed under Article 21. Without environmental protection, sustainability, ecological harmony, freedom from polluted air and water, and sanitization, it is impossible to enjoy life to its fullest. This includes the right to a dignified existence. Anyone who contracts or engages in any activity that will harm the environment shall be regarded to be in violation of Article 21. As part of the right to a decent existence, everyone has the right to a healthy environment, and without it, it would be impossible to live with any sense of honor or respect for one's own human dignity. As a result, protecting the environment is now a top priority for the human race. Ecosystem preservation is an important part of environmental conservation. Consequently, both the state and local governments have a constitutional obligation not only to secure and protect a healthy environment, but they must also promote, conserve, and develop both man-made and natural ecosystems.”

¹⁹J.W. Hansen, (2004) *“Climate impact on Indian Agriculture”*, International Journal of Climatology, Vol. 24, 1375-1393.

²⁰Retrieved From: <https://iclg.com/practice-areas/environment-and-climate-change-laws-and-regulations/india> Retrieved on: 27 May 2022.

²¹Retrieved from: <https://www.livemint.com/mint-lounge/features/decoding-india-s-climate-future-11574428096985.html> Retrieved on: 27 May 2022.

²²(1994) SCC 577.



2. In the case, **"M.C.Mehta v. Union of India"**²³ In addition, the Supreme Court mandated the presentation and dissemination of environmental messages as well as the inclusion of the environment as a mandatory subject in schools and colleges. Films and slides must be shown in cinemas, as well as radio and television programs, according to the Supreme Court's guidelines. The University Grants Commission (UGC) was tasked with recommending environmental studies as a topic of study for colleges and universities throughout the country. As a result, State Boards of Government were ordered to take immediate action to include environmental education into the school curriculum. Rebellious states have been compelled to severely implement their state's instructions under the supervision of the state authorities in order to secure complete compliance."

3. In the case, **"Industrial Areas Development Board v. Sri. C Kenchappa and Ors."**²⁴ An decision of the Karnataka High Court requiring the appellant to maintain a one-kilometer-wide buffer zone around the outskirts of a community in order to preserve a "open space" was overturned by the Supreme Court. According to the judiciary, the globe is experiencing a significant environmental degradation crisis as a result of disorderly growth and industrialization, the combustion of fossil fuels, and vast deforestation, which contributes to environmental degradation and global warming."

4. In this case, **"M.C.Mehta v. Union of India"**²⁵ An urgent PIL has been filed to safeguard the Taj Mahal and prevent air pollution from the Taj Trapezium. The Taj-Trapezium casing is another name for this model. Mathura Refinery and other industrial sources of sulfur dioxide produce sulfuric acid, sometimes known as "acid rain," which corrodes white marble. The Supreme Court's rulings were based on evidence from several technical experts that air pollution hurt the Taj and those who live in the TTZ. In light of the "precautionary principle," the Court ruled that environmental measures must be taken to foresee, avoid, and remedy the environmental consequences of the activity. The government of the state of Uttar Pradesh has been ordered to support and encourage businesses in the relocation process, while employees are entitled to certain perks and privileges.²⁶

CONCLUSION

"Climate change is already posing major dangers to the country, making global warming one of the country's most pressing concerns. As a developing country like India, this is a huge problem. Environmental and animal health are all being impacted by the effects of global warming. Climate change has a negative influence on human health, including health problems related to food insecurity, vector-borne infections, other health effects, increasing sea-levels, receding glaciers, severe weather events, and excessive temperatures. Crops, forests, coastlines, and other natural resources will all be adversely affected by the changing climate. This, in turn, will have a negative impact on the country's national growth goals."²⁷

"Several pieces of legislation have been enacted to address the threat of global warming. Despite the significant environmental risks in the area, India has a well-developed legal and institutional framework for dealing with them. There are particular articles in the Constitution of India to safeguard the environment because of the country's size and development. The government has also set up the Indian Network for Climate Change to address the issue. It comprises the organization's objectives and the measures it intends to follow in order to attain long-term success. As a whole, India is doing a good job combating the effects of global warming."

²³1987 AIR 1086, 1987 SCR (1) 819.

²⁴ Appeal (civil) 7405 of 2000.

²⁵ 1987 AIR 1086, 1987 SCR (1) 819.

²⁶P. R. Shukla, Subodh Sharma, P. VenkataRamana, (2002), "*Climate Change and India: Issues, Concerns and Opportunities*", Tata McGraw Hill, New Delhi, India.

²⁷ P.K. Aggarwal, R.K. Mall, (2002), "*Climate change and rice yields in diverse agro environments of India*". II Effect of uncertainties in Scenarios and crop models on Impact Assessment, "Climatic Change", Vol. 52, 331-443.