

CLIMATE CHANGE AND HUMAN RIGHTS

Authors: Nikitha Suresh and Lucy Sara George, V year of Kerala Law Academy Law College

ABSTRACT

Climate change is an inevitable factor. It negatively affects the rights and lives of humans, mainly the marginalized groups. Change in climatic conditions affects an array of national and international rights of humans. The right to life is universally recognized as a fundamental human right, yet, every year, 15,000 premature deaths are being linked to the climate crisis—a number set to increase with rising temperatures.

Climate-related deaths are caused by extreme weather events, heatwaves, floods, droughts, wildfires, water-borne and vector-borne diseases, malnutrition and air pollution. The climate crisis threatens the right to water and sanitation, contributing to water crises like the one in Bolivia, where glaciers are receding, and water rationing has been required in major cities.

Those who have contributed least to climate change have unjustly been affected by it. This injustice should be prevented by bringing in updated measures in terms of science and law.

The state has to protect all its people from climate change and the unforeseeable hazards that follow climate change. Failure to take proper steps would result in the breach of the State's duty towards its people. Proper measures have to be adopted strictly so that everyone gets to easily adapt to the changing climate. This article throws light upon the scenario of climate and human rights violation over the decades and how the State has responded to it through its organs.

ARTICLE

Climate is the average weather in a given area over a longer period. A description of a climate includes information on, e.g. the average temperature in different seasons, rainfall, and sunshine. Also, a description of the extremes is often included. Climate change is any systematic change in the long-term statistics of climate variables such as temperature, precipitation, pressure, or wind sustained over several decades or longer. Climate change can be due to natural external forcing (changes in solar emission or changes in the earth's orbit, natural internal processes of the climate system) or it can be human-induced¹.

In 1972 the United Nations first proclaimed that the environment is “essential...to the enjoyment of basic human rights.” The United Nations Framework Convention on Climate Change recalls this statement in its preamble, and the Cancun Agreements emphasize that “Parties should, in all climate change-related actions, fully respect human rights². The Human Rights Council has recognized that “the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography.”

Also, the U.N. High Commissioner for Human Rights has acknowledged that “the greatest single impact of climate change might be on human migration” and that persons displaced by climate change are entitled to the full range of human rights guarantees under international and domestic law³. The United States agrees that climate change has implications for human rights. In October 2014 a coalition of independent experts at the Human Rights Council called on the nations of the world to “ensure full coherence between their solemn human rights obligations and their efforts to address climate change⁴.”

A United Nations Children's Fund study on the effect of climate change on children found that “children bear the brunt of the impact of climate change” and that more frequent natural

¹ <https://www.climateurope.eu/what-is-climate-and-climate-change/>

² Universal Declaration Human Rights Articles 2, 3, 9,

³ <https://climate.law.columbia.edu/sites.pdf>

⁴ Ibid

disasters, food crisis and changing rainfall pattern threaten a wide spectrum of children's right, including their basic rights to education, health and clean water, and right to food⁵.

Environmental migrants and displaced persons are entitled to enjoy, equally and without discrimination, the same rights and freedoms under international and national laws, as do other persons in their country. The existing international legal framework does afford a degree of protection for certain segments of environmental migrants. Protection is not limited to merely securing the survival and physical security of those displaced but encompasses civil and political, and economic, social and cultural rights as attributed by international human rights and international humanitarian law. The principles of equality and non-discrimination are central to all international human rights law and humanitarian principles⁶. Under the broader framework of the international human rights regime, the rights which are particularly relevant for persons displaced by environmental and climatic factors include the right to adequate healthcare; the right to life and dignity; the right to adequate housing; right to security of the person, freedom of movement and the choice of residence; and housing, land and property restitution and/or compensation following displacement.

Climate change threatens the Right to life of citizens in India. It also threatens the rights of the minority sector in the nation. The most fundamental human right that may be affected by climate change, for example through the increase in natural disasters and flooding, is *the right to life* which is protected under Article 6 of the International Covenant on Civil and Political Rights (ICCPR) and is considered a 'peremptory norm' of International law. The 2009 Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights the OHCHR study noted the link between climate change and human rights and the obligation on States to protect human rights from the effects of Climate change. On the other hand, it also noted that to access the human rights impact of climate change-related phenomenon and of policies and measures adopted to address climate change there is a need for more detailed study and data collection across regions. The report further stated that "adverse effects of global warming are often projections about future impacts, whereas human rights violations are normally established after the harm has occurred".

⁵ www.unicef-irc.org/e-book/Climate-ch-web/basic-html

⁶ http://www.mcrg.ac.in/rw%20files/RW39_40/13.pdf

12th December 2020 marked the fifth anniversary of the adoption of the landmark Paris Agreement at the United Nations Climate Change Conference, 2015, under the French Presidency. The Agreement brought all signatories together to undertake ambitious efforts to combat climate change and adapt to its effects, with enhanced support to assist developing countries to do so. It charted a new course to accelerate global climate action and recognised the need to adapt to existing and ongoing climate-caused changes. It undertakes to assist the most vulnerable to take action. It also aims to align financial flows with a global pathway to achieving these two objectives⁷.

The UN Secretary-General has proposed [six climate-positive actions](#) for governments to take once they go about building back their economies and societies, post covid-19⁸. These include:

1. Green transition: Investments must accelerate the decarbonization of all aspects of our economy.
2. Green jobs and sustainable and inclusive growth
3. Green economy: making societies and people more resilient through a transition that is fair to all and leaves no one behind.
4. Invest in sustainable solutions: fossil fuel subsidies must end and polluters must pay for their pollution.
5. Confront all climate risks⁹

In June 2020, Human Rights Watch outlined key elements that should be incorporated in EU legislation governing mandatory human rights and environmental due diligence, including climate change. In this document, Human Rights Watch uses the phrases “due diligence” or “human rights due diligence” to mean “human rights and environmental due diligence, including climate change¹⁰.”

Further, the Intergovernmental Panel on Climate Change predicts that global warming will worsen human health conditions, especially in tropical regions. In places like Africa, an increase in temperature signifies an increase in mosquito populations, thus escalating the risk

⁷ <https://www.climateambitions summit2020.org/index.php#parisagreement>

⁸ <https://www.un.org/sustainabledevelopment/climate-change/>

⁹ Ibid

¹⁰ https://www.hrw.org/news/2020/11/09/q-proposal-eu-legislation-mandatory-human-rights-and-environmental-due-diligence#_ftnref1

of malaria, dengue and other insect-borne infections. WHO states that global warming will also cause a major increase in insect-borne diseases in Europe. Countries like Azerbaijan, Tajikistan and Turkey might already be in the danger zone for mosquito-borne malaria. However, the ability to tolerate temperature changes differs from region to region. Richer societies can utilize technological advances; for example, the use of more powerful air conditioners and the construction of houses minimize heat retention. On the other hand, developing countries lack not only the technical know-how but also the resources and public health systems, required to prevent such outbreaks. The World Wild Fund has reported that climate change can drastically alter rainfall patterns, and risk water and food supplies for millions.

Increased global warming can also pose a threat to national security, affecting food security, which, in turn, can lead to resource conflicts. At the UN Security Council debate on energy, security and climate, British Foreign Secretary Margaret Beckett introduced global warming as a security risk. Despite opposition from many Council members, such as the Russian Federation and China, she argued that the loss of basic needs due to climate change in poor countries can increase the risk of conflicts. Similarly, Ugandan President Yoweri Museveni has labelled climate change as "an act of aggression by the rich against the poor"¹¹.

The Indian judiciary is well placed to address constitutional challenges arising from climate change, primarily because of the public interest litigation or epistolary jurisprudence that it has developed to protect the fundamental rights of Indians. India is committed to continuing its efforts concerning its environmental policies. India has articulated its belief in an ethical and people-centric approach to climate change through the concept of "Climate Justice". The Supreme Court of India has also recognized the right to a clean environment as part of an individual's right to life guaranteed by the Constitution of India.

The orders and directions of the Supreme Court cover a wide range of areas whether it be air, water, solid waste or hazardous waste. The field covered is very vast such as – vehicular pollution, pollution by industries, depletion of forests, illegal felling of trees, dumping of hazardous waste, pollution of rivers, illegal mining etc. The list is unending. The Supreme Court has passed orders for the closure of polluting industries and environmentally harmful

¹¹ <https://www.un.org/en/chronicle/article/health-effects-global-warming-developing-countries-are-most-vulnerable>

aqua-farms, mandated cleaner fuel for vehicles, stopped illegal mining activity, and protected forests and architectural treasures like Taj Mahal.

The Supreme Court has provided some broad and innovative interpretation of laws in response to practical problems such as costs of litigation and other resource constraints that made the judiciary, particularly higher courts located in major cities, inaccessible to thousands of Indians. Firstly, the Court has waived "ripeness" requirements for bringing an action, on the ground that in a country where most people are unaware of their rights violations should be addressed before the actual violation occurs *Nath v. Comm'r of Income Tax*¹². Thus, the presence of a substantial threat of climate-related violations should be sufficient to invoke the Courts' writ jurisdiction under Article 32. Secondly, the Court has the authority to determine whether an injury has occurred, without relying on statutory enactments. Further, petitioners need not satisfy the other two standing requirements under U.S. law, causation and redressability (remedy) *Lujan v. Defenders of Wildlife*¹³. Thirdly, the Court can provide broad remedies, by issuing a writ of mandamus not only ordering the government to perform non-discretionary functions, or enjoining it from performing a statutorily prohibited action, but also requires it to perform discretionary functions. Moreover, the Court can issue "continuing mandamus,"

Obligating the government to take specific actions and report progress regularly, as it has in the past Due to the above rulings, the Indian judiciary is considered to be one of the most powerful courts in the world. In fact, in comparison, US courts are far more restrained by the separation of powers doctrine enshrined in the Constitution. Further, in the case of environmental issues, representative suits may generally be brought against State agencies within the scope of a given statute. Fourthly, any person with "sufficient interest" in helping poor and vulnerable sections of the population can seek judicial review on behalf of victims of fundamental rights violations¹⁴. In the alternative, the Court can assume suo moto jurisdiction by treating letters or newspaper reports as writ petitions¹⁵.

In addition to the procedural flexibilities, the Court's substantive interpretation of fundamental rights, based on non-binding constitutional law provisions, on foreign decisions

¹² *Nath v. Comm'r of Income Tax*, A.I.R. 1959 S.C. 149

¹³ *Lujan v. Defender's of Wildlife*, 504 U.S. 555 (1992)

¹⁴ *Morcha v. India*, A.I.R. 1984 S.C. 802

¹⁵ *Batra v. Delhi Admin.*, A.I.R. 1978 S.C. 1675

and international law and principles, also provide adequate room for a constitution claim. Over the years the Court has read into fundamental rights provisions, a range of ancillary rights-livelihood, health, necessities, travel abroad and privacy. The possibility of successfully proceeding with a climate change claim also appears favourable in light of the Court's invocation of epistolary jurisdiction to address several environmental concerns, including protecting the TajMahal from coal and coke pollution; cleaning up the Ganga; relocating hazardous industries in Delhi; curbing vehicular pollution, requiring compulsory environmental education¹⁶.

In *MC Mehta v. UOI*¹⁷, (Oleum Gas Leak case), the Supreme Court formulated an indigenous jurisprudence of Absolute Liability in compensating the victims of pollution caused by hazardous and inherently dangerous industries.

Further in *M.C. Mehta vs. Union of India*¹⁸, wherein the issue of pollution of the Ganga river by the hazardous industries located on its banks was highlighted, the Hon'ble Supreme Court ordered the closure of several polluting tanneries near Kanpur. The Hon'ble Supreme Court in the case of *TN Godavarman Thirumulpad vs. Union of India and Ors*¹⁹, dealing with the issue of livelihood of forest dwellers in the Nilgiri region of Tamil Nadu being affected by the destruction of forests, passed a series of directions.

The Principle of Sustainable Development was also recognized by the Supreme Court of India in the *M.C. Mehta v. Union of India*²⁰ (Taj Trapezium case).

Thus Climate change is affecting every country on every continent. It is disrupting national economies and affecting lives. Weather patterns are changing, sea levels are rising, and weather events are becoming more extreme.

As countries move toward rebuilding their economies after COVID-19, recovery plans can shape the 21st-century economy in ways that are clean, green, healthy, safe and more resilient. The current crisis is an opportunity for a profound, [systemic shift to a more sustainable economy](#) that works for both people and the planet. Governments around the

¹⁶ <https://core.ac.uk/download/pdf/144232135.pdf>

¹⁷ *MC Mehta v. UOI*, AIR 1987 SC 1086

¹⁸ *M.C. Mehta vs. Union of India*, AIR 1988 SCR (2) 538

¹⁹ *TN Godavarman Thirumulpad vs. Union of India and Ors.*, W.P.(C) No. 202 of 1995

²⁰ *M.C. Mehta v. Union of India* AIR 1997 SC 734

world have spent considerable time and effort in recent years to develop plans to chart a safer and more sustainable future for their citizens. Taking these on board now as part of recovery planning can help the world build back better from the current crisis.

The solution to protecting the climate and thereby protecting life is likely to be complex and involve short-term strategies to adapt to the current temperatures, as well as long-term strategies to drastically reduce future emissions of greenhouse gases²¹. Strategies for climate adaptation include better forest management, defences against rising sea levels and flooding, improved infrastructure to withstand extreme weather events, and the development of comprehensive services to address food and water insecurity, health care, and the economic needs of vulnerable populations. Future efforts to mitigate global warming would involve reducing the flow of heat-trapping greenhouse gases into the Earth's atmosphere by drastically curbing the burning of fossil fuels and developing effective technologies to capture and store greenhouse gases in forests, soil, oceans, or other sinks. Hopefully, these concerted efforts would allow the Earth enough time to recover and sustain the lives of humans and other species.



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²¹ <https://www.jci.org/articles/view/135006#B12>