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Climate and its Changing Effects on Future Generations- From Perspective of Humanitarian Law

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ABSTRACT

Climate is an integral part of our day to day lives nowadays. This climate change has many outcomes on human lives especially health in varied ways. The paper here would deliberately focus into the health issues that the future generations would face including the unborn children. There has been many international law framed for the protection and preservation of the human rights, but the humans who are unborn also have rights which are being violated because of the rapid and diverse changes we are having in the climate gradually. These changes are mostly seen effecting the pregnant ladies in the rural areas where the socio-economic factors also play a greater role. The drastic climate changes not only bring down the resources for the future generations but it also causes many epidemics and health issues for the ones who are not even born. However, not a lot is known about the effects that might already be felt in the health of the new generations. A recent study on extreme climate events in Colombia revealed that the health of pregnant women and of their new-born babies are affected by these phenomena. A month long heat wave for example can increase the possibility of premature births with the consequences that this can have on the future development of babies. The climatic factors not only hamper the environmental well-being of the human kinds, but it also causes a mental imbalance which harm the most who are expecting and hence these have an adverse effect on the ones in their womb. Therefore this paper will further replicate this issue on a broader scale with detailed comprehensions.

I. INTRODUCTION

(A) WHAT IS CLIMATE CHANGE?

Climate change refers to a vital and a long-term changes, in the global weather. A climate comprises of all the things or components of the nature, which consist of rocks, trees, land mass, water bodies, forests, deserts, snow, human beings and also other living creatures and

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the interactions taking place between them.² For example, climate refers to something which is mostly known and associated with a particular area. Suppose New York³ has a rainy climate, but the global climate refers to the climate as an average climate all together which is common for all. Hence this climate is changing now and this brings a lot of repercussions on the people.⁴

(B) RESEARCH OBJECTIVE

The research shall be conducted with the objective to find out how the climate change is effecting the future generations and its impact on the future unborn child and what initiatives have been taken by the international platform in this regard.

(C) RESEARCH QUESTIONS

1. Why climate change is growing day by day and how it's effecting the future generations?
2. How the rights of the unborn children are being effected and also the pregnant ladies?
3. What is the role played by the International platform in taking steps in this regard?

(D) LITERATURE REVIEW

1. The researcher has referred to this piece of article, i.e. "Climate Change and Human Rights", in United Nations Environment Programme, Columbia Law School, because this piece of article has basically helped in understanding the types of threats the climate has imposed on different kinds of human rights of the people. It also emphasised on the fact that how climate change is affecting the health of the unborn babies and what future consequences it can have.
2. The second article i.e. "Climate Change Impacts People Who Are Not Born Yet", in The World Bank, IBRD, IDA, published on 21st of April, 2015, has been also referred here because this explains how and in what ways the climatic variations have impacted on the unborn child which constitute the major part of issue in this paper.
3. In this research, the book ENVIRONMENTAL LAW, by Dr SUKANTA KUMAR NANDA, and its chapter on NATIONAL ENVIRONMENT POLICY, has also helped the researcher to know what kind of initiatives have been taken in order to curb this issue of environmental menace and how far it has become applicable in practical sense.

² United States Global Research Program, "Global Climate Change Impacts in the United States," Cambridge University Press, 2009.

³ Naomi Oreskes, "The Scientific Consensus on Climate Change," *Science* 3 December 2004: Vol. 306 no. 5702 p. 1686 DOI: 10. 1126/science. 1103618

⁴ Mike Lockwood, "Solar Change and Climate: an update in the light of the current exceptional solar minimum," *Proceedings of the Royal Society A*, December 2, 2009, doi 10. 1098/rspa.2009.0519

4. "Foetal Rights" in *West's Encyclopaedia of American Law, edition 2*. The Gale Group, Inc. 2008, retrieved 29 October 2015, was also a piece of literature that again helped in knowing the rights of the foetus and the reasons why they have been conferred with humanitarian rights even before their birth. Hence it was a vital literature for conducting this research.

(E) RESEARCH METHODOLOGY

Data has been collected for this study from the secondary sources of data which include books, magazines, journals, periodicals and different websites.

The study is done completely on doctrinal mode of research.

(F) SCOPE AND LIMITATION

The scope and limitation of this study would be only the rapid growth of climate change and its ill effects on the future generations de-limiting to unborn child and the effects on the health of the pregnant ladies. This paper would be limited also to the scope of the humanitarian law and the efforts taken by the International platform to scrap-off the effects.

(G) STATEMENT OF PROBLEM

The line of problem here would imply the growing climate changes and its divergent effects on the future generations especially the ones who are not even born and also the health of the women who are expecting. Mostly these changes in the environment are leading to ill health effects on the above mentioned categories of people. However, this also violates their humanitarian rights i.e. human rights from the perspective of humanitarian law. Though we have many steps taken by the international platform for world-wide population, still there is a long way to achieve the success or the mile stone of having a clean and pollution free environment for us especially for the ones who are yet to enjoy our planet and its resources.

II. CLIMATE, ITS CHANGING EFFECTS AND THEIR CAUSES

Climate is completely a changing paradigm in this 21st century which has many varied impact on different categories of people. The rapid population growth which results in increase in human activities which eventually leads to again various kind of impacts on the people. Hence these activities effect different people differently. This paper will however focus on the changing effects on the unborn child in the womb of the mothers and also the health of the pregnant ladies.

Climate Change is also one of the most fatal threats to rights of the people our generations and also the future ones, because it poses a dangerous threat to not only the health of the

people but also to the right in fact the fundamental right of the people to life and their standards of living.⁵

The climatic changes which are nowadays seen growing at a faster speed contributes to many changes in the health of the mothers who are expecting which in return provokes premature births, which is revealed by various studies. The changes reduces the capacity of the people resulting in a poor production activity generally of the poverty stricken people who consequently has less income. There are numerous ways in which the climatic events effects the birth of the children especially in the rural areas. The weather shocks effects the family income in the village areas and uncertainty in the harvests which is resulted as prolific or lean. Due to the lack of adaption mechanism, and an increase in one degree Celsius in the annual temperature is also leading to an average decline of nearly 11% household consumption in India. The variations in the climatic changes and the extreme weather shock is also causing stress in a segment of the population, particularly to the pregnant women thereby increasing their stress levels of the expecting mothers in an unusual way.⁶ These climatic changes has a huge impact on the nature, and due to this over growing global warming, there are many places where it is hit by landslides and floods and other natural calamities which again leads the people to displace from one place to another. In due course there also causes many deadly diseases which again effects the pregnant ladies and their offspring. For instance, the extreme climate event in Colombia in 2011, with its torrential rain and floods led to many destruction of household property and temporarily displaced a huge mass of people, which was also very evident that these weather shocks contaminated the mental health of the pregnant women causing a lot of stress.⁷

The heat waves thereby caused especially in the rural areas of Colombia, had an adverse effect on the health of the new-born baby and also the pregnant women could not protect their offspring in the event of this heat wave. These heat waves was likely to effect the heart rate, reflexes, muscle tone and breathing rates of the foetus causing the birth of abnormal and pre-mature babies.

How the climate change effects the long term health of people?

The low birth weight of the new born children also has a higher probability of infant mortality rates and potential risk of lung diseases, heart diseases, lower cognitive diseases and learning disorders too.⁸

⁵ “Climate Change and Human Rights”, United Nations Environment Programme, Columbia Law School.

⁶ “Climate Change Impacts People Who Are Not Born Yet”, The World Bank, IBRD, IDA, April 21, 2015.

⁷ “Climate Change Impacts People Who Are Not Born Yet”, The World Bank, IBRD, IDA, April 21, 2015.

⁸ *Id.* at 6.

Thus the climate changes have enumerable impacts on this earth which not only effects the human beings but also other living beings all around the world.

III. THE CHANGING EFFECTS ON FUTURE UNBORN BABIES AND PROTECTION OF HUMAN RIGHTS

This chapter will basically focus on the fact that how the climate changes are hampering the rights of the unborn babies including their human rights.

As Greta Thunberg put it in her speech at the United Nations, “The eyes of all future generations are upon you.” So it is very highly contemplated that the United Nations being the epitome of making laws on environmental matters to make laws on such a relevant crisis of the world.

This isn't for the first that an article has been written on such an issue, but the article, *The Guardian* has inadvertently acknowledged the reality of the life of the foetus in the context of climate change. On September 18, the paper published a front-page story entitled “Unborn babies exposed to toxic air pollution.”⁹

In this article, it has been noted that the politicians have a little incentive to consider future generations when they determine what political action they'll take, if any, on what it was called the “climate crisis.” “Why should they sacrifice their careers on the altar of the unborn, who can't vote?” the author asks.¹⁰ Now this is a topic to ponder upon. Perhaps most interesting. This matter was also outlined in the dimensions of *Juliana v. United States*, a lawsuit in which 21 plaintiffs claim that the federal government has violated the constitutional rights of their generation — as well as those of “future generations,” explicitly named as a plaintiff in the suit. Thus after the suit was filed, the next issue that came up was will the suit be forwarded. This was the first time when it will be the first time the federal government had faced allegations in court that its climate policies violating citizens' constitutional rights.”¹¹

It seems unlikely that these children will find success with their suit. But if they were to get any further, they'd run into a predictable tension in our country's jurisprudence. Now can a court find that the government's climate policies have violated the constitutional rights of “future generations” or not especially when the right to abortion was legalised, our courts

⁹ Alexandra Desanctis, *The National Review* (NR), “The Guardian: Does Climate Change Threaten Unborn Children's Rights?”, October 1, 2019, 10:09 AM.

¹⁰ *Id.* at 8.

¹¹ *Id.* at 9.

already have explicitly denied that unborn human beings possess those rights at all.¹² Hence now when the courts have already stated this to be a legal right in order to curb unwanted pregnancy and population control, hence in such circumstances how we can expect the same judiciary for protecting the rights of the unborn. Here lies the conflict of interests of the same authority.

Consider, too, that most climate activists are concerned with what they call an overpopulation crisis, suggesting that people ought to have fewer children to conserve environmental resources. Some even say that abortion might be a necessary means of curbing population growth: Asked about overpopulation and “climate catastrophe” at last month’s climate-change town hall, Vermont senator Bernie Sanders said the U.S. ought to provide funding for abortion and contraception “in poor countries.” His comment was hardly the first time someone has suggested such a policy.¹³

Once again, we are faced with the incoherence of the modern progressive movement, which advocates both more stringent climate regulations for the sake of the children *and* the unlimited right to abortion throughout pregnancy, both consideration for the rights of future generations and a willingness to kill the unborn to enable a cleaner future.

We are meant to believe that political leaders have failed generations yet unborn, and that we ought to craft policy to protect unborn children from toxic pollutants — but that, if unwanted by their mothers, those very same unborn children can be disposed of like so much toxic waste. We are told that unborn children have the right to clean air and that future generations deserve to be born into a planet free of climate catastrophe — but that to establish such a planet, some members of that generation will need to be sacrificed.¹⁴

The rights of the people to enjoy the environment and the natural resources are being violated by the rapid climate change taking place and there has been also a rapid violation of their fundamental rights. If we trace back to the post independence period, we have seen how the government had started taking initiatives for protecting and conserving the nature. One of the vital steps that was been taken was formulation of the National Environmental Policy on 18th of May, 2006. The preamble of the policy itself said that it is our prime duty to safeguard the rights of the people to enjoy the natural setting because our Indian Constitution has itself mandated environmental protection through Article 21 i.e. Right to Life and a healthy

¹² Alexandra Desanctis, The National Review (NR), “The Guardian: Does Climate Change Threaten Unborn Children’s Rights?”, October 1, 2019, 10:09 AM.

¹³ Alexandra Desanctis, The National Review (NR), “The Guardian: Does Climate Change Threaten Unborn Children’s Rights?”, October 1, 2019, 10:09 AM.

¹⁴ *Id.* at 12.

environment including directive principles under Article 48 A and Article 51 g.¹⁵

Therefore, violation of the human rights does not only take place when these fatal climatic changes starts effecting the health of the humans but it is also violated when the people's rights to enjoy a natural and a healthy environment is taken away from them. Thus, when we talk about the unborn babies or the foetus, this is more significant because they are the ones whose harm is more prominent as they are not directly facing the dangers of the climate change. The pivotal part is that it causes a two-way process of effect, because the mothers who carry their child in their wombs is consuming the contaminated climatic changes and hence it effects the growing life inside them. Hence this is a gross violation of human rights especially for the unborn child and their mothers.¹⁶

Now the question can arise that why we are discussing about the rights of the creatures who are not even born, which is very obvious. Therefore, the foetus has also the same legal and moral rights as that of the human being who are born. And this was for the first time established in the landmark case law, *Roe vs Wade*, that legalised abortion in the United States of America for the first time. Thus, it was in this case where the law for protecting the rights of unborn child evolved for the first time in the history.¹⁷

IV. THE INTERNATIONAL INITIATIVES TAKEN AND ITS OUTCOME

The only international treaty specifically tackling foetal rights is the American Convention on Human Rights which envisages the right to life of the foetus. While international human rights instruments lack a universal inclusion of the foetus as a person for the purposes of human rights, the foetus is granted various rights in the constitutions and civil codes of several countries. Many legal experts believe there is an increasing need to settle the legal status of the foetus.

In the 20th century and particularly after World War II foetal rights issues continued to develop. In 1948, the Declaration of Geneva was adopted which prior to amendments in 1983 and 2005, advised physicians to "maintain the utmost respect for human life from the time of its conception".¹⁸ In 1967, *American Bar Association Journal* noted "the modern trend of legal decisions that grant every property and personal right to the unborn child, including the

¹⁵ "ENVIRONMENTAL LAW", Dr SUKANTA KUMAR NANDA, NATIONAL ENVIRONMENT POLICY, Central Law Publications, Pg.28.

¹⁶ *Id.* at 14.

¹⁷ "Foetal Rights". *West's Encyclopaedia of American Law, edition 2*. The Gale Group, Inc. 2008. Retrieved October 29, 2015.

¹⁸ Tatsuo Kuroyanagi (2013). "Historical Transition in Medical Ethics — Challenges of the World Medical Association" (PDF). *Japan Medical Association Journal*. Retrieved October 29, 2015.

right to life itself, from conception on".¹⁹ In 1975, while interpreting the right to life under the Basic Law of Germany, the Federal Constitutional Court opined that "life in the sense of historical existence of a human individual" exists "at least from the 14th day after conception (nidation, individuation)" and thus everyone's right to life under the Basic Law of Germany includes the unborn as human beings.²⁰ The 1980s witnessed the reappearance of foetal protection in the workplace, aimed at guarding foetal health in potentially hazardous working conditions.²¹ In 1983, Ireland was one of the first countries in the world to constitutionalize a foetal right to life by passing the Eighth Amendment to the Constitution, later repealed in September 2018.²²

(A) Modern Regulations-

The only modern international treaty specifically tackling the foetal rights is the American Convention on Human Rights which envisages the foetal right to life from the moment of conception. The convention was ratified by twenty five countries of the America (two countries later denounced the convention leading the current number of ratifiers to be twenty three) in 1973–1993. Mexico ratified the convention with the reservation that the expression "in general" concerning the foetal right to life does not constitute an obligation and that this matter falls within the domain of the states. While the convention may be interpreted to permit domestic abortion laws in exceptional circumstances, it effectively declares the foetus a person. However, only a minority of state ratifiers completely prohibit abortion without allowing for an exception when the pregnant woman's life is in danger (Dominican Republic, El Salvador and Nicaragua).

Based on the 1959 Declaration of the Rights of the Child, preambular paragraph 9 of the Convention on the Rights of the Child (CRC) states that "the child... needs... appropriate legal protection before as well as after birth", but due to ambiguity the legal protection of the foetus conflicts with the rights of a pregnant girl under the same Convention. Such conflict is sometimes called maternal-foetal conflict. Under CRC, the rights of a pregnant girl are interpreted as superseding those of her foetus. The states retain the power to decide for themselves what prenatal legal protection they would adopt under CRC. A proposal to grant

¹⁹ Richard P. Byrne (April 1967). "Abortion Classified and Reclassified". *ABA Journal*. **53**: 304, 306. ISSN 0747-0088.

²⁰ Jayawickrama, Nihal (2002). *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence*. Cambridge University Press. pp. 246–247. ISBN 052178042X.

²¹ Blank, Robert; Bonnicksen, Andrea (2013). *Medicine Unbound: The Human Body and the Limits of Medical Intervention: Emerging Issues in Biomedical Policy Volume 3*. Columbia University Press. p. 77. ISBN 0231514263

²² "Constitutionalizing Foetal Rights: A Salutory Tale from Ireland". *Michigan Journal of Gender & Law*. SSRN 2600907, Fiona De Londras (May 22, 2015).

foetus the right to life from conception was put forward by Belgium, Brazil, El Salvador, Mexico and Morocco during drafting of the International Covenant on Civil and Political Rights (ICCPR), but it was rejected in favour of less stringent wording. At the same time, ICCPR prohibits the execution of pregnant women.

The World Medical Association Declaration on Therapeutic Abortion notes that "circumstances bringing the interests of a mother into conflict with the interests of her unborn child create a dilemma and raise the question as to whether or not the pregnancy should be deliberately terminated". The Dublin Declaration on Maternal Health, signed in 2012, prioritizes foetal right to life by noting that "there is a fundamental difference between abortion, and necessary medical treatments that are carried out to save the life of the mother, even if such treatment results in the loss of life of her unborn child". Several organizations, such as World Health Organization (WHO) and Human Rights Watch prioritize women's reproductive rights over foetal rights.

Under European law, foetus is generally regarded as an in utero part of the mother and thus its rights are held by the mother. The European Court of Human Rights opined that the right to life does not extend to fetuses under Article 2 of the European Convention on Human Rights (ECHR). In *H. v. Norway*, the European Commission did not exclude that "in certain circumstances" the foetus may enjoy "a certain protection under Article 2, first sentence". Three European Union member states (Ireland, Hungary and Slovakia) grant the foetus the constitutional right to life. The Constitution of Norway grants the unborn royal children the right of succession to the throne. In English common law, foetus is granted inheritance rights under the born alive rule.

Islamic law grants the foetus the right to life particularly after ensoulment, which according to various Islamic jurists happens after 40–42 days or four months after conception (some Shiite jurists believe the ensoulment occurs after 11 to 14 days, during the implantation of the fertilized egg in the uterine wall). Both the Sunni and Shiite jurists accord the foetus inheritance rights under two conditions: if a man dies and a pregnant wife survives him, the foetal right to inherit is secure and the inheritance cannot be disposed of before the foetus' share is set aside. Under the second condition, if a woman aborts the foetus at any stage and ignores any vital signs, the foetus is entitled to the inheritance of any legitimate legator who dies after its conception.

The legal debate on foetal rights sometimes invokes the notion of foetal viability. Its primary determinant is foetal lung capacity which typically develops at twenty-three to twenty-four weeks. The twenty-three weeks is usually regarded as the lower bound of foetal viability

because technology has been unable to surpass the limit set by lung development. It was nonetheless stated that technology has made it possible to regard the foetus as a patient independent of the mother. In *Winnipeg Child and Family Services v. G.*, the judges argued that "technologies like real-time ultrasound, foetal heart monitors and fetoscopy can clearly show us that the foetus is alive" and thus the born alive rule is "outdated and indefensible".

The creation of human embryos for all research purposes is prohibited by the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine. However, similarly to the abortion debate, in the normative debate on embryo research two views can be distinguished: a "fetalist" view focusing on the moral value of the embryo, and a "feminist" view advocating the interests of women, particularly candidate oocyte donors.

V. CONCLUSION AND RECOMMENDATIONS

After going through all the initiatives and the recommendations taken in all over the world, there have been many changes that are taking place, but with the rapid growth in initiatives taken, there has also been a rapid growth in the menaces all around the world. Nowadays the climate change is being a burning issue because it is having many adverse effects on the people including the ones who are not even born and the pregnant ladies. The paper mainly focused on the unborn child and pregnant mothers and how they have been facing a huge damage because of the climate. The huge increase in consumption of plastic that takes place nowadays also effect the health of the people in many ways. Though there has been a ban on its use but it has not been applied practically in its wholeness, hence we are still consuming the plastics and these eventually harms the organs of a person. When a lady is expecting, whatever it consumes has a direct connection with the foetus thus, this in return leads to deformed birth of the babies causing even death at times. The rapid warming of the globe and growth in release of the greenhouse gases has left no fresh air to be in taken for the mothers as well their foetus. Besides these, also the fastest growing industrialisation and advancement technology due to the needs of the people somewhere we are ignoring the fact that our needs itself will kill us one day. The ever-increasing needs will finish the world one day. Due to too much urbanisation nowadays people in rural areas have started using more artificial ways in earning procedures of livelihood, however the over use of pesticides in farming processes and also the other adulterations in food and in almost everything that we consume is being contaminated due to climatic variations. Therefore, in almost all spheres of our changing lives today, the climatic changes are affecting the health of the human being including other

living organisms also. But only discussing about the problems will do us no good, we must unite together globally and find out certain coherent solutions which will bring this problem to a permanent end.

The growing needs of the people and ultra-modernisation of almost every aspect are leading people to a pool of catastrophe where the whole mankind including other creatures will be damaged beyond repair causing the world to vanish at one point of time. And most importantly whatever laws or policies are made for the climatic issues must not only be in theories rather there must be equal efforts in putting them into practice. Hence then only this problem can be brought to a level where all the human beings along with other living and non-living creatures can co-exist with each other.

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