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Critical Analysis of the Current Legal Response to the Climate Change

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ABSTRACT

Climate change legal framework done by the UNFCC (United Nation framework Convention on Climate Change) as Issued guidelines about to stabilize atmospheric concentration of the Green House Gases. This was Starred from Kyoto Protocol 1992 to BOON Climate change Conference June 2023. Though The doctrine of sustainable development, the “polluter pays” principle and the precautionary principle were all first acknowledged by the judiciary before these principles were explicitly embedded in environmental legislation as in India as National Green Tribunal in 2010. Globally we Stockholm, Paris agreement and more but we have to had a New Climate Law as Universal Human right Declaration which one binding on all over the world. New Change we are from Carbon free to Carbon Clean environment. With the Paris Agreement, countries established an enhanced transparency framework (ETF). Under ETF, which one will start in 2024. countries of the world will report transparently and specially on works are taken and progress with achievements in the climate change mitigation, adaptation and security measures and support provided or received by other countries of the world.

Keywords: *Climate, polluter pays, Binding, polluter, Doctrine, protocol.*

I. INTRODUCTION

CLIMATE CHANGE is a problem in day to day basis we all faced but we don't know good enough about it's causes and roots.why it is happen so much ? Why our weather is not certain in quite few years ? Why our climate is spoil ? Why we had sudden Storms and rains ? Why our earth is going to be so hot ? All of Questions in our minds but we aren't able to find root causes and solution of all of them. Though reason we know, we are the reason, we are as a society responsible for it. We are as an individual responsible for it. Our Government even world Organization alike WHO , IPCC and UNO already making guidelines to all of the nations of the world to cut down their Carbon foot print in the air and controlled their Industrial Development to cattle this issue. Though UNFCC made framework and guidelines to be followed by nations about to control and tackle this burning Issue of climate change.

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Judicial knowledge about climate change, legal frameworks, and relevant legal Principles are fundamental to a strong rule of law. Many core principles in climate Law stem from environmental law, a field that a few judges in Asia and the Pacific Have studied or practiced. Resource limitations, ad hoc publication of laws, and language barriers in Asia And the Pacific also make it difficult for judges to maintain current knowledge About climate law, climate science, and local climate change impacts, diminishing Judicial effectiveness. These reports seek to overcome some of these barriers By synthesizing climate information and achievements and weaving a regional Perspective into the global discourse on climate law.

(A) Concept of Climate Change

Climate change means in general change in weather but as mentioned in Oxford Dictionary as “The change in global or regional climate patterns, in particular a change apparent from the mid to late 20th century onwards and attributed largely to the increased levels of atmospheric carbon dioxide ¹ produced by the use of fossil fuels”.

So not only the change in our weather but overall change in our Atmosphere and Environment is the Climate change. In 1990, the First IPCC 2 Assessment Report (FAR) underlined the importance of climate change as a challenge with global consequences and requiring international cooperation.

1. Jan Baptista van Helmont in the 17th century.
2. Intergovernmental Panel on Climate Change (IPCC).

II. HISTORICAL DEVELOPMENT OF THE LEGAL FRAMEWORK ON CLIMATE CHANGE

(A) Early Era :-

In 1961, the United Nations General Assembly (UNGA)³ passed which led to the creation of the World Meteorological Organization (WMO) World Weather Watch (WWW) and the WMO-International Science Council (ICSU) Global Atmospheric Research Programme.

UNGA Resolution 1721 Recommended that UN member states, the WMO, and other appropriate specialized Agencies undertake a study of measures to advance the state of atmospheric Science and technology so as to provide greater knowledge of basic physical Forces affecting climate and the possibility of large-scale weather modification.

Subsequently, the UN Conference on the Human Environment, the first global Environmental conference, was held in Stockholm, Sweden in 1972. It culminated In the Declaration of the United Nations Conference on the Human Environment (the Stockholm Declaration).

Seven years later, the First World Climate Conference was held in Geneva, Switzerland in 1979. The Conference Declaration identified “climatic variability And change” as an urgent challenge, and called on nations “to foresee and to Prevent potential man-made changes in climate that might be adverse to the Well-being of humanity.”It thus called for the establishment of the World Climate Programme, which was set up later in the year under the co sponsorship of WMO, ICSU, and the United Nations Environment Programme (UNEP).

The first international legally binding instrument on Climate In December 1982, the United Nations Convention on the Law of the Sea(UNCLOS) And In 1983, Process of Preparation of the Environmental Perspective. The Brundtland Commission (formerly known as the World Commission on Environment and Development. The commission aimed to unite states in pursuing Sustainable development in a manner that protects and enhances the environment. sustainable development in the context of equity and common interest; the persisting dilemma of fossil fuels and the potential of renewable energy; and the need for “negotiating new global and regional conventions or Arrangements aimed at promoting cooperation and coordination in the field Of environment and development.

In March 1985, the Vienna Convention for the Protection of the Ozone Layer(VCPOL) 3 In August 1987, the Montreal Protocol on Substances that Deplete the Ozone Layer (a protocol to the VCPOL).

(B) Medieval Era :-

The UN Conference on Environment and Development (also known as the Earth Summit or the Rio Summit) was held in Rio de Janeiro, Brazil, in June 1992. Representatives of 178 governments attended the Earth Summit and adopted three major non-binding instruments and two legally binding conventions, which were then opened for signature.¹⁸ Non-binding Instruments and Declarations.

Agenda 21 is a comprehensive plan of action on sustainable development.¹⁹ It is premised on “the need to take a balanced and integrated approach to environment and development questions”²⁰ on the basis of international, sub regional, national, and local cooperation (i.e., global partnership for sustainable development).²¹ Agenda 21 discusses climate change and climate variability in the context of conservation and management of resources (e.g., protection of the atmosphere; combating deforestation; protection of oceans, seas, and marine resources; improving the scientific basis for decision-making contingency plans for both natural and human-induced disasters.

The Rio Declaration on Environment and Development consists of 27 principles that define

the rights and obligations of states with respect To environment and development issues The Statement of Forest Principles a set of principles for the Sustainable management of forests, is the first global consensus Reached on forests. Which recommended that states assess the impact Of their development activities on their forest resources, and all Aspects of environmental protection and social and economic Development as they relate to forests and forest lands should be Integrated and comprehensive. At the same time, it affirms that states Have a right to develop forests according to their socioeconomic needs.

(C) Modern Era :-

The United Nations Framework Convention on Climate Change (UNFCCC) had 197 parties as of October 2020. It entered into force on 21 March 1994. It is considered to be one of the few conventions with universal. The principal aims of the Convention on Biological Diversity are conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of benefits from utilization of genetic resources.

The UNFCCC addresses all GHG emissions that were not covered by the 1987 Montreal Protocol. Article 2 states that the ultimate objective of the UNFCCC is To stabilize GHG concentrations in the atmosphere “at a level that would prevent Dangerous human-induced anthropogenic interference with the climate system. “The use of the word “dangerous” connotes some level of judgment, which the UNFCCC clarifies must be based on relevant scientific, technical, and economic Considerations, and continually reevaluated in the light of new findings. The IPCC’s periodic reports play an important role in this assessment. In addition, the “level” referenced in Article 2 is to be achieved within a time frame sufficient to allow Ecosystems to adapt naturally to climate change, to ensure that food production is not Threatened, and to enable economic development to proceed in a sustainable manner.

The 1997 Kyoto Protocol to the UNFCCC was adopted in response to the lack of Legally binding emission reduction targets and timelines in the UNFCCC. It shares The UNFCCC’s objective and is likewise based on the principle of common but Differentiated responsibilities.

The protocol, adopted and opened for signature on 11 December 1997, entered Into force on 16 February 2005. It had 192 parties as of October 2020. The heart of the Kyoto Protocol lies in Article 3, whereby UNFCCC Committed to specific, quantified, and binding emissions limitations in the period (2008–2012), “with a View to reducing their overall emissions of such gases by at least 5% below 1990 The process by which commitment Targets was contentious and difficult (footnote 60). In the end, the parties agreed To differentiated targets for countries (e.g., 8% reduction in the first Commitment period for the European Union and its member

states, 7% reduction For the United States, 6% reduction for Japan and Canada.

The 2010 United Nations Climate Change Conference officially the 16th Session of the COP, or COP 16 was held in Cancun, Mexico, from 29 November to 10 December 2010. It resulted in the Cancun Agreements ,one under the Kyoto Protocol track and one under the Ad Hoc Working Group on Long-term Cooperative Action or LCA track. The agreements contained key actions toward addressing climate change through a hybrid international and domestic approach. At the same time, the core decisions of the agreements aimed to assist developing countries in protecting themselves against climate change impacts while simultaneously pursuing sustainable development.

The Doha Amendment to the Kyoto Protocol¹²⁰ established a new quantified emission limitation or reduction targets for parties. Which replaces the original the Kyoto Protocol, and the second commitment period, which began on 1 January 2013 and will end in 2020. The parties committed to GHG emission reductions by at least 18% below 1990 levels by the end of the second commitment period. The Doha Amendment also adds nitrogen trilobite. The Doha Amendment has not yet come into force, but it will do so on 31 December 2020. Entry into force requires 144 parties to the Kyoto Protocol To deposit their instruments of acceptance with the Depositary,¹²⁴ and 146 have Done so as of October 2020.

The Paris Agreement seeks to enhance the implementation of the UNFCCC, Including its objective. At the same time, Article 2 of the agreement declares That efforts to strengthen the global response to the threat of climate change Come in the context of sustainable development and efforts to eradicate Poverty—a clear reference to the needs of developing countries and the Fundamental principles of equity.

The ASEAN Sociocultural Community Blueprint (ASCC) 2025 is a strategy And planning mechanism that features complementarities between the Region’s goals and the SDGs. It recognizes that a number of ASEAN member States remain vulnerable to natural and human-induced disasters, which Tend to disproportionately and adversely affect the poor.⁶⁹ Pollution, resource Degradation, and the fact that the ASEAN region is at the forefront of the adverse Impacts of climate change also present serious challenges.

With the Paris Agreement, countries established an enhanced transparency framework (ETF). Under ETF, starting in 2024, countries will report transparently on actions taken and progress in climate change mitigation, adaptation measures and support provided or received.

On 17 May 2023 (WMO) Geneva – Global temperatures are likely to surge to record levels in the next five years, fuelled by heat-trapping greenhouse gases and a naturally occurring El Niño

event, according to a new update issued by the World Meteorological Organization (WMO).

The Global Space Conference on Climate Change 2023 (GLOC) will focus on the theme “Fire and Ice – Space for Climate Action” and will address various topics of interest in relation to space and climate change with a specific focus on: Climate change impacts on the environment.

III. INDIAN PROSPECTIVE ABOUT LEGAL FRAMEWORK ON CLIMATE CHANGE

India also the part of UNFCCC So Indian Government passed some legislations to stop and protection from climate change

- (1) Environmental Protection Act of 1986 is the most important legislation with respect to climate changes in India. The Act confers power on the Central and State government for the purpose of – First, protecting and improving the quality of the environment. Second, preventing and abating environmental pollution.
- (2) The Air Prevention and Control of Pollution Act of 1981 is innovative legislation that lets the State regulate the standard for emission of air pollutants. The Act empowers the State to inspect any factory and check any control equipment and manufacturing process. It further allows the State to take the necessary steps for the control of air pollution. No industry can operate without meeting the requirements mentioned in this act.
- (3) The National Green Tribunal Act of 2010 was enacted to govern the National Green Tribunal. These Tribunals were established to ensure the fast and effective disposal of cases that relate to the protection of the environment. These tribunals also have jurisdiction over cases where a substantial question relating to the environment arises.
- (4) The Energy Conservation Act of 2001 was enacted to provide a legal framework for the efficient use of energy. It does this by ensuring that only energy efficient equipment is provided to consumers and by providing a comprehensive framework for power development.
- (5) The Forest Conservation Act of 1980 was enacted to conserve and protect the existing forests in India. After the enactment of this act, all forests became the reserved property of the government. The act also provides a compensatory measure to be taken when any reserved forest is directed to non- forest purposes.
- (6) The Water Prevention and Control of Pollution Act of 1977 was enacted to prevent pollution of water through agricultural, industrial and household waste. The act also regulates the cess paid on the consumption of water.

- (7) The Wildlife Protection Act of 2002 was enacted to protect wildlife within the borders of India. The act has three main objectives – First, to establish uniform legislation for wildlife.
- (8) Second, to establish a network of national parks and wildlife sanctuaries. Third, to regulate the illicit trade of wildlife and its products.
- (9) The Biological Diversity Act of 2002 was enacted for the conservation and sustainable use of biodiversity in the country. This act helps bring India one step closer to the objective of realizing the equitable sharing of its biodiversity.

Though India has some major concern over this climate change but the enforceability will be more harder and punishment such vulnerable to stop climate change.

In the case of **Ridhima Pandey Versus Union of India & Ors.(2017, NGT)** the National Green Tribunal dismissed the case, reasoning that the climate change is already covered in the process of impact assessments under the Environment Protection Act of 1986, and therefore, “There is no reason to presume that Paris Agreement and other international protocols are not reflected in the policies of the Government of India or are not taken into consideration in granting environment clearances.”

IV. CONCLUSION

Climate change is a burning problem of our Era I’m the world. UNO and most nations of the world are facing this issue from many years. Many conventions, agreements and conferences regularly done on this but yeah ti make a concrete decision about it.

As world or India as a nation have to build a Mechanism which support environment and its components so when all things favourable or being with the nature there can be make a balance between development and Nature to avoid the climate change.

All jurists and judges and advocates or legal fraternity believes that though we have laws but implementation and vulnerable punishment which make environment law to establish as Penal laws or Criminal laws to tackle this issue with humanity , sensibility and logical way to make the world Home for all.

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