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## Assessing the Necessity for a Separate Climate Change Legislation in India

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*Climate change has become a life-threatening phenomenon affecting every aspect of human life. Almost every other nation has developed its strategy to deal with it. It has been acknowledged that to pursue concrete action in battling climate change, there ought to exist binding and strategic legislation which conceives a system of accountability. India being a key player in geopolitics, the advent of rapid urbanization and industrialization has put immense stress on its ecosystem. Hence there exists a need to reevaluate its domestic climate policy. India's climate law is scattered over numerous statutes, policies, and international treaties which are voluntary and lack the quality of being result oriented. Through this article, we will be understanding the ramification of climate change and critically analyzing the present framework of environmental laws in India. The article will further focus on the reforms which need to be done in the path of developing a novel climate change legislation while examining the gaps in the current mechanism.*

**Keywords:** *climate change, legislation, environment, life-threatening phenomenon, domestic climate policy.*

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## INTRODUCTION

Climate has always been a part of humanity, with its conditions shaping the human race. As early as the 19th century, it was apparent that several environmental issues needed to be addressed, which were referred to as 'climate change'. To deal with it, the governments of several countries have made efforts to overcome it; one of the earliest initiatives for the same at a global level was the Stockholm Conference in 1976. The domestic governments of India have also established countless laws throughout the years, like the Air (Prevention and Control of Pollution) Act of 1981, the Atomic Energy Act of 1982, the Motor Vehicles Act of 1988, and the Wildlife (Protection) Act of 1972. All of these acts were put in place to regulate the harmful activities that were causing immense damage to our environment and were accelerating the process of climate change.

Most comparable techniques have been employed to maintain control over these conditions. There have also been several changes in the idea of the laws and regulations, with the help of various case laws that have been mentioned below. The research focuses on whether separate climate change legislation is required in India instead of focusing on binding legislation, the government has instituted a policy process to address climate change. Another step taken by India is that, rather than relying on the central government to establish binding regulations, it has decided to give state governments more power in dealing with climate change. All the above-mentioned points are the factors that have given personality to Indian laws. This approach has given the Indian laws a distinct character, allowing states to craft laws that are tailored to their particular needs and environmental conditions.

## WHAT IS CLIMATE CHANGE?

The climate in layman's language refers to the atmosphere around the humankind, it has been there since the beginning of time and per se scientists, believe that the world's climate has been changing constantly over the period. However, it is only recently that the climate has undergone such rapid changes making it volatile. <sup>1</sup>These long-term shifts in temperatures and weather

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<sup>1</sup> Russ Parker, *Climate Crisis (Planet in Crisis)* (Rosen Central 2009)

patterns are seen as either natural or through variations in the solar cycle.<sup>2</sup> However, over time it has been seen, climate change is more via the changes in the number of fossil fuels getting burnt which has eventually ushered in climate change.

Further, governments all over the globe have started with their strategies to get the increasing levels of pollution under control. Examples of the same are the “Arab Forum for Environment and Development (AFED)” in the Arab Region, the “Asian Pacific Adaptation Network (APAN)” in Asia and the Pacific region, and “C40” cities they aim to confront the climate crisis and create a future where everyone can thrive.

This is primarily because these organizations have recognized how the risks associated with climate change and climate extremes will increase globally as temperatures rise, and that historical emissions from developed countries are already having a negative impact in a variety of sectors and regions.<sup>3</sup> Due to their ineffective climate mitigation efforts, the industrialized countries, which have generated the majority of cumulative emissions to date and continue to emit at a rate disproportionate to their share of the global population, must significantly increase their climate action efforts. Climate change was recognized by Prime Minister Narendra Modi as the greatest threat to human civilization in his talk at the 2018 World Economic Forum Annual Meeting in January 2018.

To add to it, the efforts of the Indian Ministry of Environment, Forest and Climate Change should also be given some recognition as they have shown efforts towards highlighting the Climate change challenges stem mostly from rich countries' historical emissions of greenhouse gases. They have also included reports from various sources including the “Intergovernmental Panel on Climate Change” namely the “Special Report on Global Warming of 1.5°C”, the Special Report on Climate Change and Land, and the Special Report on the Ocean and Cryosphere in a

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<sup>2</sup> ‘What Is Climate Change?’ (United Nations) <<https://www.un.org/en/climatechange/what-is-climate-change>> accessed 15 January 2023

<sup>3</sup> ‘India’s Efforts to Combat Global Climate Change’ (Ministry of Environment, Forest and Climate Change, 25 November 2019) <<https://pib.gov.in/PressReleasePage.aspx?PRID=1593449>> accessed 15 January 2023

Changing Climate.<sup>4</sup> To add India commits to the primacy of the UNFCCC processes in addressing the challenge of climate change.

“It has proactively participated in international efforts to combat climate change and continues to do so, while also pursuing its own independent, improved activities in climate mitigation and adaptation, in addition to achieving all of its UNFCCC, KP, and PA commitments. Independent analyses have found India's efforts to be commendable and in line with the standards of the PA.”

### IMPACT OF CLIMATE CHANGE ON INDIA

Various consequences are directly related to climate change and have a worsening impact on the climate, such as having to face higher temperatures, which leads to heat-related illnesses and makes working outdoors difficult; wildfires starting more easily; severe storms that exacerbate higher and more intense rainfall; this leads to more suffering in tropical areas, as well as increased drought and species loss; and not being able to prod the climate.<sup>5</sup> All of these impacts have hurt our environment, making it difficult for people to continue living their lives the same way as before and disrupting economies worldwide.

We can connect these dots with the economic, social, and health-related issues of the countries even though the developed and developing nations see it from different perspectives. “The Asia and Pacific region has the most dynamic and fastest-growing economies in the world.” “If it continues to grow on its recent trajectory, the region will account for more than half of global gross domestic product (GDP), trade, and investment by 2050.”<sup>6</sup> With this, India should be concerned about the negative effects of climate change on its economy because it is a developing nation. It is extremely vulnerable to climate change because a sizable portion of its population depends on sectors of the economy that are sensitive to climate change.

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<sup>4</sup> *Ibid*

<sup>5</sup> ‘Causes and Effects of Climate Change’ (*United Nations*)

<<https://www.un.org/en/climatechange/science/causes-effects-climate-change>> accessed 17 January 2023

<sup>6</sup> ‘The Economics of Climate Change’ (*Asian Development Bank*, November 2011)

<<https://www.adb.org/publications/economics-climate-change>> accessed 17 January 2023

Crops, forests, coastal regions, and other areas are all susceptible to several serious impacts from climate change, which could compromise the achievement of crucial national development goals. Additionally, India's economic development has increased energy consumption, leading to higher emissions of greenhouse gases and further exacerbating climate change which we need to get a hold off.

As India, with 17% of the world's population, contributes only 4 percent of the total global greenhouse gas emissions we might seem to have a good start however we cannot lose vision of the fact that about 50% of the population doesn't have a proper supply of energy. As per the newer government data, it has been believed that there would be a drastic increase in India's usage of primary energy supplies, this growth is projected to be about 8%. India would have to utilize all energy resources and pursue all current and future energy technologies. India must increase its power generation capacity by at least sixfold by 2030 if it is to meet its long-term growth target of 8%. Its emissions are projected to more than quadruple during that time.<sup>7</sup>

As far as the effect of climate change and economic conditions are concerned we can begin with "climate change adaptation" and the factors playing key roles in this are that (1) "climate change imposes a distinct and additional burden on society"; (2) "climate adaptation is one response among many to a host of socio-economic and environmental pressures, and cannot necessarily be isolated from regular development activities"<sup>8</sup> "Many nations are expected to experience significant economic effects as a result of climate change, with many low-income nations (like India) being particularly vulnerable." Indeed, due to the lack of resources, many low-income countries have inadequate infrastructure to cope with climate change and are thus more likely to suffer from its effects.

Over the years it has come under consideration that scientists and researchers have been trying to establish a causal link between climatic events and social outcomes so that it can be

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<sup>7</sup> 'Melting Asia' (*The Economist*, 05 June 2008) <<https://www.economist.com/briefing/2008/06/05/melting-asia>> accessed 17 January 2023

<sup>8</sup> Vijayalaxmi Khed & K B Umesh, 'Economics of climate change and financing climate adaptation and mitigation in India' (2017) 12 *Agriculture Update* <[http://dx.doi.org/10.15740/HAS/AU/12.TECHSEAR\(4\)2017/1175-1180](http://dx.doi.org/10.15740/HAS/AU/12.TECHSEAR(4)2017/1175-1180)> accessed 17 January 2023

generalized. Such a link is difficult to establish as there are multiple social and environmental factors at play here. This project has shown that a variety of climate elements have a significant impact on civilizations and economies. It has become increasingly clear that the climate is an important factor in economic growth and social stability. And as climate change is also directly related to social justice in accordance to India we can say that the country has yet a lot of work regarding the programs aimed exclusively at addressing critical vulnerabilities to climate change

Also, the social and environmental determinants of health are impacted by climate change in a variety of ways. “Between 2030 and 2050, climate change is predicted to cause an additional 250,000 fatalities per year from hunger, malaria, diarrhea, and heat stress”<sup>9</sup>. This would have a significant impact on population health. Particularly in danger are vulnerable groups like children and the elderly since they have a harder time adapting to changing circumstances. Although not all the changes would be negative however this should not hold us from concerns about the future what we currently need to think about is reducing both the rate of climate change and the vulnerability of poorly protected populations.<sup>10</sup> As we know, the majority of the environmental health issues we currently face are local or regional in nature. But many of the expected climate change health consequences would have a significant impact on many regions' huge populations.

Some of the human health issues which would be prominent in the regions near the Indian continent would be cholera, and other food-related and water-related infections, Agricultural productivity would be impacted by climate change via effects on soil, photosynthesis, pests, diseases, and skin cancer incidence would rise as a result of continued stratospheric ozone loss and increased ground-level UV exposure. Additionally, it could raise the likelihood of ocular

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<sup>9</sup> 'Health and Climate Change' (*National Health Portal of India*) <[https://www.nhp.gov.in/health-and-climate-change\\_pg](https://www.nhp.gov.in/health-and-climate-change_pg)> accessed 17 January 2023

<sup>10</sup> 'Climate change and human health' (1997) 23(1) *Population and Development Review* <<https://doi.org/10.2307/2137486>> accessed 17 January 2023

lesions. Nonetheless, while the application of human rights in the climate change regime may be problematic, we must continue to fight toward our goals.<sup>11</sup>

## EXISTING CLIMATE LAWS IN INDIA

The climate change-related policies of our nation have shown a variety of sources, including international agreements, parliamentary legislation, rules and guidelines issued by the government, planning, and direction documents, and court rulings. Before India's independence, several environmental legislations existed like The Factories Act, of 1897, The Bengal Smoke Nuisance Act, of 1905, the Wild Birds and Animals Protection Act of 1912, etc. but the real impetus for bringing about a well-developed framework came only after the UN Conference on the Human Environment (Stockholm, 1972). In the Department of Science and Technology, the "National Council for Environmental Policy and Planning" was established in 1972. In 1985, it became the "Ministry of Environment and Forests (MoEF)", which is now whose aim was to attain environmental protection and govern it then becoming the highest administrative authority.<sup>12</sup> A vast network of environmental laws has developed in the nation since the 1970s:

- Water (Prevention and Control of Pollution) Act 1974;
- Water (Prevention and Control of Pollution) Act 1977;
- Air (Prevention and Control of Pollution) Act 1981;
- Atomic Energy Act 1982;
- Motor Vehicles Act 1988;
- The Wildlife (Protection) Act 1972;
- The Forest (Conservation) Act, 1980;
- Environment (Protection) Act 1986 (EPA);

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<sup>11</sup> Chaun-Feng Wu, 'Challenges to Protecting the Right to Health under the Climate Change Regime' (2021) 23(2) Health and Human Rights Journal <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8694293/>> accessed 17 January 2023

<sup>12</sup> Faisal Sherwani & Achal Gupta, 'Climate Change - Indian Law And Judiciary' (Mondaq, 02 June 2020) <<https://www.mondaq.com/india/clean-air--pollution/945304/climate-change---indian-law-and-judiciary>> accessed 18 January 2023

- The National Environment Appellate Authority Act 1997;
- Public Liability Insurance Act (PLIA) 1991;
- National Environment Tribunal Act 1995;
- Biological Diversity Act 2002.

To support the statutory provisions, a policy framework has also been created. To create and promote programs for the protection and enhancement of the climate, the MoEF released the National Conservation Strategy, Policy Statement on Environment and Development, and Policy Statement for Abatement of Pollution” in 1992. The EAP (Environmental Action Program) was established in 1993 to form developmental initiatives in a way that helps in expanding environmental services and other concerns. To protect water resources, forests, coastal areas, and agriculture, as well as to encourage Indian industry to participate in the Clean Development Mechanism (CDM), the National Environment Policy, 2006 was established.<sup>13</sup>

Instead of concentrating more on enforcing laws, India created a policy procedure to explicitly address climate change. The "National Action Plan on Climate Change" (NAPCC), which was enacted in 2008 and was rebuilt in November 2014, outlines current and upcoming policies and programs aimed at mitigating, adapting to, and managing knowledge of climate change<sup>14</sup> with its eight subsidiary missions:

- National Solar Mission (started in 2010);
- National Mission for Enhanced Energy Efficiency (approved in 2009);
- National Mission on Sustainable Habitat (approved in 2011);
- National Water Mission;
- National Mission for Sustaining the Himalayan Ecosystem (approved in 2014);
- National Mission for a Green India (approved in 2014);

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<sup>13</sup> Meena Menon, 'PM's climate change council recast' (*The Hindu*, 5 November 2014)

<<https://www.thehindu.com/sci-tech/energy-and-environment/Govt-reconstitutes-PMs-Council-on-Climate-Change/article60101397.ece>> accessed 17 January 2023

<sup>14</sup> Michal Nachmany et al., 'The 2015 global climate legislation study. A review of climate change legislation in 99 Countries' (2015) 1 (1) LSEACUK <<https://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2015/05/INDIA.pdf>> accessed 15 January 2023



- National Mission for Sustainable Agriculture (approved in 2010);
- National Mission on Strategic Knowledge for Climate Change.

The National Green Tribunal (NGT) was established in 2010 to speedily handle matters involving environmental preservation and conservation. There are also other pollution control boards along with the MoEF whose duty is to regulate, formulate and support for administering and controlling pollution in the country. For example, Central Pollution Control Board, SPCBs, or State Pollution Control Boards. In India, every state is also obligated to set up a State Action Plan on Climate Change that offers recommendations on how to incorporate mitigation and adaptation into the development strategy. A wide range of rules and notifications have also been promulgated from time to time such as E-Waste (Management) Rules 2016, Plastic Waste Management Rules 2016, BioMedical Waste Management Rules 2016, Manufacture, Storage and Import of Hazardous Chemicals Rules 1989, among others.

## ENVIRONMENT AND OUR CONSTITUTION

India's constitution is one of the few in the world containing specific environmental clauses. Following the Stockholm Conference, the 42nd Amendment, passed in 1976, granted environmental concerns constitutional protection by putting them in the Directive Principles of State Policy and the Fundamental Rights and Duties. These chapters demonstrate that India is committed to protecting the environment, in part by encouraging sustainable development. The chapters on Fundamental Duties and State Policy Directive Principles express the nation's commitment to environmental protection and enhancement.

Supreme Court recognized the right to a healthy environment under the ambit of *Article 21* in *Subhash Kumar v State of Bihar*<sup>15</sup> and *Virendra Gaur v State of Haryana*<sup>16</sup>. According To *Article 21*: "No person shall be deprived of his life or personal liberty except according to procedure established by law." This set up a precedent followed by all the subordinate courts giving an environmental dimension to this Article.

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<sup>15</sup> *Subhash Kumar v State of Bihar* (1991) SCC 420

<sup>16</sup> *Virendra Gaur v State of Haryana* (1995) 2 SCC 577

*Article 48A* requires that 'the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.' This forms an important point in climate change policy, provided that the values set out in Part IV of the Constitution are central to the country's governance. The 42nd constitutional amendment shifted the constitutionally mandated level of responsibility for environmental development and protection to that of individual residents, rather than leaving it solely in the hands of the state by integrating *Article 51A(g)* which establishes that "it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures." The Constitution of India under *Article 47* states that it is the "primary duty of a state to raise the nutrition level, the standard of people living in it, and the improvement of public health." It is clear from this that improving public health also entails protecting the environment because public health cannot be guaranteed in the absence of environmental protection.

## JUDICIAL ACTIVISM

To address a crucial gap in governance – the fact that a significant portion of Indians was unable to partake in constitutional democracy and exercise their rights – the judiciary in India assumed tremendous powers and offered extensive interpretations and remedies, even taking suo-motu in several environmental matters. The apex Court has played a significant role in establishing environmental jurisprudence. And the development of the Indian environment has been heavily influenced by some of the most innovative judgments passed by the Indian courts. The judiciary has interpreted *Article 21* liberally by including the right to a pollution-free environment such as clean air and water under the right to life.<sup>17</sup> In 1996, the Supreme Court passed a judgment declaring State as the trustee for all natural resources which makes it their duty to preserve and protect them. Breaching this duty would be a violation of the public trust doctrine.<sup>18</sup> *Article 21* is a constitutionally protected right to life. We must preserve and maintain our environment, promote ecological equilibrium, get rid of air and water pollution, and follow sanitary

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<sup>17</sup> *Subhash Kumar v State of Bihar* (1991) 1 SCC 598

<sup>18</sup> *MC Mehta v Kamal Nath* (1996) 1 SCC 38

regulations if we want to live with dignity and enjoy life. As a result, the State Government and the municipalities have a constitutional duty to take the necessary steps to ensure and safeguard a healthy environment.

Any contract or conduct that leads to pollution of the environment, ecology, air, water, or other types of pollution should be viewed as violating Article 21.<sup>19</sup> This point was further reiterated along with *Article 48(A)* and *Article 51A* in the Rohtang Pass Case. Intergenerational equity has been acknowledged as an essential component of forest resource protection and sustainable development.<sup>20</sup> Polluter pays Principle was made part of the environmental law of the country by the court by adopting the precautionary principle in the case of pollution caused by leather industries which had devastating effects on underground water.<sup>21</sup>

A similar principle which is related to absolute liability has also been laid out by the supreme court of India in the oleum leakage case.<sup>22</sup> By forbidding any hazardous industry very close to human habitation which further evolved the “*Deep Pocket Principle*.” This judgment guided the Parliament to add a new chapter to the Factory Act, of 1948. The “Public Liability Act” was passed and the policy for the Abatement of Pollution Control was also established. The pollution by hazardous industry affecting the river Ganga was further dealt with by the Supreme Court which led to the closure of tanneries surrounding Kanpur.<sup>23</sup> The Hon’ble court ordered: “*Every University television network in the country will give 5 to 7 minutes to televise programs on the environment. Cinema theatres all over the country exhibit two slides free of cost on the environment. Their licenses will be canceled if they fail to do so. The environment has become a compulsory subject up to 12th standard from the academic session 1992.*”<sup>24</sup>

International treaties and conventions have also played a pivotal role in influencing the judgments given by Indian courts. In *Society for Protection of Environment & Biodiversity v Union of India & Ors*, a decision of the government to exempt the construction sector from

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<sup>19</sup> *Virender Gaur v State of Haryana* (1995) 2 SCC 577

<sup>20</sup> *State of H P. v Ganesh Wood Products* (1995) 6 SCC 363

<sup>21</sup> *Vellore Citizens Welfare Forum v UOI* AIR (1996) SC 2718

<sup>22</sup> *M.C. Mehta & Anr Etc v Union of India & Ors* (1986) SCR (1) 312

<sup>23</sup> *M.C. Mehta v Union of India* AIR (1988) SCR (2) 538

<sup>24</sup> *M.C. Mehta v Union Of India & Ors* (1992) 2 SCC 378

environmental regulation was challenged. The decision was struck down keeping in mind, principles 15 to 17 of the Rio Declaration are read along with clauses of the Paris Agreement, 2015, particularly, in the face of a precautionary approach by the court. In another case,<sup>25</sup> the Court noted the severity of climate change and its adverse impacts which comes with the conversion of land by citing reports by the Intergovernmental Panel on Climate Change (IPCC) and the World Watch Institute. The Hon'ble Supreme Court in the case of *TN Godavarman Thirumulpad v Union of India and Ors*<sup>26</sup> came to the rescue of forest dwellers whose livelihoods were getting affected due to deforestation in the Nilgiri region.

### COMPARATIVE ANALYSIS

This section of the article focuses on identifying and contrasting different nations' attitudes toward climate change; particular attention has been given to Morocco, the US, and India. The GHG emissions and climate change policies of each nation would be the fundamental characteristics for comparison in this case. GHGs of Green House Gases have been historically known for warming the earth's surface and oceans.<sup>27</sup> GHGs are quite likely the principal source of the earth's lower atmosphere warming since 1979, according to scientific research. Even under the most conservative GHG emission scenarios, the most recent global assessment indicated that surface temperatures will continue to rise until the middle of the century. The Intergovernmental Panel on Climate Change reached this conclusion (IPCC).<sup>28</sup>

To begin, various methods in the United States of America lead to the creation of different types of GHGs and carbon dioxide. These sources are unlimited and include ground producers such as power plants, industries, office buildings, and other commercial areas. All of these sources contribute to the build-up of GHGs in the atmosphere, leading to a warming climate and its associated consequences, such as extreme weather events, sea level rise, and biodiversity loss. For this country the year 2007 saw the highest level of gross U.S. GHG emissions, rising 15.6%

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<sup>25</sup> *Karnataka Industrial Areas Development Board v C. Kenchappa* (2006) 6 SCC 371

<sup>26</sup> *TN Godavarman Thirumulpad v Union of India and Ors* (2012) 3 SCC 277

<sup>27</sup> Eric A. Posner & David Weisbach, *Climate Change Justice* (Princeton University Press 2010)

<sup>28</sup> 'Chapter 5: Global Carbon and Other Biogeochemical Cycles and Feedbacks' (IPCC, 2021)

<<https://www.ipcc.ch/report/ar6/wg1/chapter/chapter-5/>> accessed 17 January 2023

over 1990 levels<sup>29</sup>. The United States has taken up various steps to reduce its GHG production which includes the methodologies like Net-Zero Emissions Targets, following the 1997 Kyoto Protocol, the 2007 decision in “Massachusetts v EPA”, where the Supreme Court determined that EPA has the authority to regulate GHG emissions from motor vehicles as air pollutants under the Clean Air Act, there has been a move toward direct federal regulation of GHG emissions (CAA).<sup>30</sup> The majority of the court, which rendered a 5-4 decision, stated that the EPA must decide whether GHG emissions from new motor vehicles contribute to air pollution that could reasonably be expected to endanger public health or welfare – or give a good reason why it cannot or will not reach that conclusion. The Court determined that EPA had the authority to regulate GHG emissions from motor vehicles as air pollutants under the Clean Air Act and that for them to do so, they must consider whether those emissions endanger public health or welfare.<sup>31</sup>

For India and Morocco, GHG emission has been rated high with a rank of 9 and per the Climate Change Performance Index, the country is among the top performers in the index. India receives a high ranking in the categories of GHG Emissions and Energy Use, with a middling rating in Climate Policy and Renewable Energy. The government is on track to reach its 2030 emissions objectives (which are compatible with a temperature rise of well below 2°C). However, the renewable energy path is falling short of the 2030 target. The new targets and the political cues to take action on climate change are welcomed by the nation's experts. India has included renewable energy targets in its updated NDC despite the country's medium ranking in the renewable energy category. However, the experts point out the lack of clear road maps and practical action plans for achieving the goals. Despite this, the experts agree that India's updated NDC is an encouraging sign that indicates that it is committed to taking action to reduce carbon emissions.

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<sup>29</sup> ‘U.S. Climate Change Policy’ (*Congressional Research Service*, October 28, 2021)

<<https://crsreports.congress.gov/product/pdf/R/R46947>> accessed 17 January 2023

<sup>30</sup> Margaret Rosso Grossman, ‘Climate Change and the Law’ (2010) 58 *The American Journal of Comparative Law* <<https://www.jstor.org/stable/20744540>> accessed 18 January 2023

<sup>31</sup> Linda Tsang, ‘Key Historical Court Decisions Shaping EPA’s Program Under the Clean Air Act’ (*Congressional Research Service*, 2017) <<https://crsreports.congress.gov/product/pdf/R/R43699>> accessed 18 January 2023

Experts stress the significance of a fair and inclusive energy transition as well as the necessity of rooftop photovoltaic capacity and decentralized renewable energy. Key demands include the need for a carbon pricing mechanism, increased subnational capacity, and clear action plans to meet the goals. India is one of the nine nations that produce 90% of the world's coal. By 2030, it also intends to have increased oil, gas, and oil production by more than 5%. The 1.5°C target is incompatible with this.<sup>32</sup> Morocco has a similar GHG emission rate as India and similar policies to cope with it, falling in the top 10 polluters on the list. By 2030, the country has committed to planting 600,000 hectares of forest. The CCPI experts applaud the gains the nation has made over the past few years. However, they criticize the current laws for having no teeth and being disregarded by the business community.<sup>33</sup> As a result, it is possible to conclude that government institutions are in charge of strategic decisions about the economic development of specific countries and regional areas. The certainty of the information supplied to government authorities influences this decision-making process.

## **PREDICAMENTS IN THE CURRENT FRAMEWORK**

The Wildlife Protection Act of 1972, the Water (Prevention and Control of Pollution) Act of 1974, the Forest (Conservation) Act of 1980, the Air (Prevention and Control of Pollution) Act of 1981, and the Environment (Protection) Act of 1986 are just a few examples of specific laws that rely on a variety of governmental agencies and specialized regulatory organizations, including central and state pollution control boards, central and state environmental ministries, and specialized regulatory organizations. Notably, the majority of these laws were passed decades before people were aware of and accepted climate change, and therefore do not take into account key problems in the contemporary national and international climate conversation.

Even though climate change issues frequently come up in Indian environmental litigation, they remain ancillary and accidental. Strategic actions to advance bold climate policies are extremely rare. In India, numerous laws are related to the climate, including those that govern mining,

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<sup>32</sup> 'Implementation of new NDC needs concrete action plans' (*Climate Change Performance Index*, 14 November 2022) <<https://ccpi.org/country/ind/>> accessed 17 January 2023

<sup>33</sup> 'Morocco - Climate Performance Ranking 2023' (*Climate Change Performance*, 14 November 2022) <<https://ccpi.org/country/mar/>> accessed 17 January 2023

power, forestry management, and environmental protection. On paper, these have established institutions and guidelines with enough latitude to cover climate policy. The climate, however, has no bearing on these laws, and their institutional frameworks are not sufficiently coordinated or integrated, according to fundamental climate principles, to address the complex nature of the situation, and they were not created for the sequential, ambitious target-setting required by the Paris Agreement and the most recent scientific findings.<sup>34</sup>

In modern times India has also been believed to have a “dualist system”, which in basic terminology refers to having the requirement to adjust the international treaties with the domestic ones an example of the same would be the “Paris Agreement”, which must be converted into domestic enactments.<sup>35</sup> Nevertheless, international accords that embody general normative principles do not specify the means of application and enforcement within the domestic legal frameworks of particular signatory countries. This has been the main factor for India not having a timeline to enact domestic legislations which would further bolster the conditions of various climate change treaties. With the help of the various wording of international climate agreements, the government has been able to avoid substantial domestic legislation and precise regulatory frameworks focused on the issues of climate change.<sup>36</sup>

The Twelfth Five-Year Plan called for the complete integration of climate policy with sectoral planning, however, India has not done so. To comprehensively assess and reformulate India's climate policy, the NAPCC must be examined. There is a great deal of variation across the many State Action Plans on Climate Change (SAPCCs) due to inequalities in allocating different priorities to climate change, institutional variability, developmental conditions, and resource availability.<sup>37</sup> The SAPCCs are deficient in several areas when it comes to institutional

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<sup>34</sup> Chandra Bhushan & Tarun Gopalakrishnan, ‘Environmental Laws and Climate Action: A case for enacting a framework climate legislation in India.’ (2021) 1 (1) International Forum for Environment Sustainability and Technology

<sup>35</sup> Prabhash Ranjan et al., ‘Is the Supreme Court Confused About the Application of International Law?’ (*The Wire*, 28 September 2016) <<https://thewire.in/law/supreme-court-international-law>> accessed 15 January 2023

<sup>36</sup> Parul Kumar & Abhayraj Naik, ‘India’s Domestic Climate Policy is Fragmented and Lacks Clarity’ (2019) 54(7) EPW <<https://www.epw.in/engage/article/indias-domestic-climate-policy-fragmented-lacks-clarity>> accessed 16 January 2023

<sup>37</sup> Aaron Atteridge, Manish Kumar Shrivastava, ‘Climate Policy in India: What Shapes International, National and State Policy?’ (2012) 41 (1) JSTOR <<http://www.jstor.org/stable/41417390>> accessed 17 Jan. 2023.

mechanisms that are well-designed and have adequate resources for implementation and monitoring. Certain natural factors are not taken under consideration in the budgetary allocations made by the federal government and the states for the implementation of climate policy such as being more vulnerable to climate.

### CRITICALLY EVALUATING THE NEED FOR A SEPARATE LEGISLATION

The greatest challenge facing our generation is the climate crisis. It will take exceptional levels of global cooperation to address it. A big part of this cooperation will come from countries around the globe integrating and adopting frameworks to combat climate change in their national policy and legislations. A climate law is required for India, a large and unwieldy democracy, to make a concerted effort to meet the challenge. Given that India is the third-largest CO<sub>2</sub> emitter in the world and is gravely threatened by rising temperatures, it can avoid locking into high-carbon futures. One of the most vulnerable nations to the effects of climate change in India. It is highly susceptible to flooding due to its geographic location being surrounded by water on three sides. As a result, the question of whether it is time for executive action to overtake more formal legislation with the authority of the law for climate change arises.<sup>38</sup>

Climate change has far-reaching implications for the field of agriculture. So a country like India in which the agricultural sector contributes 20% to the GDP and employs more than 40% of the population cannot turn a blind eye to it. The poorest and most marginalized people are most impacted by climate change since it causes their displacement AND loss of means of livelihood in addition to the loss of land and crops. Indian people do not have a legal right to file a claim for protection, other than ex gratia recompense announced by the government and insurance benefits that may be available.<sup>39</sup> An accountable system that combats climate change in the interest of communities, especially the underprivileged and marginalized, is what we require. As a result, the Climate Legislation will increase accountability. Many have claimed that because India is a developing country, it cannot be compared to a developed economy such as

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<sup>38</sup> Sairam Bhat & Madhubanti Sadhya, 'Legislating Climate Change in India' (*The Centre for Environment Law Education, Research and Advocacy*, 26 October 2020) <<https://enlaw.nls.ac.in/legislating-climate-change-in-india/#>> accessed 17 January 2023

<sup>39</sup> *Ibid*



the United States, which has pledged to become carbon neutral by 2050. This rationale, however, ignores India's progressive transition from a developing to a developed nation, which would result in higher levels of demand and consumption.<sup>40</sup>

In today's world, it would be fair enough to make a statement that climate change has become a matter of a nation's security, this is the same with all the three countries discussed above i.e. India, Morocco, and the United States. With the above-formed views we can even say that climate change would eventually become a test for the global civilization of the 21<sup>st</sup> century. These countries and other countries across the globe have taken predictions made by the scientists and the U.N. Intergovernmental Panel on Climate Change seriously to change the climatic conditions for the betterment of everyone.<sup>41</sup> Nonetheless, the rightward political movement taking place in many nations threatens to dismantle global treaties aimed at reducing carbon emissions. President Trump aims to withdraw the United States from the Paris Agreement, and Brazil's leading presidential candidate, Jair Bolsonaro, has expressed the same ambition.

Many right-wing politicians deny climate change exists to appease the commercial groups who support their campaigns. With this and other factors included we must keep in mind that the three countries cannot be compared on similar grounds as Climate Change disproportionately affects the Developing World and thus they have different histories concerning the emission of GHGs. Thus calling for the need to pursue a form of development that has low emissions and boosts their capacity.

The fundamental limitation in the Indian context is that there is a lack of binding legislation which is essential to meet the specific target a country aspires for. While plans and policies do facilitate advancing an agenda, only enactments can make the state accordingly bound to achieve them. For example, under the Paris Agreement, India committed to reducing its gross domestic product's emission intensity (GHG emissions per unit GDP) by 33–35% above 2005

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<sup>40</sup> Siddharth Chaturvedi, 'Analysing India's Climate Change Policy' (*The Leaflet*, 30 September 2021)

<<https://theleaflet.in/analysing-indias-climate-change-policy/>> accessed 12 January 2023

<sup>41</sup> Eric Schewe, 'Why Climate Change Is a National Security Issue?' (*Jstor Daily*, 25 October 2018)

<<https://daily.jstor.org/why-climate-change-is-a-national-security-issue/>> accessed 12 January 2023

levels by 2030 and to increase its carbon sink capacity by 2.5–3 billion tonnes CO<sub>2</sub> equivalent through the increased forest and tree cover.<sup>42</sup> India has pledged to reduce carbon emissions, but environmental experts believe that without strict laws to address the problem, commitments won't be adequately met.

## MEANINGFUL REFORMS TO FORMULATE AN OPERATIVE LAW

### A. Integration and Avoid Duplication

India's climate policy is largely fragmented spanning numerous rules and legislations regulated by various governmental bodies at various levels which renders any effort for substantial action unsuccessful. Hence It is recommended that India adopt a framework climate law that can consolidate and tie together the existing statutes and institutions and include the necessary components for raising ambition and guaranteeing compliance. It's high time for India to enact a comprehensive code on its own that would cover every aspect of climate change. Simply establishing rules, programs, plans, and frameworks won't be enough to address the serious issue of harming human life. Common law can be used to adopt policies and plans. It is also imperative to lay the groundwork for fundamental climate policy concepts that will guide all future government policies to prevent the long-term proliferation or duplication of decision-making organizations, and entities, and, rules for policy coordination should be established with sufficient ongoing ability and resources.

### B. Obligatory

Any new Indian climate law must be carefully crafted to address specific challenges and delegate specific measures to be performed to fulfill commitments, maybe within a specified time frame, to responsible authorities. A framework law on climate change can specify the responsibilities of public and private players, create the institutional framework required, and give the government the legal justification to take various further measures. According to

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<sup>42</sup> Aruna Chandrasekhar, 'Q&A: What does India's updated Paris Agreement pledge mean for climate change?' (*Carbon Brief*, 14 September 2022) <<https://www.carbonbrief.org/qa-what-does-indias-updated-paris-agreement-pledge-mean-for-climate-change/>> accessed 12 January 2023

Bentham's<sup>24</sup> evaluation of the "Concept of Law," A good rule can only be conceptualized if its expression is perfect in both design and expression. Since the current regulations are essentially voluntary and non-binding, there is a need for legislative sanction, which would have a binding effect.

### **C. Collaboration**

It is a belief that the policies related to climate followed in the current times are a result of a democratic, cooperative process that includes the support and overall help of the decision-makers, and scientists who have good know-how about the issue, along with other knowers of the topic. Engagement of local participants' knowledge, research, time, and resources must be based on fair terms, with appropriate acknowledgment and pay.<sup>43</sup> It is essential to expressly support and encourage the part that villages, cities, and states play in jointly developing India's climate strategy. This can be achieved by building constructive feedback loops, which are then included in national and state budgets, policies, and roadmaps. A competent law should focus on developing institutional, technological, and financial capabilities to prepare all economic sectors.

### **D. Federal Arrangement**

The federal arrangement of the law refers to the division of authority and accountability between the federal government, the states, and local governments concerning the act's more general climatic aims. This bottom-up strategy should be used to define the roles of the various levels of government and provide local governments more authority to play a bigger part in climate mitigation and adaptation. For this section, federalism will be understood as a spectrum ranging from top-down dominance, in which lower governments are compelled to align their policies with central plans, to a more equitable vertical allocation of power, in which state and local governments are allowed to make laws and policies independent of the federal plan.<sup>44</sup>

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<sup>43</sup> Nicole L. Klenk et al., 'Stakeholders in Climate Science: Beyond Lip Service?' (2015) 350 Science 743-744

<sup>44</sup> Anirudh Sridhar, 'Designing a Climate Law for India' (*Environmentality*, 24 August 2021)

<<https://environmentality.cprindia.org/blog/designing-a-climate-law-for-india>> accessed 15 January 2023

### **E. System of Accountability and Responsibility**

A legal mechanism is required to supervise the enactment's execution and provide compensation to those harmed as a result of violating climate change norms. Businesses and companies in particular should be held accountable for the harm they do. Given that industrial activities account for the vast majority of carbon emissions contributing to climate change, corporations should be held more accountable to society as a whole. Thus, in light of environmental dangers, corporate social responsibility standards should be made obligatory. An approach based on the sound principles of climate justice should be employed to enable everyone to achieve their right to development.<sup>45</sup> A quasi-judicial agency might be established to oversee the implementation of action plans for combating climate change. This institution would have the jurisdiction to issue directives and ensure that plans and programs are carried out by the language and spirit of the law. In an ideal scenario, a climate commission might stop egregious carelessness in vulnerable places and address responsibility when it occurs to ensure that the misuse of natural resources does not go unpunished.

### **F. Scientific-based and Target Specific**

A scientific approach based on cross-sectoral collaboration with the participation of stakeholders from domains of science, law, technology, research, and policymaking would be ideal. As readiness, planning, and response are essential for taking action on climate change, which would necessitate a significant amount of research and investment, climate law must be interwoven with disaster management, green technology, and sustainable development.

## **CONCLUSION**

Without a question, the scope and character of climate change are exceedingly broad and pervasive. India has so far responded to or been reactive to issues about climate change. But it is past time that more than just detailed guidelines and plans be used to address all of these

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<sup>45</sup> Germana Canzi, 'Q & A with Mary Robinson : What is Climate Justice' (*Road to Paris*, 29 July 2015) <<https://roadtoparis.info/2015/07/29/qa-with-mary-robinson-what-is-climate-justice/>> accessed 14 January 2023

issues. To make it more efficient and goal-oriented, it must be addressed through a legal enactment. A private member made an unsuccessful attempt to put out a bill in 2012 to establish climate change legislation in India. 21 Even though this initiative was unsuccessful, it serves as a torch-bearer for an effective answer to India's climate change challenges.<sup>46</sup>

Sui generis law is necessary to address climate change, and it cannot be abandoned for any reason. This action will assist India in resolving the issue domestically and preventing climate-related disasters similar to those we have recently seen. It can also exemplify India's willingness and desire to cooperate with efforts to combat climate change as a responsible member of the international community.<sup>47</sup> We are aware that no matter the issue, those who are poor and oppressed are the ones who suffer the most. For example, the 2013 climate change crisis in Uttarakhand showed us that no matter what mistake is made, the poor are always the ones who suffer the consequences. History demonstrates that we have always used legislation as a last resort to address problems like this.<sup>48</sup>

We survive if the environment around us survives. If our Man is inclined to take from nature without giving back and to destroy without replenishing it. This is creating a lot of issues for not just other plants and animals but also our health and the health of our offspring. Only through our effort and persistence will the environment's rabid destruction be slowed down<sup>49</sup>. Additionally, healthy people are precious assets for the nation since they can greatly contribute to the economy and grow the country by paving the way for progress, creating jobs, and raising the GDP to fulfill our aspiration of becoming a \$5 trillion economy.

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<sup>46</sup> Swatee Yogesh, 'Climate Change Laws in India – Need for Change in Legal Climate?' [2016] IJSR 255

<sup>47</sup> Shelal Lodhi Rajput, 'Need For Laws For Climate Change In India' (*Judicateme*, 15 July 2020) <<https://judicateme.com/need-for-laws-for-climate-change-in-india/>> accessed 14 January 2023

<sup>48</sup> *Ibid*

<sup>49</sup> Shrankhala Parwar, 'Environmental Law- Principles and Policies in India' (*Indian Legal Solution*, 5 November 2019) <<https://indianlegalsolution.com/environmental-law-principles-and-policies-in-india/>> accessed 18 January 2023