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Report

On

“Analysing the Need for a Climate Change Legislation in India”

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Abstract

India has been active in formulating its climate change policy through the release of the National Action Plan on Climate Change in 2008, the re-constitution of the Prime Minister’s Council on Climate Change in 2014 as well as through its role as an environmental policy driver at the global level. A direct outcome of this engagement has been the establishment of the International Solar Alliance at COP22. All of these are progressive steps signaling India’s commitment in addressing climate change. However, in order to regulate these adaptation and mitigation efforts, an exclusive and inclusive climate change law must be enacted by the Indian Parliament. The effects of climate change cannot be denied and thus, it is vital that climate crisis be addressed and worked upon, not only through individual actions but through cooperative efforts as well. A dedicated climate change legislation will ensure that not only the government, but the citizens, also, are reminded of their duty to protect, restore and manage the natural environment. This paper is an attempt to analyse the lack of and the need to enact an exclusive climate change legislation for India.

Keywords: India, climate change, effects, legislation.

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RESEARCH OBJECTIVE

The primary objective of the current research report is to study the lack of and analyse the need for an exclusive climate change legislation in India. The report includes ancillary objectives to the primary objective as well which are to study the global trends in climate change law; to review the climate change policy of India, and to identify crucial points to be considered for a future climate change law, that is both cohesive and practicable.

RESEARCH METHODOLOGY

In order to achieve the research objectives, an analytical and qualitative study of the Indian climate change policy including the NAPCC, SAPCCs, government's engagement at the international fora and its obligations under the international conventions and agreements like the UNFCCC and the Paris Agreement have been employed. The researcher has also undertaken a study of the climate change laws around the world such as in the United Kingdom to ascertain the global perspectives and trends with respect to an exclusive climate change law.

LITERATURE REVIEW

Global Trends in Climate Change Law

The nations, worldwide, have been discussing how to combat climate change since the 1990s. The Kyoto Protocol and the Paris Agreement are only two of the significant agreements that came out of these negotiations. The author has highlighted that while governments largely concur that climate change is real, but they disagree about who is most to blame, how to monitor emissions reduction targets, and whether to pay more severely affected nations.¹

Over the past twenty years, there has been a twenty-fold growth in the number of climate change legislation or laws related to climate change.² This illustrates how much ground is already covered by current climate regulations. Most nations have a solid legal foundation upon which to base future actions. The paper highlights that as the number of low-income nations enacting laws to combat climate change is rising, thus, development strategies need to properly incorporate climate change.³

¹ Global Climate Agreements: Successes and Failures | Council on Foreign Relations, <https://www.cfr.org/backgrounder/paris-global-climate-change-agreements> (last visited Aug 15, 2023).

² Shaikh Eskander, Sam Fankhauser & Joana Setzer, *Global Lessons from Climate Change Legislation and Litigation*, 2 ENVIRONMENTAL AND ENERGY POLICY AND THE ECONOMY 44 (2021).

³ Michal Nachmany et al., *Global Trends in Climate Change Legislation and Litigation: 2017 Update*, (2017), <http://www.lse.ac.uk/GranthamInstitute/publications/> (last visited Jun 20, 2023).

Review of India's Initiatives and Global Engagement

The authors delve into the evolving position of India from a trial ground for environmental policies to a policy driver at international forums. India now has a large influence on climate politics and policy.⁴ Climate change will impact a variety of areas, including agriculture, which will further jeopardize food security, sea level rise, increased coastal zone erosion, intensifying natural disasters, species extinction, and the spread of vector-borne diseases⁵, thus, the paper explores the reasons for formulation of the National Action Plan on Climate Change and whether the Plan achieved what it set out to. There is a growing understanding that there will be significant differences in how climate change affects Indian states, and several may do worse than the area as a whole. The author discusses that since the state climate plans were designed as a way to decentralize national efforts on combating climate change, they have proven to be a successful exercise in launching action, mostly on adaptation, at the subnational level.⁶ However, the documentation and monitoring of their operationalization are still insufficient.

Analyzing the need for a climate change legislation

The laws and policies that control climate change action by establishing its legal foundation are collectively referred to as “climate legislation”, or simply “climate legislation.” These laws and regulations cover activities that fall under the purview of catastrophe risk reduction, adaptation, and mitigation for climate change.⁷ A climate change law for India will provide a legal basis to the international commitments as well as weave India's considerations as a developing country into the climate change narrative. Further, the law will be useful in attracting investment into green technologies developed within the country.

⁴ Navroz K. Dubash et al., *India and Climate Change: Evolving Ideas and Increasing Policy Engagement*, 43 ANNUAL REVIEW OF ENVIRONMENT AND RESOURCES 395 (2018).

⁵ Harshal T. Pandve, *India's National Action Plan on Climate Change*, 13 INDIAN J OCCUP ENVIRON MED 17 (2009).

⁶ Anu Jogesh & Mridula Mary Paul, *Ten Years After: Evaluating State Action Plans in India*, 86 SCIENCE AND CULTURE 38 (2020).

⁷ What is climate change legislation?, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT, <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-climate-change-legislation/> (last visited Sep 5, 2023).

I. INTRODUCTION

The human civilization is currently under threat from climate change. It is the result of millennia of unchecked depletion of natural resources, exploitation of biodiversity, and polluting human activities to satiate their insatiable appetites. As the effects of climate change worsen on a global scale, it is clearer than ever that countries must take proactive measures to lessen their negative effects.

The Stockholm Convention, or the United Nations Conference on Human Environment held in Stockholm, Sweden in 1972, launched a number of international governance initiatives to combat environmentally risky human activities while sustaining and advancing economic and social development.¹ When the west highlighted the plight of the environment and demanded that developing countries adopt a more environmentally sound development strategy, Mrs. Indira Gandhi argued for developing countries to fight their current battles, such as the elimination of poverty, at the 1972 Convention.² In 1983, a report titled “Our Common Future” was released by the World Commission on Environment and Development, also known as the Brundtland Commission which further christened climate change as the common concern of mankind and thus solidified the resolve of nation-states towards combating it.³ “Global Warming in an Unequal World”⁴, a report by the not-for-profit organisation named Centre for Science and Environment (“CSE”) laid down the ideological cornerstones of India’s international climate policy. It declared that “carbon colonialism” was the fault of wealthy nations. The report categorically argued that since the global north historically contributed the majority of the global pool of emissions, the world owed it to the global north to reduce its emissions as well as emissions intensity, and that the per-capita emissions should ideally be the metric used to evaluate the responsibility for mitigation.⁵

India, one of the most populous and climate-vulnerable nations in the world, has a pressing need to tackle the issue of climate change through effective legislative measures. According to climate change forecasts for India, temperatures would generally rise by 1-4 degrees

¹ United Nations, *United Nations Conference on the Human Environment, Stockholm 1972*, UNITED NATIONS, <https://www.un.org/en/conferences/environment/stockholm1972> (last visited Aug 5, 2023).

² Antto Vihma, *India and the Global Climate Governance: Between Principles and Pragmatism*, 20 THE JOURNAL OF ENVIRONMENT & DEVELOPMENT 69 (2011).

³ *Id.*

⁴ Anil Agarwal & Sunita Narain, *Global Warming in an Unequal World: A Case of Environmental Colonialism, in INDIA IN A WARMING WORLD: INTEGRATING CLIMATE CHANGE AND DEVELOPMENT* 0 (Navroz K. Dubash ed., 2019).

⁵ *Id.*

Celsius and precipitation will increase by 9–16% by the mid-2050s.⁶ However, it is anticipated that the amount of rainfall would vary in different places in the ensuing decades.⁷ The occurrence of extreme events like cyclones, floods, and droughts is occurring more frequently as a result of climate change, which is another important factor. All of these anticipated changes will negatively affect human health as well as climate-sensitive industries including agriculture, coastal habitats, and forests, as well as the availability of water for various uses. The need of adaptation in addressing climate change has finally been correctly acknowledged by the international climate change negotiations. Even dramatic mitigation measures won't stop the predicted rise in temperature until 2100 because the world has already committed to some degree to climate change.⁸ Therefore, it is important to give adaptive measures for coping with climatic variability and change more attention through institutional, research, and policy interventions. This study examines the vital justifications for India to pass a thorough climate change law. The study gives reasons and argues for the need to pass a framework law on climate change for India while, providing information about the possible advantages of such law.

II. CLIMATE CHANGE LAW: GLOBAL TRENDS AND PERSPECTIVES

Climate change is a global emergency that transcends national boundaries and calls for worldwide collaboration and coordinated responses at every level. All 195 Parties to the United Nations Framework Convention on Climate Change (“UNFCCC”) have signed the Paris Agreement and have agreed to decrease their emissions and cooperate to adapt to the effects of climate change.⁹ The Agreement also encourages nations to make stronger pledges over time. The provisions of the Agreement, although legally enforceable, lack the same force of law that the Kyoto Protocol that came before it held.¹⁰ For a select group of nations, the Kyoto Protocol established clear emission reduction goals; in contrast, the Paris Agreement requires all nations to choose their own goals.¹¹ In addition to the international instruments, the world also experienced a slew of public interest litigations against national governments and private corporations to hold them responsible for the action contributing to and inaction towards

⁶ K Krishna Kumar et al., *Simulated Projections for Summer Monsoon Climate over India by a High-Resolution Regional Climate Model (PRECIS)*, 101 CURRENT SCIENCE (2011).

⁷ Asha V., Munisamy Gopinath & A. Bhat, *Impact of Climate Change on Rainfed Agriculture in India: A Case Study of Dharwad*, INTERNATIONAL JOURNAL OF ENVIRONMENTAL SCIENCE AND DEVELOPMENT 368 (2012).

⁸ C. A. Rama Rao et al., *A District Level Assessment of Vulnerability of Indian Agriculture to Climate Change*, 110 CURRENT SCIENCE 1939 (2016).

⁹ United Nations, *The Paris Agreement*, UNITED NATIONS, <https://www.un.org/en/climatechange/paris-agreement> (last visited Aug 15, 2023).

¹⁰ Global Climate Agreements: Successes and Failures | Council on Foreign Relations, <https://www.cfr.org/backgrounder/paris-global-climate-change-agreements> (last visited Aug 15, 2023).

¹¹ *Id.*

climate change. The overall number of climate change cases has more than doubled, from 884 in 2017 to 2,180 in 2022.¹² Despite the fact that the majority of claims have been filed in the United States, climate litigation is spreading throughout the world, with about 17% of cases now being recorded in poor nations, including Small Island Developing States. Sixty-five courts, tribunals, quasi-judicial bodies, and other adjudicative bodies, including the United Nations' special procedures and arbitration tribunals, received these legal actions from all around the world.

It is pertinent to note that none of the international instruments offers a method of enforcement similar to that of national legislation. International courts have limited jurisdiction, and there is no international regulator or enforcement body that can keep a check on climate actions by nations around the world. Therefore, when nations withdrew from the Kyoto Protocol, there was not much that could be done legally to check and ensure that the Parties adhered to their emission targets.¹³ Thus, it was deemed necessary that each Party in the process of ratification of the Paris Agreement and the UNFCCC devise their own national law or policy on climate action. These domestic laws or policies would be based on local considerations while at the same time operate in accordance with the commitments and obligations under the international instruments on climate change. There isn't a nation on this planet without at least one law or policy addressing climate change. There are more than twenty in the most prolific nations, and 1,800 such laws exist worldwide, of which state governments issue some as executive orders or policies, while parliament passes others as laws.¹⁴ Only 110 key legislation and programs that directly or indirectly addressed climate change were passed between 1990 and 1999 and there were around 1,100 laws and policies enacted between 2010 and 2019 - a tenfold increase.¹⁵ Today, there are about 1,800 laws and policies related to climate change in existence worldwide, and this number is only rising, signalling that nations are now considering climate change as one of the major concerns of today's mankind that could potentially disrupt economies and hamper life. Several nations like the United Kingdom, Sweden France, Scotland and New Zealand have come up with exclusive laws on climate change. These laws include a pledge to reach net zero emissions and a framework to guide the adaptation and mitigation

¹² Climate litigation more than doubles in five years, now a key tool in delivering climate justice, UN ENVIRONMENT (2023), <http://www.unep.org/news-and-stories/press-release/climate-litigation-more-doubles-five-years-now-key-tool-delivering> (last visited Aug 15, 2023).

¹³ Scott Barrett, *Political Economy of the Kyoto Protocol*, 14 OXFORD REVIEW OF ECONOMIC POLICY 20 (1998).

¹⁴ Eskander, Fankhauser, and Setzer, *supra* note 2.

¹⁵ Gabriela Iacobuta et al., *National Climate Change Mitigation Legislation, Strategy and Targets: A Global Update*, 18 CLIMATE POLICY 1114 (2018).

measures in response to national concerns associated with climate change. An example of a broad adaptation framework that establishes a process of ongoing knowledge production and adaptation planning is the UK Climate Change Act.¹⁶ The UK Climate Change Act covers both adaptation and mitigation of climate change, like many framework legislation. However, as is common in many nations, the mitigation clauses set precise emission reduction goals while the focus of adaptation is on creating the proper institutions and procedures.¹⁷

III. CLIMATE ACTION IN INDIA: STRATEGY AND INITIATIVES

i. India's Engagement in Global Climate Governance from COP1 to COP27

India ratified the UNFCCC in 1993 and the Kyoto Protocol in 2002 and has been an active participant in global climate negotiations. From COP1 to COP27, India has maintained developing nations have a right to development, thus, emissions are expected to occur. When it comes to addressing fundamental development issues like hunger and poverty, India sees itself as a developing country with much to do.¹⁸ The Global North has historically viewed India as a partner in their efforts to reduce global emissions. The Conference of Parties' decisions are the outcome of extensive deliberations that adhere to the idea of the lowest common denominator. Despite this, India has been effective in promoting its objectives and making sure that crucial principles like technology transfer, respect for each other's capabilities and common but differentiated responsibilities, and developed nations' responsibility for climate change, are at the core of every CoP decision.

At subsequent COPs, India and other emerging nations prioritized economic development and the eradication of poverty, which is to expected to result in an increase in GHG emissions. India revised its position on the Clean Development Mechanism¹⁹ ("CDM") after realizing how valuable it was for it to attract foreign investment and clean technology from the West. In fact, India not only actively participated in developing the principles, regulations, and institutions governing the CDM during this time, but it also, along with China, rose to the top of the CDM

¹⁶ Michal Nachmany, Rebecca Byrnes and Swenja Surminsk, *National laws and policies on climate change adaptation: A Global Review*, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT, <https://www.lse.ac.uk/granthaminstitute/publication/national-laws-and-policies-on-climate-change-adaptation-a-global-review/> (last visited Aug 13, 2023).

¹⁷ Sam Fankhauser, Alina Averchenkova and Jared Finnegan, *10 years of the UK Climate Change Act*, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT, <https://www.lse.ac.uk/granthaminstitute/publication/10-years-climate-change-act/> (last visited Aug 15, 2023).

¹⁸ India and the MDGs | UN ESCAP, https://www.unescap.org/sites/default/files/India_and_the_MDGs_0.pdf (last visited Aug 15, 2023).

¹⁹ The Clean Development Mechanism | UNFCCC, <https://unfccc.int/process-and-meetings/the-kyoto-protocol/mechanisms-under-the-kyoto-protocol/the-clean-development-mechanism> (last visited Aug 15, 2023).

project hosting rankings in the years that followed, with its private sector capturing a sizeable portion of the global market.²⁰

India has advocated strongly for the adoption of technology transfer and financial assistance from industrialized to developing countries in any official agreement on climate change as well as further urged increased focus on adaptation funds at COP7 in Marrakesh in 2001.²¹ India also urged the removal of financial and intellectual property rights-related barriers to the effective adoption of emerging technology alternatives in energy efficiency, fuel switching, and renewable energy.²² India and other developing nations compelled developed Parties to uphold their mitigation obligations and implement more robust procedures to handle money, transparency, and technology.²³ Towards the later COPs, from COP17 to COP 21, India reiterated the need of including “loss and damage” in the new accord, along with the Least Developed Countries and Small Island Developing States, stressing that the “mechanism for addressing loss and damage must be taken to its logical conclusion.”²⁴

Although the most recent COP27 concluded with a purported cursory reiteration of the international commitment to close the gaps in mitigation, adaptation, and climate finance, it amassed greater importance due to the establishment of a new mechanism in global climate-change governance known as the “loss and damage fund”.²⁵ The developed nations upheld India’s position as one of the top polluters while diminishing its heightened geographical and socio-economic vulnerabilities in light of the threat posed by climate change. However, the composition of the contributors to the aforementioned fund became a contentious contestation between the global north and India.

India’s participation in the COP27 has shown that it is a significant and engaged nation that is committed to upholding the interests of developing and underdeveloped economies. It was established to defend the rights of the numerous individuals on the earth who are the victims of the climate crisis rather than its perpetrators. The ideas of equity, fairness, and universal

²⁰ Michael Richards, *A Review of the Effectiveness of Developing Country Participation in the Climate Change Convention Negotiations* (2011).

²¹ Funding under the Convention and the Kyoto Protocol, <https://unfccc.int/cop7/issues/convkpfunding.html> (last visited Aug 21, 2023).

²² Outcome and Indian stance in COPs 1 - 21 - Indian Council of World Affairs (Government of India), https://www.icwa.in/show_content.php?lang=1&level=3&ls_id=607&lid=551 (last visited Aug 24, 2023).

²³ Chime Youdon and Pushp Bajaj, *India’s Approach and Position on Climate Change Governance*, NATIONAL MARITIME FOUNDATION (Nov. 19, 2022), <https://maritimeindia.org/indias-approach-and-position-on-climate-change-governance/> (last visited Aug 25, 2023).

²⁴ Outcome and Indian stance in COPs 1 - 21 - Indian Council of World Affairs (Government of India), *supra* note 29.

²⁵ Harsh V. Pant, *The World in 2022: An Epilogue*, ORF, <https://www.orfonline.org/research/the-world-in-2022-an-epilogue/> (last visited Aug 22, 2023).

justice that are significant to India will continue to govern India's involvement and contribution in ongoing international climate negotiations. Ambition, making climate action a top priority in national policies, encouraging international cooperation, and taking the lead on ambitious global climate action can help India resolve its climate issue.

ii. Review of National Initiatives

a. Prime Minister's Council on Climate Change

The Prime Minister's Council on Climate Change ("PM Council") was reconstituted in 2014, after its initial constitution in 2008, to coordinate national action for assessment, adaptation, and mitigation of climate change.²⁶ The PM Council was tasked to develop a national response that is coordinated to climate change-related challenges; exercise control over the creation of action plans for assessing, adjusting to, and mitigating climate change as well as to monitor important policy decisions on climate change.²⁷ Over three sessions between July 13, 2007 and June 2, 2008, the first council was able to formulate the National Action Plan on Climate Change (NAPCC), a month before the 'Group of Eight' countries summit that was held in July 2008.²⁸ The council has not met since 2015, according to information publicly available.

b. National Action Plan on Climate Change

The National Action Plan on Climate Change ("NAPCC") was formulated in 2008 by the PM Council. The action plan highlights several initiatives that can be taken to promote both, India's development goals and targets connected to climate change.²⁹ It establishes eight missions, ranging from solar to climate research, that will be described and then followed up on by the PM Council in order to prioritize national action.³⁰

It is evident that efforts are being made to stop climate change, but what is most important is that these efforts must be ongoing and long-lasting, and every person in every nation must make a contribution.³¹ The government of India has demonstrated its commitment to addressing climate change issues by releasing the NAPCC. In addition, the government has

²⁶ Government reconstitutes the Prime Minister's Council on Climate Change, <https://pib.gov.in/newsite/printrelease.aspx?relid=111090> (last visited Aug 18, 2023).

²⁷ Shyam Saran, *India's Climate Change Policy: Towards a Better Future*, <https://www.eoimadrid.gov.in/pdf/Article%20by%20Shyam%20Saran%20on%20India's%20Climate%20Change%20Policy,%20Towards%20a%20Better%20Future.pdf> (last visited on Aug 16, 2023).

²⁸ PM's climate change council has not met in almost 7 years, <https://www.downtoearth.org.in/news/climate-change/pm-s-climate-change-council-has-not-met-in-almost-7-years-80369> (last visited Aug 15, 2023).

²⁹ Pandve, *supra* note 5.

³⁰ National Action Plan on Climate Change | Ministry of Environment, Forests and Climate Change (Government of India), <https://cckpindia.nic.in/napcc/> (last visited Aug 26, 2023).

³¹ Harshal T. Pandve, *Global Initiatives to Prevent Climate Change*, 12 INDIAN J OCCUP ENVIRON MED 96 (2008).

positively communicated its desire to address the climate change issue through coordinated action to the general public, businesses, and civil society.³² It is imperative to deal forcefully and effectively with issues relating to the general public's understanding of global warming and climate change, as well as issues relating to agriculture and health risks brought on by climate change.

c. State Action Plan on Climate Change

Post the formulation of the NAPCC, it was observed that effective climate action would also require action at the state and the district level, hence, all states and Union Territories were urged to come up with their own State Action Plans on Climate Change ("SAPCC") consistent with the objectives of the NAPCC. The SAPCCs are cited as a crucial component of India's efforts to combat climate change in the NDC. According to the Parliamentary Committee on Estimates' report on the NAPCC's performance, "actions at the level of state governments and Union Territories supplement broad policy initiatives of the Central Government."³³ While Delhi took eight years to complete its action plan, which was completed in 2019, Odisha was among the first to produce their document in 2010.

In reality, however, there has been a mismatch between local and national attempts to combat climate change. The money given to states under national programs like MGNREGA and the value of the benefits they provide for the climate are the main areas of attention in the current measurement of sub-national action.³⁴ Regarding sectoral concentration, plans largely align with national missions, but they place a strong emphasis on adaptation. States that have considered operations involved in mitigation, such as energy and transportation, have done so in accordance with regional priorities. For instance, Odisha emphasised on interventions in the energy sector in its SAPCC which was in line with only one mission under the NAPCC, that is, the National Mission on Energy Efficiency.

d. Climate Change Bill, 2015

In 2015, a private member's bill to enact a climate change law known as the Climate Change Act was tabled in the Lok Sabha of the Parliament by Kalikesh Narayan Singh Deo, Member of Parliament. The bill was introduced with a view "*to set a target for the reduction of targeted greenhouse gas emissions; to establish a National Committee on Climate Change; to provide*

³² Harshal Pandve, *Global Warming: Need to Sensitize General Population*, 11 INDIAN J OCCUP ENVIRON MED 86 (2007).

³³ Committee Reports, PRS LEGISLATIVE RESEARCH, <https://prsindia.org/policy/report-summaries/performance-of-national-action-plan-on-climate-change> (last visited Aug 26, 2023).

³⁴ India's Intended Nationally Determined Contribution is Balanced and Comprehensive: Environment Minister, <https://pib.gov.in/newsite/printrelease.aspx?relid=128403> (last visited Sep 3, 2023).

for carbon budgeting and carbon trading schemes and to encourage other such activities to reduce greenhouse gas emissions and for matters connected therewith or incidental thereto.”³⁵

In order to keep a track of the government’s actions and policy decisions with respect to climate change, the Bill also stipulated that the government must submit “*a report setting out proposals and policies for meeting carbon budgets for the current and future periods*” before the Parliament.³⁶

IV. ASSESSING THE NEED FOR A CLIMATE CHANGE LEGISLATION IN INDIA

By the end of the century, it is predicted that the Indian subcontinent would have warmed significantly, with large changes in the frequency and severity of precipitation, flood, and drought events.³⁷ The full scope of these anticipated changes is currently being determined through multiple state and district-level climate modelling efforts due to the agro-climatic variability of Indian states.³⁸ There is broad consensus that climate impacts are already making it more difficult for states to develop in terms of food production, forest and biodiversity, water availability, and human health.³⁹ The recent string of extreme weather events in Maharashtra, Kerala, Assam, Uttarakhand, and Himachal Pradesh are a part of a bigger trend that is anticipated to get worse if existing infrastructure development, key service provision, and resource management practices continue and are not regulated from the perspective of climate emergency.⁴⁰

The Paris Agreement lacks instruments to raise ambition. The globe is still on course to warm by well over 2 degrees Celsius by the year 2100, according to the total of the Nationally Determined Contributions (“NDCs”) made by the various countries as required by the Agreement.⁴¹ The Agreement commits all parties to collectively limit global warming to 2 degrees Celsius and to use their best efforts to limit it to 1.5 degrees Celsius. Even worse,

³⁵ The Climate Change Bill, 2015, Bill No. 23 (2015).

³⁶ Siddharth Chaturvedi, *Analysing India’s Climate Change Policy*, The Leaflet (2021), <https://theleaflet.in/analysing-indias-climate-change-policy/> (last visited Jun 14, 2023).

³⁷ What’s in it for South Asia | Climate & Development Knowledge Network, (2014), <https://cdkn.org/resource/highlights-south-asia-ar5> (last visited Aug 14, 2023).

³⁸ Pritha Datta, Bhagirath Behera & Dil Bahadur Rahut, *Climate Change and Indian Agriculture: A Systematic Review of Farmers’ Perception, Adaptation, and Transformation*, 8 ENVIRONMENTAL CHALLENGES 100543 (2022).

³⁹ N. Ravindranath et al., *Climate Change Vulnerability Profiles for North East India*, Vol.101 CURRENT SCIENCE 384 (2011).

⁴⁰ Assessing India’s mounting climate losses to financial institutions | PreventionWeb, (2019), <https://www.preventionweb.net/publication/assessing-indias-mounting-climate-losses-financial-institutions> (last visited Aug 14, 2023).

⁴¹ NDC compliance not enough, world may still be 2.5°C warmer by 2100: Study, <https://www.downtoearth.org.in/news/climate-change/ndc-compliance-not-enough-world-may-still-be-2-5-c-warmer-by-2100-study-84071> (last visited Aug 15, 2023).

nations' actions fall far short of their declared goals. This includes India, which has the most equitable NDCs for an emerging economy. India is on course to reach the renewable energy and energy intensity of Gross Domestic Product ("GDP") targets set forth in its NDC, while progress on the country's forest carbon target has lagged.⁴²

The atmospheric buildup of greenhouse gases ("GHGs") is the primary cause of climate change and India ranks among the top emitters of GHGs because of its sizeable population and expanding economy.⁴³ An exclusive climate change law can establish precise emission reduction goals and procedures for the nation to lower its GHG emissions, assisting in the worldwide mitigation of climate change. India is susceptible to the effects of climate change due to its geographical location and topography, which leads to more frequent and severe floods, cyclones, and sea level rise.⁴⁴ A climate change law can, therefore, aid in allocating funds and establishing plans for coping with these effects, safeguarding the populace, the nation's infrastructure, and its ecosystems.

India has ratified international accords like the Paris Agreement, which mandates that nations take particular steps to keep global warming to well below 2 degrees Celsius above pre-industrial levels.⁴⁵ India can contribute to global efforts to address climate change and fulfill its obligations under these agreements with the aid of a climate change law. A climate change law can give the different government departments and agencies involved in climate-related activities a legal basis.⁴⁶ Further, it can assure the consistency of policies and activities across numerous industries, including those related to energy, transportation, agriculture, and forestry, all of which are crucial for effective climate action.

An exclusive climate change law will also lead to increased investments and financial benefits. Investments in green and sustainable technology, renewable energy, and climate-resilient infrastructure can be attracted on a national and worldwide level with the aid of a clear and

⁴² India stands committed to reduce Emissions Intensity of its GDP by 45 percent by 2030, from 2005 level, <https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1885731> (last visited Aug 15, 2023).

⁴³ Thomas Harrisson, *The Carbon Brief Profile: India*, CARBON BRIEF (2019), <https://www.carbonbrief.org/the-carbon-brief-profile-india/> (last visited Aug 14, 2023).

⁴⁴ India: Climate Change Impacts, WORLD BANK, <https://www.worldbank.org/en/news/feature/2013/06/19/india-climate-change-impacts> (last visited Aug 24, 2023).

⁴⁵ Cabinet approves ratification of the Paris Agreement, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=151205> (last visited Aug 25, 2023).

⁴⁶ What is climate change legislation?, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT, <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-climate-change-legislation/> (last visited Aug 25, 2023).

comprehensive climate change law. Investors may benefit from the assurance it can give them on the legal framework and financial incentives for climate-friendly initiatives.⁴⁷

A climate change law may raise people's awareness of the issue's significance and the urgency of taking action. India can protect its residents, uphold its international obligations, enhance policy coordination, promote economic growth, and involve its citizens in the global fight against climate change by passing such laws.⁴⁸ The government can be held responsible for attaining its climate goals by establishing mechanisms for tracking and reporting progress. The Constitution of India guarantees the right to a healthy environment under Article 21, as well as imposes a duty on the state to protect and improve the environment under Article 48A. A dedicated climate change legislation will not only bind the government to act upon its constitutional duty towards its citizens as well as under the international accords but also raise awareness and devolve responsibility upon the public about their role in combating climate change. The justiciable nature of the duties of both the government and the citizens will ensure that effective climate action policies are framed under the law. Further, while India's legal regime ensures that activities contributing to GHG emissions are regulated such as through the implementation of Factories Act, 1948; The Air (Prevention and Control of Pollution) Act, 1981; The Water (Prevention & Control of Pollution) Act, 1974; all of which set standards for factory operations, emissions into air as well release of waste into water bodies respectively, yet do not address the issue of climate change directly. It is required that the existing legislations be updated to reflect new concerns of the nation.

Achievement of sustainable development goals is directly related to combating climate change. A climate change law can, therefore, assist in incorporating climate action into larger development plans and strategies, while guaranteeing economic growth is socially and environmentally responsible. A climate change law can also offer a legal framework for tackling environmental and climate justice issues as climate-related conflicts and lawsuits increase in frequency across the globe.⁴⁹

⁴⁷ Ananthkrishnan Prasad et al, *Mobilizing Private Climate Financing in Emerging Market and Developing Economies*, IMF (2022), <https://www.imf.org/en/Publications/staff-climate-notes/Issues/2022/07/26/Mobilizing-Private-Climate-Financing-in-Emerging-Market-and-Developing-Economies-520585> (last visited Aug 25, 2023).

⁴⁸ Social Dimensions of Climate Change, WORLD BANK, <https://www.worldbank.org/en/topic/social-dimensions-of-climate-change> (last visited Aug 27, 2023).

⁴⁹ Climate litigation more than doubles in five years, now a key tool in delivering climate justice, *supra* note 19.

V. CONCLUSION

i. Identification of crucial points to be included in a future legislation

This paper has sufficiently highlighted that in absence of a hard law or an exclusive law on climate change, most of the initiatives by India, although laudable are largely unregulated and therefore, lack the force of law. It is proposed that an exclusive, that is, a law dedicated to the cause of climate change that sufficiently details the adaptation and mitigation measures may be introduced and brought into effect. Such piece of legislation shall operate to serve a dual purpose, that is, to not only honour India's international commitments and obligations under the Paris Agreement and UNFCCC but also takes the national growth objectives into account. To this effect, it is also proposed that this framework legislation should be inclusive as well, that is, the law must consider all aspects associated with climate change that the nation is facing and address the threats as well as the impact of climate change. The legislation should include measures that are under the purview of disaster risk management, mitigation, and adaptation to climate change.

The researcher has identified certain crucial points for consideration in a future climate change law for India. Firstly, the framework legislation should contain an objects clause that defines the purpose and the objectives of the law. The objects clause should be followed by a title clause and a definition clause that contains definitions of all terms necessary for understanding and effective implementation of this law. Further, this exclusive legislation must also identify a governing body that can sufficiently administer and overlook the implementation of this law. Adaptation and mitigation measures form an important aspect of climate action; hence, the law should contain provisions for the same. The National Action Plan on Climate Change, State Action Plans on Climate Change and Disaster Management Plans for disasters induced by climate change should find a place in the law. Further, as recommended in the Climate Change Bill of 2015, provisions with respect to emission standards, carbon budgeting and trading would also form a vital part of the framework legislation. The law should also envision a process for regular review and updating of these action plans by the Governing Body. Provisions with respect to recognition of rights of those sections of society that are impacted most by climate change such as indigenous communities who have not only borne the brunt of climate change due to their close association and dependence on natural resources but have also transformed into actors of environmental protection must be included. Such provisions should entail a participatory process for such communities who have utilized their traditional knowledge in the past to overcome and adjust to the changing climatic conditions. These

provisions could be modelled after the Paris Agreement which includes provisions on the rights of indigenous peoples, their traditional knowledge, and their contributions to climate change mitigation and adaptation.⁵⁰ The law must also ensure that sufficient funds are set aside from the national budget or from global climate funding such as the Adaptation Fund or the Green Climate Fund under the UNFCCC to implement alternative public goods like flood defenses and nature-based solutions. Lastly, a nationwide ranking for States and Union Territories could also be adopted on the basis of their climate action performance.⁵¹ The ranking could be displayed on a digital dashboard and updated either monthly and annually. This ranking system will provide the much-needed encouragement to States and Union Territories for timely action as well as be instrumental in dissemination of information among the public.

ii. Concluding Remarks

Science has proven beyond a shadow of a doubt that there is a finite window of opportunity for combating climate change. Business players, in particular, now play a more significant role than ever in the implementation of emissions reductions as carbon markets acquire growing importance. Non-Governmental Organizations (“NGOs”) are being used more frequently to create, oversee, and protect projects. In fact, the UN struggles to remain relevant in the face of so many governing structures outside the international system, and it is past time that support for market mechanisms was recognized as a successful method of regulating climate change. The ideology, institutions, and material interests that prevail in the larger global economy, where climate politics exists and with which it strives to engage, cannot be understood in isolation from climate governance.

Due to the urgent need for adaptation to the growing impacts of climate change, all nations must implement laws or policies that address adaptation at the national level, mandate adaptation activities across sectors, and coordinate subnational action. India, which has now emerged as a major environmental policy driver at the global level must take initiative in coming up with a framework law on climate change that guides the adaptation and mitigation measures across the nation at all levels of governance. While India is known to have a robust legal regime that individually targets the sectors or activities contributing to climate change as well as addresses the effects of climate change, be it on wildlife, forest rights of communities or the increasing pollution levels, it cannot be denied that these specific laws still do not

⁵⁰ How Indigenous Peoples Enrich Climate Action | UNFCCC, <https://unfccc.int/news/how-indigenous-peoples-enrich-climate-action> (last visited Aug 23, 2023).

⁵¹ Chaturvedi, *supra* note 36.

mention the term “climate change” and fail to address it directly. India, therefore, needs a climate change law to address its role in reducing climate change, adapt to its effects, meet its international obligations, and promote sustainable development while preserving the environment and the welfare of its people.

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