

A dark, atmospheric forest scene with a path leading towards a bright light at the end of the tunnel. The trees are tall and thin, with bare branches, creating a dense canopy. The light at the end of the path is a bright, glowing yellow-green, casting a long shadow on the path. The overall mood is mysterious and ethereal.

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**TRANSITIONAL ADVENT IN CLIMATE CHANGE LITIGATION: IS IT TIME FOR CLIMATIZING THE JUDICIAL DECISIONS?**

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Abstract

Climate litigation has numerous merits and it has been an emerging tool for climate governance. For studies on the topic the establishment approach of the issue has been from intra state perspective and it has been extended to the nature of offers from the international focus, climate change litigation in the domestic and the international to reflect the signs in the growth of the research. The objective of this paper is to reflect that India has not taken a root in the field of the climate change litigations. The paper argues that India can develop climate change litigations to effectively address the serious problem of climate change. Tackling of the issue of climate change requires the multidimensional governance which would require the change in the regime of both the top-down of the regulation from the government in the agencies and this paper aims to reflect the participation of the judicial and the non-judicial decisions in benefit to adopt such a regime in the reference of the same. There are few of the Responses in the India and subject of the several in the insignificant chapter in the history of the historiographical observation on the INA as a prelude to a balance in the critical analysis of the outset of the issue which are being perceived in slights of their religious traditional also comes under the ambit of the hindsight of

the peculiar of the other element in the climate change litigations.

Keywords: Climate change, Litigation, Global Warming, tribunals

INTRODUCTION

Climate change poses a serious threat to the Earth's system and humanity and in accordance with the intergovernmental panel on the climate change of the fifth assessment as a body of the sound and the scientific evidence and with more than ninety percent of the certainty that is happening is of the responsibility of the for the earth's warming. It has been seen that climate change has affected the global areas at a greater extent reflecting areas of importance such as human rights. To put an emphasis on the global discussion in per-se of the agreements on climate change, it has been seen that there has been a disproportionately suffering the consequences of the rapid changing climate and there it lacks to offer an innovative solution to the reduction of greenhouse gas emission. There is little existing evidence that has been presented to show the disproportionately harmful effects of climate with the induced changes in the precipitation and in the extreme events which are gradually affecting today's children especially to be highlighted in the global area in the Global South. There is still an ambiguity lies to show what is the appropriate legal and logical strategy for limiting the emission of the greenhouse gasses? This represents a profound departure from the anthropological framing of the environment as merely a means of providing resources for human exploitation, towards a vision of the environment in Kant terms, as "end of itself", as a legal entity with a right of defence.

There are a number of enforcement strategies adopted at a global level to improve the combat on climate change and for a regime that is obligatory and committed towards the sustainable cause. There also had been a

dismissal on the question as a non-justiciable political question is still pending to be answered on the strong legal grounds which succeed in being overturned in the political question bar. The India's is a society of the litigious nature of the society and it has its deep-rooted historical and the social factors or the state governance and is predominantly influenced by which the social roles, clan and the ethics come into the place. The perspective of the government is still influenced by the historical ideology of the western notions of the superior and the authority which determine the moral standard and with the decisions which are usually demonstrated in the deference of the governmental authority. There no longer hope to the rescue of the imperilled pieces by leaving them alone in the climate change resulting in the form of the human activity already in the habitat and pieces will be experiences one of the degree interface's and it requires the active steps to support their adaptations to the new landscape and there had been traditionally been used to keep human hands off it would be brought into the future and it has utilized to the support an increase in hands-on approaches to biodiversity managements. There has been an evolution in the selecting ideal traits for the survivals generally in the disturbance of the oriental worked towards the repeated return to the self-maintenance, along with the benefits of the healthy ecosystems.

There are few of existing laws that are not in the main focus of the climate change while the decisions are being taken they are taken as the or have been listed as the and been interpreted in the application for the changes and issues for the specific meaning and the scope of the application under the rules. Climate change is still under uncertainty for justice to the environment when it has been under the law independence of the political and legal commitment for the other level of adjudication and functions attached to it. The hierarchical structure that demands for the loyalty in the political and direction of the proactive and

innovative approach to the climate change and the claims and issue under ruling under the based on the climate change in the occurrence of the unless it was explicitly been instructed. It could be valuable to the set of the forth some basis requirements in the statue and it is inflexible and the specific but a kind of the rubric of the issues and concerns that must e addressed in such of plans ad with some basis of the instruction for the creating them and it long way towards getting them done on the grounds as well as marinating consistent standards.

The demands to shift in the low carbon economy has seen this lack of control can be sit easily under it would be required to seek and to retain the control of the direction of climate change and the need for the litigation under the field of the research. Until recently there has usually been a restriction to claim for injunctive relief was not the topic of discussions in the nature of the issue in the environment. These are the approaches that involve the creative use of the litigation on the basis of the existence of the domestic and litigation and international law. One of the advantage of the international law, there are the facts of the prohibit and the they apply to the greenhouse gases as well in these legal claims could have been a potentially pursued before the domestic court or the international tribunals in these reference there are few of the serious problems that regardless of whether the ultimately requirements are regulated in the impact of the climate change in the involving of the defendants in the questionable because of the causation problems and there are the particular victims in the legally economy. Liability is defined as "*someone's liability for their actions, for example the responsibility to pay another person for harm or damage caused by such actions*". Interestingly, the central economic law is becoming a re-enactment of the fundamental foundations of the international legal system of human conscience. Central economic concepts

transform human-centred legal systems, which have historically undervalued non-human life.

The debate so far is decided by the outcome of the litigation and with the rights to bring in such claims. The litigation process seems to be attractive to many of the people mainly because of the more conventional means for addressing global warming, the development of treaties and the dressing of the global discussion in the matter and with the raised concerns by the government. Merely, the treaty approach of the obvious appeal would permitted states to design the system that is under the economic development under the international system that would be preferable to the litigation of the numerous reasons for the pessimism about the international cooperation in the face of the global warming and so it is the time to consolidate and make and face the negligence of the global warming. While the courts absorb public health science, significant legal reform is needed to improve the use of public health evidence in legal rulings on climate disputes. Integrating public health mandates into a new eco-centric legal model will maximize its potential to promote human well-being – a central goal underpinning both international law, human rights and public health. Existing legal doctrines and practices can be improved to increase the weight of public health arguments in climate litigation and thus ensure that legal decisions in litigation about climate priority, protecting and promoting public health. To make a link to flow to sustainability and that if climate change continues to affect the global areas of this importance such as human rights, the marine environment and in the international trade at large. This paper proposes that India should at least undertake the reforms to encourage and facilitate the development of the climate change litigations. From the perspective of the appeal of the international s easy to understand the states might presume in the generate in the form of the press attention and in relation of the work done by the multinational corporation

might have a pressure them to be reduce their greenhouse gasses in the emission and the litigation are generated in the press attention and it created pressure that might generate wise the policy and it may finally enter treaties in order to reduce to risk of liability and the relation to the costs of the litigation. There can be political progress in the continuation of the slow and non-existence of the question of the encouraged and to recognize the customs of the forms and requiring the protection of life and health in general and being violated by the corporations in states that contributed to global warming. Few of the questions pertaining to the India's commitments of the domestic implementation on the Indian Climate Change litigation issues that has

- There has litigation in Indian courts resulted in an ambitious climate policy?
- Are there any of the existing policies and plans sufficient for ambitious climate action in the country?
- Does India have need a new climate law to enhance ambition and enforce international commitments? If so, what are the critical design elements required in such legislation?

Through these questions by analysing three inter-related areas – climate litigation, climate legislations from around the world, and existing national laws on environment, energy, and natural resources.

GENERAL CONCEPT OF ENFORCEMENT BY CLIMATE-RELATED LITIGATION

The "ocean falling" issue in the climate change debate arises not only as a result of failure to recognize climate change as a multi scalar term, but also as failure to unify traditional regulatory and governance approaches. It is also because of the focus on in zoning or planning law, for example, a project and its environmental impacts are evaluated in a self-contained manner, independent of other

projects or existing entities not involved by the current proponent³⁷. This allows proponents to claim that a particular project will have negligible or negligible impact on global climate change. Climate change litigation have witnessed to catch the eyes of the drastic sense of the importance of the recent past with gaining that rather popular belief of the indeed real and that have taken shape to be the dangerous and the harmful problems³⁸.

People and the countries with the minimal resources or to scare the measures of the education that capable than to obtain advantages of the industrial activities with the less ready and to get ready for the worst situations³⁹. Climate change advocates usually talk about two processes for addressing the problems caused by climate change. The first process, called mitigation, aims to solve the climate change problem through the introduction of regulations, addressing climate change in her platform internationally through treaties, treaties, etc⁴⁰. People and countries with minimal resources and education are less able than other countries to take advantage of industrial activity and less motivated to prepare for and recover from the worst⁴¹. It includes any legal action or reform that has been undertaken protecting life from the harmful effects of climate change, looking

at it from different angles, including scientific reasoning, adaptation and mitigation efforts. Legal governance has never been a more important tool to pressure policymakers and legislators to develop and update viable methods for climate change mitigation and adaptation; than it is today.

Despite expressly 'climate-related' activism being limited at the local level, India for environmental rights-based claims more broadly. India as jurisdictions with strong potential for future climate litigation, based on a history of progressive judgements that have borne from public-interest litigation⁴². Rajamani and Ghosh state that India had an 'engaged and proactive civil society, an activist judiciary, a progressive body of enviro-legal jurisprudence and an unparalleled culture of public interest litigation' that meant it was ripe for climate litigation⁴³. Similarly, Lin states that it is 'perhaps just a matter of time before climate change becomes a subject of litigation in the Indian courts⁴⁴'. A major reason for the growth of rights-based litigation has been public interest litigation (PIL). PIL brought forward several technical and procedural flexibilities. Standing rules were transformed to allow for claims to be brought on behalf of a public grievance, and to allow any person, acting bona fide, to advance claims of human rights violations on behalf of victims who could not do so themselves as a result of their poverty, disability or socially or economically disadvantaged positions⁴⁵.

³⁷ C. Merritt and M. Warren, "Activist Judge in Objection to Mine", *The Australian*, 30 November 2006, at 6; T. Perinotto, "Court Ruling Spooks Developers", *Australian Financial Review*, 1 December 2006, at 6

³⁸ EPA, "Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clear Air Act; Final Rule", 74(239) *Federal Register* (15 December 2009), 66496

³⁹ 2 It is noteworthy that the US courts have sometimes refused to exercise jurisdiction in climate change cases on the basis of the political questions doctrine, an element of the broader doctrine of the separation of powers: see *Kivalina v ExxonMobil* 663 F.Supp.2d 863 (NDCal 2009), at 882-883; *People of the State of California v General Motors* 2007 WL 2726871 (NDCal 2007) at 5-13; and *Connecticut v American Electric Power Co*, 406 F Supp 2d 265 (SDNY 2005) at 274. The latter decision was successfully appealed to the Court of Appeals which found that the political question doctrine did not apply and remanded the matter for further proceedings: *Connecticut v American Electric Power Co* 582 F 3d 309 (2nd Cir 2009). An appeal of that decision will now be heard by the Supreme Court.

⁴⁰ Cheryl Cox Macpherson, *Climate Change Matters*, (April 2014), pp. 288-290

⁴¹ CLIMATE CHANGE: IMPACTS, VULNERABILITIES AND ADAPTATION IN DEVELOPING COUNTRIES (United Nations Framework Convention on Climate Change, 2010), <https://unfccc.int/resource/docs/publications/impacts.pdf>.

⁴² Lin (n 3); Pluchon (n 8); Jacqueline Peel and Hari M Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) 7 *Transnational Environmental Law* 37, 52-53

⁴³ Lavanya Rajamani and Shibani Ghosh, 'India' in Richard Lord and others (eds), *Climate Change Liability: Transnational Law and Practice* (Cambridge University Press 2011) 176.

⁴⁴ Lin (n 3) 142.

⁴⁵ For example, in Pakistan, the foundations of PIL are based on Article 199(1) of the 1973 Constitution that allows a High Court to hear cases regarding the 'enforcement of any Fundamental Right' if satisfied that there is 'no other adequate remedy provided by law' on the application of 'any aggrieved person'. For a more complete discussion, see: Maryam S Khan, 'Genesis and Evolution of Public Interest Litigation in the Supreme Court of Pakistan: Toward a Dynamic Theory of Judicialization' (2014) 28 *Temple International and Competition Law Journal* 285, 298-299. Similarly, Article 226 of the Indian Constitution (for the High Court) and Article 32 (for the Supreme Court).

A major reason for the increase in rights-based litigation is public interest litigation (PIL). PIL provided some technical and procedural flexibility. The Permanent Regulations have been redesigned to allow claims to be made on behalf of public grievances, allowing anyone acting in good faith to claim damages he or she could not have done on their own because of a grievance for poverty⁴⁶. You can make a claim for human rights violations on behalf of a person. The application of the continuous Mandamus doctrine, which allows courts to keep cases unresolved for long periods of time, is also important to the growth of rights-based environmental litigation, with courts issuing multiple orders over time to monitor implementation⁴⁷. Accordingly, judicial flexibilities and techniques have given rise to a rich and unique jurisprudence on environmental, development and human rights issues. This reflects the potential danger of a "climate conflict"⁴⁸. Limiting the climate framework to fighting carbon emissions can obscure issues of livelihoods, the environment, poverty and rights⁴⁹. The climate framework can be abused to worship technical solutions at any cost. A relevant example is climate policy in India's water sector. Matthew England's empirical work on climate policy in India suggests that the 'plasticity' of the climate change discourse has led officials to use the climate discourse as an additional justification for mobilizing the large-scale projects they have always supported⁵⁰. In other words, bureaucrats could use flexibility in the meaning of climate change in terms of "solutions" to justify the development of larger hydroelectric dams and other

interventions. Moreover, as noted earlier, a major recent criticism of the judiciary is its adherence to state economic ideologies, including decisions on energy and infrastructure development⁵¹.

Therefore, if litigation uses a narrow climate framework, these litigants pose risks to litigants. Plaintiffs have little reason to cite climate change if climate terminology creates opportunities to obscure questions of material, social, and environmental justice⁵². Climate change litigation raises of decision-making that challenges the encompass issue of how to response to signify the uncertainty that resolve in the global sphere. The lack of clear path that follows that issues means that climate cases often present a legitimate minefield in the judiciary⁵³. Of course, on a more positive note, climate litigation also presents an opportunity for judicial innovation⁵⁴. A leader in legislation aimed at addressing important and urgent environmental issues. In another context, a former NSW LEC judge once said that environmental judges should be "brave spirits and not fearsome souls"⁵⁵. This commonality of issues provides opportunities for cross-border judicial dialogue and learning, as courts draw on the case law of other countries to assess issues such as causation⁵⁶. Ecosystem restoration is unprecedented on a global scale, but the underlying legal principles and approaches are very similar to those traditionally applied to individual resources⁵⁷.

⁴⁶ [2008] VCAT 1545. This decision is unreported but can be found on the Austlii free case law database, available on the Internet at (last accessed on 28 March 20)

⁴⁷ International Council on Human Rights Policy (2008).

⁴⁸ Elisa de Wit and Rachael Webb, "Planning for Coastal Climate Change in Victoria", 27 *Environmental & Planning Law Journal* (2010), 23.

⁴⁹ UN Human Rights Council Resolutions on Human rights and climate change, 7/23 of 28 March 2008 and 10/4 of 25 March 2009.

⁵⁰ Matthew I England, 'India's Water Policy Response to Climate Change' (2018) 43 *Water International* 1

⁵¹ Australian Climate justice Program, "Enforcing Climate Change Law", available on the Internet at (last accessed on 28 March 2)

⁵² UN Human Rights Council Resolution on Human rights and climate change, A/HRC/ 18/L26/Rev. 1 (30 September 2011).

⁵³ The number of environmental courts and tribunals is increasing. There are over 350 in 41 countries, see Pring & Pring (2009).

⁵⁴ Cray v Minister for Planning, supra, note 17, at 288. See also Australian Conservation Foundation v Latrobe City Council (2004) 140 LGERA 100, at

⁵⁵ Justice Paul L. Stein, "Are Decision-Makers Too Cautious with the Precautionary Principle?", 17(6) *Environmental & Planning Law Journal* (2000), 3, at 3, discussing judicial development of the precautionary principle

⁵⁶ The US Supreme Court decision in Massachusetts v EPA has thus been referenced by judges in Australia deciding climate change cases such as Anvil

⁵⁷ For documentation on some of these cases, see <http://www.climatelaw.org/cases>, last accessed 25 January 2013.

CONTEXTUALIZING CLIMATE CHANGE LITIGATION IN INDIA

Although India's per capita carbon dioxide emissions are very low and its historical emissions were insignificant, its current annual GHG emissions are the third highest in the world. At the same time, given its topography, demography, and disparate levels of economic development across the population, India is extremely vulnerable to the impacts of climate change. In 2008, the Government of India released the National Action Plan on Climate Change (NAPCC), which endorsed a "co-benefits approach"—an approach that promotes India's development objectives while also addressing climate change effectively. The NAPCC led to the emergence of national climate policy-making and institution-building in India⁵⁸. Several laws also address different aspects of climate change—in particular, causes and impacts—and thus provide potential hooks for climate litigation⁵⁹. But there is no comprehensive legislation on climate change in India⁶⁰.

Climate change and the right to health care do not completely occupy separate jurisdictions. Failure of a state to mitigate or adapt to climate change, for example, may result in the inability to prevent, treat, or control disease, violate the right to health according to article 12 of the international convention Economic⁶¹, social and cultural rights. Climate Amendments to laws and policies must therefore be evaluated attention to their impact on the right to health

⁵⁸ Navroz K. Dubash & Shibani Ghosh, National Climate Policies and Institutions, in *INDIA IN A WARMING WORLD* 329 (Navroz K. Dubash ed., 2019).

⁵⁹ Shibani Ghosh, Climate Litigation in India, in *COMPARATIVE CLIMATE CHANGE LITIGATION: BEYOND THE USUAL SUSPECTS* (Francesco Sindico & Makane Moïse Mbengue eds., forthcoming).

⁶⁰ D. Shelton, Problems in climate change and human rights (2011), p. 30, available at https://scholarship.law.gwu.edu/faculty_publications/1047; Note, "Causation in environmental law: Lessons from toxic torts," *Harvard Law Review* 128 (2015), p. 2257.

⁶¹ Human Rights Council, Duty to prevent exposure to the COVID-19 virus, UN Doc. A/HRC/45/12 (2020), paras. 26, 28, 74. See also European Committee of Social Rights, Statement of interpretation on the right to protection of health in times of pandemic (2020), p. 4. Available at <https://rm.coe.int/statement-of-interpretation-on-the-right-to-protection-of-health-in-ti/16809e3640>.

care and international human rights law standards. Furthermore, since the right to health protection includes maintain a safe, healthy and sustainable environment environment (considered as a fundamental determinant health)⁶², the right to health can act as a bridge between the fields of climate change and people rights, which can be useful in determining the scope of state legal obligations to mitigate or adapt to climate change, and can empower individuals and Communities demand state action on climate change to protect their right to health care⁶³. Climate change and the right to health care do not completely occupy separate jurisdictions. Failure of a state to mitigate or adapt to climate change, for example, may result in the inability to prevent, treat, or control disease, violate the right to health according to article 12 of the international convention Economic, social and cultural rights. Climate Amendments to laws and policies must therefore be evaluated attention to their impact on the right to health care and international human rights law standards. Furthermore, since the right to health protection includes maintain a safe, healthy and sustainable environment⁶⁴ (considered as a fundamental determinant health), the right to health can act as a bridge between the fields of climate change and people rights, which can be useful in determining the scope of state legal obligations to mitigate or adapt to climate change, and can empower individuals and Communities demand state action on climate change to protect their right to health care⁶⁵.

Policy Instruments in Different Countries with respect of climate change litigations-

⁶² E. Colombo and A. Giadrossi, "Comparative international litigation and climate change: A case study on access to justice in adaptation matters," *University Pittsburgh Law Review* 81 (2020), p. 538.

⁶³ Hunt and Khosla (see note 114), p. 256; Hesselman and Toebes (see note 89), p. 25.

⁶⁴ Osofsky (2005, see note 21), pp. 90–94; Toebes (see note 48), p. 257; T. Rättälä, "Deliberation as public use of reason – Or, what public? Whose reason?" in M. Saward (ed), *Democratic innovation: Deliberation, representation and association* (Abingdon: Routledge, 2000), p. 43.

⁶⁵ Office of the United Nations High Commissioner for Human Rights, Frequently asked questions on economic, social and cultural rights (2008), p. 16. Available at <https://www.ohchr.org/documents/publications/factsheet33en.pdf>

- Some climate change framework laws specify the policy instruments to be used (France) or the precise actions to be taken (the draught laws for Mexico and Spain). Others create deadlines for the government to implement the policy tools through subsequent legislation or regulation (United Kingdom)⁶⁶. The framework legislation's specification of policy tools provides more assurance about the methods for achieving the long-term goals. If this strategy is adopted, framework legislation should allow for flexibility in the adjustment of policy instruments to accommodate new demands and technological advancements, without restarting discussions that would allow reversal of the objectives⁶⁷.
- Some countries require this in their Framework Laws Ministries need to develop specific decarbonization⁶⁸ and adaptation plans (Colombia, Kenya, UK). Dedicated climate strategies and plans enable institutions to address policy issues in detail, but such tools are too abstract and do not take into account other potentially competing national and regional development goals. Effective implementation of climate change strategies and plans requires institutions to integrate climate change⁶⁹ policies into regular planning tools such as development plans, sector plans and annual budget processes. Framework legislation can

provide for the integration of climate protection policies into these instruments.

- In Costa Rica, Decree No. 40615 established the Scientific Council on Climate Change as an independent advisory body. A group of scholars, researchers and professionals who advise governments on climate science and technology issues development. The Council is attached to the Climate Change Department of the Ministry of the Environment. Ability to speak as well as write reports as required by the Ministry of Energy and related matters.
- The Bulgarian Climate Protection Act of 2014 gave the initiative to the Ministry of Environment and Water. Coordination of climate protection, with ministers acting as coordinating body. Ministers must consult the Ministry of Environment and Water on funding, draft and appoint sectoral policies professionals who assist them in their respective duties and responsibilities.

Possibly the most challenging challenge that the problem with climate change lawsuit plaintiffs the challenge of proving that a specific activity or facility is responsible for the emission of GHGs into the environment will have distinct effects on a neighbourhood or population. It is a universal issue of proof that litigation related to climate change, whatever of based on civil, governmental, or international causes in motion. For instance, in a tortuous situation, there is typically the requirement to show a causal connection between the actions of the defendant and the damages by the plaintiff, in his lawsuit. a public law or international National action, potential proof of harm issues a component of a court's evaluation of standing issues or got to a claim's merits. Somewhere else all over the planet, there too have been advancements in environment prosecution. Smith and the College of Adelaide partner, doctor David Shearman, as of late co-wrote a book, Environmental Change Prosecution, which inspects the issue in even more an overall viewpoint, in spite of the fact that they center

⁶⁶ Averchenkova, A., and S. L. Guzman Luna. 2018. Mexico's General Law on Climate Change: Key Achievements and Challenges Ahead. London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science.

⁶⁷ Averchenkova, A., S. Fankhauser, and J. Finnegan. 2018. The Role of Independent Bodies in Climate Governance: The UK's Committee on Climate Change. London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science.

⁶⁸ Bravo Cordoba, S. "INSIDER: Q&A: Spotlight on Colombia's Efforts to Track Progress Toward Tackling Climate Change." World Resources Institute, Washington, DC, June 7, 2018. <https://www.wri.org/blog/2018/06/insider-qa-spotlight-colombias-efforts-track-progress-towardtackling-climate-change>.

⁶⁹ Duwe, M., M. Freundt, E. Iwaszuk, D. Knoblauch, M. Maxter, L. Mederake, R. Ostwald, A. Riedel, K. Umpfenbach, E. Zelljadt, J. Finnegan, and A. Rüdinger. 2017. "Paris Compatible" Governance: Long-Term Policy Frameworks to Drive Transformational Change. A Comparative Analysis of National and Sub-National Case Studies. Paris: Ecologic Institute. https://www.ecologic.eu/sites/default/files/publication/2017/paris_compatible_governance_-_ecologic_institute_report_0.pdf

around the US and Australia for models. Shearman is a long-lasting individual from the worker bunch Specialists for the Climate, Australia, and a commitment wellbeing segments of the 2001 and 2007 evaluations of the Intergovernmental Board on Environmental Change, while Smith applied lawful investigations to look at the sorts of legitimate reactions that hold guarantee. To Shearman, the way to making effective legitimate contentions about an Earth-wide temperature boost rests in the logical information about the wellbeing impacts. For instance, he refers to the 2003 European intensity wave, which came about in an assessed 22,000 to 45,000 "unreasonable passing's" (the number over the ordinary passing sums for the period). That sort of heat should happen each 50 to According to 100 years in Europe, he, yet "according to the probabilities of environmental change, by 2050 such an intensity wave will happen each fourth year in France.

PRESENT CASE LAWS ON CLIMATE CHANGE LITIGATIONS

Hanuman Laxman Aroskar V. Union of India, 2018

In the recent case of March 29, 2019⁷⁰, the issue raised by Whether the Indian Government's approval of a new airport adequately considered environmental impact. The environmental approval for an airport in the State of Goa has been suspended by the Supreme Court of India, who has directed the government to review the clearance. In the Supreme Court, petitioners Hanuman Laxman Aroskar, a citizen, and the NGO Federation of Rainbow Warriors contested the clearance. The government's failure to consider environmental implications that were essential to the environmental assessment process led the

court to suspend the airport's environmental clearance⁷¹.

The Court stated that the pursuit of environmental governance within a paradigm of rule of law is "fundamental to the outcome of this dispute." The Paris Agreement and India's Nationally Determined Contribution to the Paris Agreement were then cited by the Court as important components of India's environmental rule of law and as justifications. On January 16, 2020, following additional submissions from airport project proponents, the Supreme Court lifted the environmental clearance suspension and allowed the airport project to proceed. The government took note of the additional environmental impact information provided, including a commitment to make the airport a "zero-carbon airport operation," and imposed additional environmental constraints on the project. The court argued that the government had adequately addressed the concerns expressed in its 2019 decision. The court also appointed the National Institute of Environmental Engineering to oversee compliance with the government's environmental regulations and ordered project backers to pay the costs of the oversight⁷².

Indian Council for Enviro-Legal Action [ICELA] V. MOEF, 2014

In the Case of Indian Council for Enviro-Legal Action [ICELA] V. MOEF in Application No. 170 of 2014⁷³ in 2014, the environmental NGO ICELA petitioned the Ministry of Environment, Forests and Climate Change and the companies that produce HCFC-2 to stop releasing HFC-

⁷¹ See, for example, Government of the Republic of South Africa v. Grootboom and Others (2000), 1997 SACLR LEXIS 41 (South Africa).

⁷² See, for example, Minister of Health v. Treatment Action Campaign (2002), 2002 SACLR LEXIS 26 (South Africa), paras. 26-39; Judgment T-760/08 (Constitutional Court 2008) (Colombia), para. 3.3.2

⁷³ Indian Council for Enviro-Legal Action [ICELA] V. MOEF in Application No. 170 of 2014

⁷⁰ Hanuman Laxman Aroskar V. Union of India and Ors., Civil Appel No. 12251 of 2018

23. Emissions of this by-product have a global warming potential (as a greenhouse gas) 14,800 times that of carbon dioxide and contribute to the depletion of the ozone layer. Excessive release of greenhouse gases can create a climate bomb and have serious consequences for the environment. The petitioner seeks to comply with section 48A (the state's duty to protect the environment), section 51A (g) (the citizen's fundamental duty to protect and improve the environment), and section 3 of the Constitutional Law of the Environmental Protection Act 1986. Exercised its obligations. The power of the central government to take such measures as it deems necessary or appropriate for the purposes of protecting and improving the quality of the environment and preventing, controlling and reducing pollution. However, the defendant, namely the Ministry of Environment and Forests, filed a preliminary objection, stating that it could not support the petition because it was not within the jurisdiction of the National Environmental Court. The court could not consider the petition because HFC-23 by-products do not fall under the laws listed in Schedule I of the NGT Act. On December 10, 2015, NGT claimed jurisdiction to hear the lawsuit because greenhouse gases as part of the environment have raised national and international concerns. The 2010 NGT Act is a social law aimed at bringing speedy justice to civil environmental litigation. However, the arbitral tribunal has determined that HFC-23 regulation is related to global political issues that need to be resolved under international law⁷⁴.

As such, the court understood that "domestic legal authorities have little role to play in taking appropriate action." In 2014, the environmental NGO ICELA

petitioned the Ministry of Environment, Forests and Climate Change and the companies that produce HCFC-2 to stop emitting HFC-23. Emissions of this by-product have a global warming potential (as a greenhouse gas) 14,800 times that of carbon dioxide and contribute to the depletion of the ozone layer. Excessive release of greenhouse gases can create a climate bomb and have serious consequences for the environment. The petitioner seeks to comply with section 48A (the state's duty to protect the environment), section 51A(g) (the citizen's fundamental duty to protect and improve the environment), and section 3 of the Constitutional Law of the Environmental Protection Act 1986 exercised its obligations.

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Pandey V. India, 2017

In the Year 2017 in a case concerning climate change that was submitted to the National Green Tribunal of India in March 2017, nine-year-old Ridhima Pandey from the state of Uttarakhand is the listed plaintiff. The Public Trust Doctrine, India's commitments under the Paris Agreement, and India's current environmental laws and climate-related policies, according to the plaintiff's appeal, all call for stronger action to mitigate climate change. Additionally, it asserts that the climate

⁷⁴ Aminzadeh (see note 1), p. 233. See also B.C. Mank, "Standing and global warming: Is injury to all injury to none?," *Environmental Law* 35 (2005), p. 6. H. M. Osofsky, "The geography of climate change litigation: Implications for transnational regulatory governance," *Washington University Law Review* 83 (2005), p. 1802.

is inextricably linked to the term "environment" as it is used in the Environment (Protection) Act of 1986. The National Green Tribunal Act of 2010's section 2(m), which permits claims that present "a serious matter relating to the environment," was used to bring the case. The petition also refers to judicial decisions based on related legal principles from the Netherlands (*Urgenda Foundation v. Kingdom of the Netherlands*), Pakistan (*Leghari v. Pakistan*), and the United States, as well as the principles of sustainable development, caution, and intergenerational equity (*Juliana v. United States*).

According to Pandey, the intergenerational equity concept guaranteed her the right to a healthy environment, along with other children and future generations. The issue raised whether there is adequacy of India's Climate change mitigation efforts vis-à-vis Public Trust Doctrine and legal Obligations. The petition points out that India is among the all most vulnerable to the negative effects of climate change and the third-largest national emitter of greenhouse gases (after China and the United States). The petition cites facts based on "the finest climate science" that India (and the rest of the world) must avoid exceeding in order to prevent drastic climatic changes: 1 degree Celsius or 350 parts per million of atmospheric carbon dioxide. The petition asks the court to direct the national government to take a number of actions to address the alleged harm to the present and future climate, including but not limited to the preparation of a national greenhouse gas emissions inventory, including climate change in environmental impact assessments.

The National Green Tribunal dismissed the case on January 15, 2019, stating that there is "no reason to presume that Paris Agreement and other international protocols are not reflected in the policies of the Government of India or are not taken into consideration when granting environment clearances" because climate change is already covered in the process of

impact assessments under the Environment Protection Act of 1986 under the section 14 and 15 of the National Green Tribunal Act, 2010⁷⁵.

WHY DO WE NEED A NEW CLIMATE LITIGATION LAW

On the need for climate law (rather than policy), we asked experts how to present climate change as a legal issue in India. Experts were asked to select the one or two most appropriate options from the list of options provided or to provide an alternative framework. The most selected option was that it is essentially an issue of 'regulating climate pollutants'. 'Climate-exacerbated disaster risk management', and 'protecting national resources' were highlighted by two experts each, with one highlighting the Himalayas, mangroves and Western Ghats as critical fragile national resources. Two experts highlighted 'equitable access to development', but both considered that a law is not the best way to address this concern. 'Ensuring long-term policy stability' (in the sense that a law is binding on successive governments) received one vote. One option that we offered – 'strengthening national security' – received no votes, which somewhat supports the idea that 'securitization' of issues like climate change is an approach that can backfire on policymakers.¹³¹ One expert offered a new framing – 'ease of doing business', on the twin basis that it is a current political priority and that the energy transition cannot occur without favourable policy for certain business sectors or technologies, particularly renewable energy. Finally, we asked the experts a yes or no question about the need for a Climate Framework Act. There are strong opinions on both sides, with one expert opposing such legislation on the grounds that "we are a supra-statutory state". Few experts believed that it would be

⁷⁵ Ridhima Pandey V. Union of India and Ors., Original Application No. 187/2017

better to “learn from mistakes in the implementation of existing laws and correct them” rather than introduce a new framework. We don’t really need a law that focuses on climate change measures, nor do we need to drastically change existing laws to prioritize climate change measures,” he said. (along with air pollution, energy access, employment, energy security, gender inequality, biodiversity, etc.). An opposing view is that “existing laws cannot prevent climate change. It is a phenomenon that requires a sort of concerted approach that is difficult to achieve through change. No. This needs to be changed by law.” Furthermore, one expert believes: Otherwise, such proceedings are based on India’s international commitments, action plans, etc. These are political commitments that are not the strongest route to enforceable commitments.”

With the increasing dangers of climate change, it is imperative that corporations take a positive step to take responsibility for their actions affecting the environment. The operations of companies can have a major impact on the surrounding ecology and therefore the directors would be liable for environmental negligence by allowing the company to operate in this way. The goal of the board should therefore be to develop holistic and sustainable development policies and strengthen their governance.

The fulfilment of national decarbonisation and adaptation targets is supported by framework law. Decarbonization is the process of achieving net zero emissions of carbon dioxide. In this guide, the phrase is used in place of mitigation, which is the phrase that appears in many. Decarbonization better encapsulates the policy purpose than both domestic legislation and the Paris Agreement. In order to achieve decarbonization, aggressive measures must be implemented to restructure economic activity and rearrange land use on four fronts: electrification, enhanced energy efficiency, decarbonization of energy sources, and

preservation and increased use of natural carbon sinks. If all nations developed and developing—are to achieve inclusive, resilient, and sustainable growth, their economies must be decarbonized.

- A WAY AHEAD

While there is the difference in the opinions of various of the factors while there a new climate change litigation is need with the concluded framework of the climate litigation is required in India to proof with a vision, coordination to the target and predictability to have the mainstream climate change mitigation and adaptation. Wherein the term ‘Framework’ refers to as the legislative techniques used to address the cross-sections of the general principles with the obligation that leaves to specific measures to be taken to realize such as to the obligations that are possibly done within the time limit of the climate change and such obligations should be important for the state authorities as of for the private actors, necessary for the institutional mechanisms ad provide with the legal basis for the state authorizes⁷⁶.

- A framework of the climate law is not between the 2012 and 2015 for a climate change bill which are circulated amongst the stakeholders in India and structural as to the private members bull that are to be provided a useful starting point for Indian Climate legislation. The bill also proposed a National Climate Change Commission (similar to the UK’s Climate Commission) made up of members from scientific, legal, administrative and civil society backgrounds. The Commission is designed to provide governments (and any agency that requests them) with expert advice on setting carbon budgets and amending existing

⁷⁶ Bach, Tracy & Justin Brown, 2008, Recent Developments in Australian Climate Change Litigation, Sustainable Development Law & Policy 8, 39–44.

legislation to address climate change priorities.

Development of detailed Climate Finance Framework by Reserve Bank of India (RBI). Multiple institutions dealing with climate finance – rural adaptation, climate/disaster resilient infrastructure, energy, industry, etc. Funds like CAMPA, NCEF should be applicable to use for climate action. We need to raise available international climate finance through national financial institutions.

- There is an addressing gap between the Climate policy and the legislative framework with the an⁷⁷ evolutionary goal-setting system based on cooperative and competitive federalism, in which states are empowered to set more ambitious goals than national goals. The central government sets long-term goals for the entire nation and her five-year goals, coordinates government capacity and allocates resources. Make NDCs filed under the Paris Agreement legally enforceable in India. State and local governments have the power to set localized targets and enforce implementation at the ground level, with performance incentives provided by the central government. Regular (biannual) reporting to state legislatures and legislative bodies on risk, mitigation and adaptation. In addition to governments' primary responsibility for monitoring and reporting, institutionalized public-private research collaboration platforms for

climate data collection and sharing should be established. A committee is a necessary idea, and its composition should be more focused on independent experts from research institutes, industry and civil society. Administrative and judicial experts already have a distinct role in policy-making, including their involvement on this Commission, which weakens the Commission's independence.

- Framework legislation should include the need to develop just transition plans for industries dependent on fossil fuels, including coal mines, coal-fired power plants and industries, the oil and gas industry, and others. Principles to guide policy making. Framework laws should stipulate that all government rules/regulations and policies must consider climate risk, mitigation and adaptation as core policies and plan for development and implementation.
- The Framework Act requires all government rules/regulations and policies to purchase loans and aggregate them into national carbon credits in order to stabilize the market (and improve the international bargaining power of Indian loans). It should stipulate that by doing so, it should be easier to do environmentally friendly business. Adaptation is the process of taking steps to stop or lessen the negative effects of climate change by enhancing the capacity of individuals, organisations, and the public sector to withstand shocks and to seize opportunities when they present themselves. The severe effects of climate change will need

⁷⁷ Burns, William, 2008, A Voice for the Fish? Litigation and Potential Causes of Action for Impacts under the United Nations Fish Stocks Agreement, 48, Santa Clara Law Review, 605–647.

adaptation on the part of all nations, developed and developing alike.

- Framework legislation provides a credible commitment to the continuity of climate objectives through political mandates and establishes the long-term direction of climate strategy. Investments in decarbonisation and adaptation are time-consuming and go far beyond the scope of elections. If households and businesses are to invest in and alter their behaviour in line with national climate change objectives, they must feel sure that policies will stay stable over a long period of time.
- One of the most remarkable temporal trends we observed was the increasing frequency of climate change being seen as a central issue. Litigation is clearly evolving as a specific tool for climate justice action. Early cases tend to show environmental devastation as a central concern and treat climate change as a peripheral or secondary issue.

CONCLUSION

The basis of the research and the results of the survey is first it is clear that the climate related litigation is increasing across the jurisdiction and is a fast moving target with the climate related cases that are to be brought in with First, it is obvious that climate-related litigation is growing and is a fast-moving target across jurisdictions. Financial institutions are being sued directly in relation to climate change, and the NGFS believes that this trend will certainly continue in the years to come. Second, despite the fact that they represent a crucial pathway through which physical risks and transition risks may affect the assets or counterparties of financial institutions, supervisory authorities may not have, up to this point, fully recognised

the impacts of such cases when assessing climate-related financial risks. Due to the present trend of increasing climate lawsuits, supervisors and central banks must carefully monitor these risks. Supervisors must make sure that financial institutions under their control properly handle the financial and operational risks associated with future lawsuits related to climate change.

India's contribution to climate change litigation in the global South is likely to increase in the coming years. The constitutional and statutory powers of Indian courts are broad and allow them to exercise their jurisdiction in innovative ways in situations not necessarily governed by black copyright law⁷⁸. Indian courts have not hesitated to exercise this discretion when adjudicating environmental disputes and are likely to apply this proactive approach to climate-related claims as well. The framework of environmental rights and legal principles that we have developed over the last 30 years is well suited to support climate litigation. In this scenario, short-term climate change is most likely to remain an important but marginal issue, raising and addressing more 'general' environmental issues⁷⁹. Indian judicial bodies, in particular the Supreme Court, the High Court and the National Green Court (NGT)⁸⁰, have played an active role in India's environmental policy over the past three decades. Promoting public interest litigation as a tool to improve access to the justice system and failing to meet onerous procedural requirements, several cases of environmental and social significance have been brought to judicial attention. The judiciary

⁷⁸ See David L. Greene, Bush Seen as Polluter, but Kerry's Plan Vague, BALT. SUN, Oct, 17, 2004, at IF ("Despite conservationists' strong feelings about Bush's record, environmental concerns have been all but invisible in the presidential campaign, elbowed aside by Iraq and terrorism.") . But see Amanda Griscom Little, How Green Was My Election, GRIST, Nov. 9, 2006, <http://grist.org/news/muck/2006/11/09/election> (reporting that "the environment played a central role in some high-profile victories" in the 2006 mid-term elections)

⁷⁹ Martin Wagner & Donald M. Goldberg, An Inuit Petition to the Inter-American Commission on Human Rights for Dangerous Impacts of Climate Change (Dec. 15, 2004) [hereinafter Inuit Petition]

⁸⁰ The NGT is a specialized environmental tribunal set up under the National Green Tribunal Act 2010.

also broadly interprets constitutional and statutory rights (both substantive and procedural) to urge otherwise unconcerned administrative bodies to act, and to develop policies to adequately respond to deteriorating environmental conditions establishments and readily resort to or rely on international legal means for the assistance they have referred to. His decision. It is therefore not surprising that climate concerns are being brought to Indian courts in the absence of climate legislation⁸¹.

Despite its limitations, this relatively comprehensive review of climate disputes over the past three decades has revealed remarkable developments in the legal field of environmental management, many of which are under development. incentives from public health, human rights and economic perspectives. This field is in transition.

However, reluctance still exists. Defensive teams can no longer dispute the validity of science or a lack of understanding of the link between human-caused climate disruption and harm to human health. In the context of the climate health emergency, it is clear that there is an urgent need to ramp up decarbonization⁸² efforts. Litigation offers a powerful tool to drive multi- sector transition. Given the shortcomings that remain in the widespread use and acceptance of public health claims in legal argumentation used for litigation, we advise that laws and legal incentives are created, which position public health as a central focus. In the interests of future generations, we argue for more funding to be mobilized towards

climate-health evidence and further develop this research as a scientific discipline, the promotion of greater public and industry awareness of climate-health links to support more widespread utilization of public health claims in allegations of wrongdoing, and that a legal panel of climate-health experts be devised which can be called upon by plaintiffs to provide expert testimony and deliver credible yet compelling research briefings during court hearings⁸³.

We advocate for the establishment of multi-lateral body, with legally binding power, to access breaches of existing law, identify laws that amplify disproportionate health impacts upon specific communities, responds to systemic racism, corruption, and inequities within legal systems, is aligned with the Hague to bring criminal charges against nations and corporations, and works to develop real legal incentives to ensure planetary and human safety. Considering the impacts of climate change, we must ensure that health risks are fully integrated into the economic cost should companies seek to avoid liability for climate risks. If this recommendation is passed, we believe we will see new developments in the field of litigation, where public health arguments play an important role in lobbying for legislative action. Because the risk of harm to public health is built into the economy, through liability this can incentivize a welfare/health-based economy. This will be a victory not only for the plaintiffs pursuing the case but also for all of humanity, whose future health and existence are seriously threatened by the climate crisis⁸⁴.

⁸¹ Loveleen Bhullar, The Judiciary and the Right to Environment in India: Past, Present and Future, in *INDIAN ENVIRONMENTAL LAW: KEY CONCEPTS AND PRINCIPLES 1* (Shibani Ghosh ed., 2019); Shibani Ghosh, Procedural Environmental Rights in Indian Law, in *id.* at 55; Lavanya Rajamani, The Right to Environmental Protection in India: Many a Slip Between the Cup and the Lip?, 16 *RECIEL* 274 (2008).

⁸² See, e.g., TerraPass Home Page, <http://www.terrapass.com> (last visited May 1, 2007) (allowing consumers to purchase carbon offsets for their car, flight, and home energy emissions); Chicago Climate Exchange Home Page, <http://www.chicagoclimatex.com> (last visited May 1, 2007) (providing a "voluntary, legally binding rules-based greenhouse gas emission reduction and trading system.

⁸³ See BP, Beyond Petroleum, <http://www.bp.com/sectiongenericarticle.do?categoryId=9010219&contentId=7019491> (last visited May 1, 2007). Chevron has changed its slogan to the enigmatic "Human energy." See [willyoujoinus.com](http://www.willyoujoinus.com), The Advertising, <http://www.willyoujoinus.com/advertising> (last visited May 1, 2007) (displaying Chevron's new advertising campaign); see also Steven Mufson, Exxon Mobil Warming Up to Global Climate Issue, *WASH. POST*, Feb. 10, 2007, at D1 (discussing a possible shift by ExxonMobil toward acknowledging the scientific consensus that the climate is changing).

⁸⁴ See generally PEW CTR. ON GLOBAL CLIMATE CHANGE, *LEARNING FROM STATE ACTION ON CLIMATE CHANGE: JUNE 2006 UPDATE* (2006), available at <http://www.pewclimate.org/document.cfm?documentID=548> (describing regional initiatives and state policies designed to reduce greenhouse gas emission).

Regardless of whether a significant number of the endeavors to dispute environment change²⁰⁰ and, at times, solution change are ineffective, there is an agreement a lot quicker pace by starting among reporters that there is esteem in the Not exclusively will there be a more from endeavors themselves. While courts are limited by roads of prosecution canvassed in th home grown or global standards in their action, probable that the roads utilized t and can't achieve sensational change, environmental change-related matters will conti change case has ended up being a vehicle through legislatures are probably going to demon which matters that are mean a lot to networks to handle environmental change, su are being brought to the consideration of the overseesions exchanging plans, this coulments and, consequently, go about as an impetus for chief gants with new manners by which to activity. ue in the Not exclusively will there be a more from endeavors themselves. While courts are limited by roads of prosecution canvassed in th homegrown or global standards in their action, possible that the roads utilized t and can't achieve sensational change, environmental change-related matters will conti change case has ended up being a vehicle through legislatures are probably going to devil which matters that are mean a lot to networks tion to handle environmental change, su are being brought to the consideration of the oversee sions exchanging plans, this coul ments and, consequently, go about as an impetus for chief gants with new manners by which to activity. One more significant impact of prosecution is change-initiating activities. Another inportant impact of prosecution is that such e litigants' and the bar public's consciousness of the ramifications of clim

Regardless of whether large numbers of the endeavors to contest environmental change and, once in a while, solution change are fruitless, there is an agreement a lot quicker pace by beginning procedure⁸⁵.

- RECOMMENDATION

Few of the recommendations in the eyes to be reflected with the view of the climate change litigation-

- General legal principles already applied in Indian courts have been, and may be further applied, to address climate change, but a purely process-oriented approach to combating climate change approach is not sufficient.
- Existing environmental protection laws can be used to limit climate pollutants. However, there is a need to strengthen the powers and capacities of regulators (including innovative use of agencies under other non-environmental laws) to move from issuing conditional licenses to strategic pollution limits. You have to go to settings. Therefore, despite the issuance of guidelines for sustainable mining by the Ministry of the Environment, it is unclear whether these will be fully implemented by the Ministry of Mines.
- The Electricity Act aims to promote market competitiveness and diversification by promoting renewable energy, but government policies continue to promote coal. Better policy coordination is essential, and it requires new frameworks (but not new institutions, as explained below).

Based Climate Change Litigation, 28 COLUM.J. ENVTL. L. 1, 9-33 (2003) (discussing the effects of climate change that could substantiate claims for damages and the challenges of showing causation); Vincent S. Oleszkiewicz & Douglas B. Sanders, The Advent of Climate Change Litigation Against Corporate Defendants, 35 Env't Rep. (BNA) 2365, 2369 (Nov. 12, 2004) ("Causation is the crucial issue for defendants because it will be the most difficult for a plaintiff to demonstrate . . ."); see also *Comer v. Nationwide Mut. Ins. Co.*, No. 1:05 CV 436 LTD RHW, 2006 WL 1066645, at *4 (S.D. Miss. Feb. 23, 2006) ("I foresee daunting evidentiary problems for anyone who undertakes to prove, by a preponderance of the evidence, the degree to which global warming is caused by the emission of greenhouse gasses; the degree to which the actions of any individual oil company, any individual chemical company, or the collective action of these corporations contribute, through the emission of greenhouse gasses, to global warming; and the extent to which the emission of greenhouse gasses by these defendants, through the phenomenon of global warming, intensified or otherwise affected the weather system that produced Hurricane Katrina.").

⁸⁵ See David A. Grossman, Warming Up to a Not-So-Radical Idea: Tort-



- There is disagreement on whether India needs a climate framework law. This is because while India has many existing laws that may include climate priorities, these laws are currently underutilized in practice to address these priorities. Expected disagreements because there are dual realities. If new framework legislation is the way to go, it must be carefully tailored to the issues surrounding climate policy.
- To address ease of doing business is a general policy priority, sharpening it to focus on ease of doing green business and incorporating it as a legal requirement for all policy-making bodies in the country to consider would accelerate the required transition.
- This emerging constitutional problem in the case of climate the change shows that the focus on limiting international obligations reducing emissions could potentially undermine fundamentals a document not only of the legal system of nations, but of its entire form management; the perfect balance between people's rights and limitation of government powers⁸⁶.

⁸⁶ See John C.P. Goldberg & Benjamin C. Zipursky, The Restatement (Third) and the Place of Duty in Negligence Law, 54 VAND. L. REV. 657, 658 & n.1, 659 8c nn