

**HUMAN RIGHTS AND CLIMATE CHANGE****Part- 1**

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**Abstract**

Climate Change (CC) has become a global phenomenon of concern. The states are working tirelessly to combat CC. By bringing CC under the umbrella of the Human Rights (HR), this subject has become an area of utmost importance.

In my view the link between HR and Environment to combat CC has taken place because CC infringes rights of people. For example, Right to Life that is infringed as CC takes place, for example when pollution levels increase, they have an impact upon the health of people, thereby infringes Right to Life. Furthermore, CC patterns not only decrease the availability of water only for individuals but also puts a backstep on the sustainable environment as rain patterns and river water level decreases. Similarly, CC has a direct impact upon agriculture, therefore, impact on Right to Standard of Living as food production decreases. On the other hand, when forest cover reduces, the Right of Indigenous People are infringed as they have contributed immensely in protecting environment as they use to practice measures to protect forests and their practice led to combat CC.

We learn from above that whenever environmental Degradation takes place, it has direct rational upon rights of people. The reason is because HR are recognized globally where states are parties to international HR instruments to protect the rights of individuals, whereas environmental rights or Right to Healthy Environment is not recognized as an independent legal right. Thus, whenever HR are infringed, claims can be filed before the court and relationship between HR and environment to combat CC will lead to filing of environmental claims in-relation to HR before HR tribunals and courts. On the other hand, many states have recognized environmental right as an independent right, thus I'll argue in further chapter if recognition of Right to Healthy Environment is important to be recognized as an independent right.

**Introduction**

The topic for my paper is **HR and Environment (Climate Change)**. My research question is **“To what extent HR Law regime has offered remedies to combat CC?”** My argument in dissertation is **why Right to Healthy/Good environment should be recognized as independent right to combat CC?** I’ll examine with reference to **India and United Kingdom (U.K.)**

In this Chapter, I’ll answer the question ‘How HR dimensions help to combat CC?’ I’ll give an overview of how the overlapping between HR and CC has become a subject of prime importance before the global world and with special reference to India and United Kingdom (UK). I’ll explain in terms of jurisdiction to what extent the rights mentioned below are protected by states i.e. to what extent both states are concerned to protect people’s rights

I’ll explain important right such as Right to Life, Right to Adequate Standard of Living, Right to Health, Right to Water, Right to Health and Right to Indigenous People. I’ll discuss these rights because HR are recognized and the complex relationship between HR and Environment has been created to prevent infringement of people’s rights i.e. caused due to CC.

In subsequent Chapters I’ll explain the right to good/healthy environment under International Law, followed by challenges and solutions to challenges under International law to protect HR in-relation to Environment to combat CC.

**Background**

The overlapping between HR and Environment to combat CC, imposes obligation upon states to protect environment because with the degradation of environment, people’s rights are infringed and because HR are recognized as independent right, thus, overlapping between HR and Environment will help to take measures to combat CC. “Environmental HR are rights of individuals and communities to be fully informed about environmental impacts and participate in decision making that affect environment.”<sup>1</sup> This definition is appropriate as it

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<sup>1</sup>See Bridget Lewis, ‘Environmental Human Rights and Climate Change; Current Status and Future Prospects’, Springer; 2018; Page 4. <<https://link-springer-com.libproxy.ncl.ac.uk/content/pdf/10.1007%2F978-981-13-1960-0.pdf>> accessed on June 9, 2020.

clearly explains individuals must be fully informed as to what activities cause environmental degradation and how to overcome them.

‘Knox, Special Rapporteur explains that it’s responsibility of state to ensure safe, clean, healthy and sustainable environment’<sup>2</sup>. He further writes that HR approach to CC has advantages i.e. it helps to understand the impact of CC upon the lives of people, which is concern of the global world today as the recognized human rights has offered remedies to overcome CC.<sup>3</sup> ‘He further argues that to combat CC, it’s important to encourage participation of all states because HR Treaties cannot only help to overcome the problem of CC as they do not clarify the exact standards that we need to meet and achieve positive outcomes’<sup>4</sup>. I agree with Knox views, because both states and individuals should be responsible to protect environment to sustain people rights. Furthermore, I agree that HR treaties do lay down exact standards to overcome the problem of CC, thus joint cooperation of all states is needed to overcome the problem of CC.

“The Universal Declaration of Human Rights (UDHR), 1948, explains that everyone is entitled to social and international order with rights and freedoms of the people can be fully realized for clean and healthy environment i.e. to protect HR and combat CC”<sup>5</sup>. “Stockholm Declaration (SD), 1972 also explains the need and importance of environment to protect freedom, equality and adequate conditions of life”<sup>6</sup>. Both UDHR and SD highlight the fact that Right to Healthy Environment is important to protect rights of people.

### **Human Rights Dimensions of Climate Change**

The following are HR dimensions to protect environment and combat CC.

- **Right to Life**

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<sup>2</sup>See John H. Knox, ‘Framework Principles On Human Rights And The Environment’ 2018; Page 6 <<https://rwi.lu.se/app/uploads/2018/02/Framework-Principles-on-Human-Rights-and-the-Environment.pdf>> accessed on June 9, 2020

<sup>3</sup>See John H Knox, ‘Climate ethics and human rights’; Journal of Human Rights and the Environment; Volume 5, Issue 0, 2014; Page 33.

<sup>4</sup>*Ibid.*

<sup>5</sup>See Bums H. Weston and David Bollier, ‘Universal Covenant affirming a human right to commons- and rights-based governance of Earth’s natural wealth and resources’; Journal of Human Rights and the Environment; Volume 4, Issue 2, 2013; Page 215.

<sup>6</sup>*Ibid.*

Right to Life is explained under ‘Article 3 of UDHR’<sup>7</sup> and ‘Article 6(1) of ICCPR’<sup>8</sup> and ‘Article 6 of CRC’<sup>9</sup>. The United Nations HR Committee has interpreted Right to Life in-relation to environment in broad manner i.e. it imposes obligations upon the state parties to ensure right to life should inform relevant obligations under International Environment Law i.e. combat CC, Pollution, sustainable use of natural resources etc.<sup>10</sup>

‘In Indian case of Subhash Kumar vs State of Bihar and Ors, the court explained that right to life includes right to wholesome/healthy environment as per Article 21 of the Constitution of India.’<sup>11</sup>

- **Right to Adequate Standard of Living**

This right is explained under Article 25 (1) of UDHR.<sup>12</sup> It includes right to food, clothing, housing and medical care i.e. well-being of his and his family.<sup>13</sup> Similarly Article 11(1) of ICESCR explains this right.<sup>14</sup> UN Special Rapporteur on the Right to Food has explained state obligations to respect adequate access to food, to fulfil and implement measures required to for adequate access to food and increase its production and utilize resources sustainably i.e. to protect and promote food production’<sup>15</sup>. It can be argued under this right, that CC can affect the right to food in significant manner. Kumar and Gautam have analyzed that in India, food production has been tremendously been affected because of CC, the water availability considerably gets impacted as farmers are still dependent upon rains and constant

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<sup>7</sup>See Article 3 of Universal Declaration of Human Rights; <[https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf)> accessed on June 9, 2020.

<sup>8</sup>See Article 6(1) of International Covenant of Civil and Political Rights; <<https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>> accessed on June 10, 2020.

<sup>9</sup>Article 6 of Convention of Rights of Child; Page 2 & 3 <<https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>> accessed on June 10, 2020.

<sup>10</sup>See General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, (CCPR/C/GC/36); Page 14 and Page 15; <[https://tbinet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf)> accessed on June 10, 2020.

<sup>11</sup>See Subhash Kumar vs State of Bihar And Orson 9 January, 1991; <<https://indiankanoon.org/doc/1646284/>> accessed on July 11, 2020.

<sup>12</sup>See Article 25(1) of Universal Declaration of Human Rights; <[https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf)> accessed on June 9, 2020.

<sup>13</sup>*Ibid.*

<sup>14</sup>See Article 11(1) of International Covenant on Economic, Social and Cultural Rights; Page 4 <<https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>> accessed on June 10, 2020.

<sup>15</sup>See Report of Special Rapporteur on the right to food; <<https://www.ohchr.org/en/issues/food/pages/foodindex.aspx>> accessed on June 10, 2020

depletion of Ground water levels.<sup>16</sup> Similarly, in UK, CC has tremendously impacted the food production as the Greenhouse Gas Emissions, changes in rainfall patterns that has led to changed crop patterns.<sup>17</sup> Thus it's important to combat CC and protect HR as it impacts the right to food and indirectly right to adequate standard of living.<sup>18</sup>

- **Right to Water**

This right is explained in Article 24 of CRC.<sup>19</sup> Similarly, Article 14(2)(h) of CEDAW explains right to water.<sup>20</sup> General Comment 15 explains that Right to water is independent right, because it protects right to adequate standard of living.<sup>21</sup> Westra argues that right to water is important not only for individuals but also to protect and support environment protection for sustainable use of international water courses and Law of Sea for protection of Marine environment.<sup>22</sup> She further argues that with globalization, there's been steady demand for electricity and dams are being built disrupting water courses and power plants are being built and emissions from them affect water quality.<sup>23</sup> Thus, globalization has led to change in Climate patterns that had disturbed agriculture and other activities as right to water had negative impacts.

In India, CC has led to negative impacts upon water due to urbanization, industrialization and economic development that has also disrupted the rainfall patterns.<sup>24</sup> The writers thus suggest India's move to for groundwater storage, change

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<sup>16</sup>See Rohitashw Kumar and Harender Raj Gautam, 'Climate Change and its Impact on Agricultural Productivity in India'; Journal of Climatology & Weather Forecasting; Volume 2, Issue 1, 2014; Page 2 <<https://www.longdom.org/open-access/climate-change-and-its-impact-on-agricultural-productivity-in-india-2332-2594.1000109.pdf>> accessed on June 10, 2020.

<sup>17</sup>See Report of United Kingdom Parliamentary Office of Science and Technology, Climate Change and Agriculture; Number 600, May 2019; Page 2 & Page 3; <<https://post.parliament.uk/research-briefings/post-pn-0600/>> ; accessed on June 10, 2020.

<sup>18</sup>See The Hon John Von Doussa QC, Allison Corkery & Renee Chartres; 'Human Rights and Climate Change'; Australian International Law Journal; Volume 14, Issue 1, 2007; Page 165.

<sup>19</sup>See Article 24 of Convention of Rights of Child; Page 7; <<https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>> accessed on June 10, 2020.

<sup>20</sup>See Article 14(2)(h) of Convention on the Elimination of All Forms of Discrimination against Women; Page 5 and Page 6 <<https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>> accessed on June 10, 2020.

<sup>21</sup>See General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant); Page 1 <<https://www.refworld.org/pdfid/4538838d11.pdf>> accessed on June 10, 2020.

<sup>22</sup>See Laura Westra, 'Climate change and the human right to water'; Journal of Human Rights and the Environment, Volume 1, Issue 2, September 2010; Page 162, 163.

<sup>23</sup>*Ibid*, at Page 175, 176.

<sup>24</sup>See R. K. Mall, Akhilesh Gupta, Ranjeet Singh, R. S. Singh and L. S. Rathore, 'Water resources and climate change: An Indian perspective'; Current Science, Volume 19, Number 12, 25 June 2006; Page 1 <[https://www.researchgate.net/publication/235916232\\_Water\\_resources\\_and\\_climate\\_change\\_An\\_Indian\\_perspective/link/0fcfd5141e11b19205000000/download](https://www.researchgate.net/publication/235916232_Water_resources_and_climate_change_An_Indian_perspective/link/0fcfd5141e11b19205000000/download)> accessed on June 10, 2020.

agriculture patterns.<sup>25</sup> In the case of UK, it's been argued that CC will lead to change in rainfall patterns, increase in evaporation of water from rivers and lakes due to increasing global temperatures.<sup>26</sup> Thus, the writers suggest to find ways to reduce emissions, decision-makers to plan legislations to overcome dire consequences.<sup>27</sup> I agree to the writers views regarding the respective countries because the East and West will have to adopt strategies in accordance to needs and circumstances within the respective states.

- **Right to Health**

Article 25(1) of UDHR explains right to health.<sup>28</sup> Similarly, "Article 12(1) of ICESCR explains the right of everyone to the enjoyment of the highest standard of physical and mental health"<sup>29</sup>. Article 24 of CRC explains Right to Health.<sup>30</sup> And CEDAW Article 12 explains Right to Health.<sup>31</sup>

In India, it's been realized that the continuous change in Climate Patterns has led to increase in diseases such as malaria, dengue, yellow fever, cholera, and chikungunya as pollution levels continue to rise.<sup>32</sup> 'It has been realized that there is need to adopt environmental monitoring and surveillance systems for people of India.'<sup>33</sup> This means that India needs to build infrastructure and need to develop strategies to curb pollution

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<sup>25</sup>*Ibid.*

<sup>26</sup>See Glenn Watts, Richard W. Battarbee, John P. Bloomfield, Jill Crossman, Andre Daccache, Isabelle Durance, J. Alex Elliott, Grace Garner, Jamie Hannaford, David M. Hannah, Tim Hess, Christopher R. Jackson, Alison L. Kay, Martin Kernan, Jerry Knox, Jonathan Mackay, Don T. Monteith, Steve J. Ormerod, Jemima Rance, Marianne E. Stuart, Andrew J. Wade, Steven D. Wade, Keith Weatherhead, Paul G. Whitehead, Robert L. Wilby, 'Climate change and water in the UK – past changes and future prospects'; Sage Publications; Page 7; <<https://journals.sagepub.com/doi/pdf/10.1177/0309133314542957>> accessed on June 10, 2020.

<sup>27</sup>*Ibid.*, at Page 17, 18.

<sup>28</sup>See Article 25 of Universal Declaration of Human Rights; <[https://www.ohchr.org/en/udhr/documents/udhr\\_translations/eng.pdf](https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf)> accessed on June 10, 2020.

<sup>29</sup>See Article 12(1) of International Covenant of Economic, Social and Cultural Rights; Page 4 <<https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>> accessed on June 10, 2020.

<sup>30</sup>See Article 24 of Convention of Rights of Child; Page 8 <[https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC\\_united\\_nations\\_convention\\_on\\_the\\_rights\\_of\\_the\\_child.pdf](https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf)> accessed on June 10, 2020.

<sup>31</sup>See Article 12 of Convention on the Elimination of All Forms of Discrimination against Women; Page 5 <<https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>> accessed on June 10, 2020.

<sup>32</sup>See Kathleen F. Bush, George Luber, S. Rani Kotha, R.S. Dhaliwal, Vikas Kapil, Mercedes Pascual, Daniel G. Brown, Howard Frumkin, R.C. Dhiman, Jeremy Hess, Mark L. Wilson, Kalpana Balakrishnan, Joseph Eisenberg, Tanvir Kaur, Richard Rood, Stuart Batterman, Aley Joseph, Carina J. Gronlund, Arun Agrawal, and Howard Hu, 'Impacts of Climate Change on Public Health in India: Future Research Directions'; Environmental Health Perspectives, Volume 119, Number 6, June 2011; Page 765 <[https://www.researchgate.net/publication/49790928\\_Impacts\\_of\\_Climate\\_Change\\_on\\_Public\\_Health\\_in\\_India\\_Future\\_Research\\_Directions](https://www.researchgate.net/publication/49790928_Impacts_of_Climate_Change_on_Public_Health_in_India_Future_Research_Directions)> accessed on June 10, 2020.

<sup>33</sup>*Ibid.*, at page 768.

levels because the changing climate patterns will lead to widespread of diseases like asthma, cholera, malaria, tuberculosis.<sup>34</sup>

In UK, with the adverse impacts of CC, campaigns took place, for example the unleaded petrol campaign in UK that was driven because of the adverse impacts caused by lead.<sup>35</sup> Thus, it's important to learn that it was possible because of PP and people have realized the impacts that were going to be on their health. UK has adopted methods to assess the impact of CC upon health. The early effects are assessed on the basis of impacts upon health risk i.e. illness caused due to change in climate patterns.<sup>36</sup> Similarly, 'UK also assesses the CC impacts by checking agriculture production, increase and decrease of population, urbanization and trade'<sup>37</sup>. Thus, India should also follow UK pattern and should assess the CC patterns on the basis of these impacts.

- **Rights of Indigenous Peoples**

“Article 29 of the Declaration of Rights of Indigenous People explains the right to conservation and protection of the environment and the productive capacity of their lands or territories and resources”<sup>38</sup>. “Article 29 imposes obligation upon states for conservation and protection of the indigenous people resources and also to establish and implement assistance programmes.”<sup>39</sup> Westra argues that Indigenous People's right to water needs to be protected because they are the ones who are dependent upon rivers, streams and lakes.<sup>40</sup> Thus, when CC takes place it impacts the maximum upon Indigenous People. Lee argues the fact that over a passage of time, links have developed between Rights of Indigenous People and Environment.<sup>41</sup> ‘Principle 22 of Rio Declaration on Environment and Development supports the fact that Indigenous

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<sup>34</sup>*Ibid.*

<sup>35</sup>See Report of Health Effects of Climate Change in the UK, Page 52; <[https://www.climateinireland.org.uk/cmsfiles/resources/files/Health-Effects-of-Climate-Change-in-the-UK\\_Department-of-Health.pdf](https://www.climateinireland.org.uk/cmsfiles/resources/files/Health-Effects-of-Climate-Change-in-the-UK_Department-of-Health.pdf)> accessed on June 10, 2020.

<sup>36</sup>*Ibid.*, at Page 58.

<sup>37</sup>*Ibid.*

<sup>38</sup>See Article 29 of United Nations Declaration on the Rights of Indigenous Peoples, Page 21; <[https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)> accessed on June 10, 2020.

<sup>39</sup>*Ibid.*

<sup>40</sup>See Laura Westra, ‘Climate change and the human right to water’; *Journal of Human Rights and the Environment*, Volume 1, Issue 2, September 2010; Page 172.

<sup>41</sup>See John Lee, ‘The Underlying Legal Theory to Support a Well-Defined Human Right to a Healthy Environment as a Principle of Customary International Law’; *Columbia Journal of Environmental Law*; Volume 25, Issue 283, 2000; Page 328.

communities have played a vital role in protecting environment and development because of the traditional practices followed by this community and it imposes obligation upon states to recognize their rights as they promote sustainable development.<sup>42</sup> Article 8(j) of the Convention of Biological Diversity, 1992 explains that states should protect the practices of Indigenous Communities as they have played an important role in conservation and sustainable use of natural resources.<sup>43</sup> Indigenous communities protect forests in India. Panda writes that in order to protect the Rights of Indigenous People, the Government of India had enacted Forest Rights Act, 2006, to protect forests, thereby to protect forests and combat CC.<sup>44</sup> It's been realized that indigenous people not only conserve forests but also help to combat CC. 'In UK, People's March for Climate Justice and Jobs in London, a bloc made up of Indigenous people and people descended from communities from the global south'<sup>45</sup>

### **Inclusion of HR in-relation to CC in State Constitutions**

When states realize the importance of HR dimensions to combat CC, legal provisions are made by them in respective constitution. This means states have recognized HR provisions in-relation to environment to combat CC. But this recognition is not uniform as different states have different legal provisions. 'Lewis explains that provisions of the Constitution of respective states differ in terms of judicial interpretation and legal enforcement.'<sup>46</sup> 'The enforceability of Constitutional Rights differs according to domestic structures and legal traditions of each country.'<sup>47</sup> It's explained that Constitution Provisions and State Enforcement play an important role in building jurisprudence around this subject.<sup>48</sup> At international level i.e. courts of many states have tried to engage in to protect HR to promote human dignity

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<sup>42</sup>See Principle 22 of Report of The United Nations Conference on Environment and Development; Page 4; <[https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CON F.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CON F.151_26_Vol.I_Declaration.pdf)> accessed on June 11, 2020.

<sup>43</sup>See Article 8(j) of Convention on Biological Diversity; Page 6; <<https://www.cbd.int/doc/legal/cbd-en.pdf>> accessed on June 11, 2020.

<sup>44</sup>See Report by Ranjan K Panda, "Tribal rights over forests essential to combat climate change"; July 29, 2019<<https://indiaclimatedialogue.net/2019/07/29/tribal-rights-over-forests-essential-to-combat-climate-change/>> accessed on June 10, 2020.

<sup>45</sup>See Open Democracy, 'Open letter to organizers of the People's Climate March'; December 10, 2015.

<sup>46</sup>See Bridget Lewis, 'Environmental Human Rights and Climate Change; Current Status and Future Prospects'; Springer; 2018; Page 49. <<https://link-springer-com.libproxy.ncl.ac.uk/content/pdf/10.1007%2F978-981-13-1960-0.pdf>> accessed on June 12, 2020

<sup>47</sup>*Ibid*; at Page 49 & Page 50.

<sup>48</sup>See Erin Daly and James R May, 'Bridging constitutional dignity and environmental rights jurisprudence'; Journal of Human Rights and the Environment; Volume 7, Issue 2, 2016; page 218.

than to constitutionalize rights for quality environment.<sup>49</sup> I agree to this view as at international level HR are recognized as independent rights whereas Right to Healthy Environment i.e. to protect HR and combat CC is not internationally recognized right. Genest and Paquerot explains that importance of HR in-relation to environment has been understood because of political conflicts and political space undergoing transformation.<sup>50</sup> The writers say that from international perspective, states have included HR provisions in their Constitution and linked them to environment, that are today of prime importance.<sup>51</sup> I agree to this because of political developments HR in-relation to environment provisions have been included in state constitution because it has been realized that overlapping between two has led to combat CC. Article 28 of the UDHR is an evidence on the basis of which states have incorporated HR provisions, in their Constitution.<sup>52</sup>

‘Gellers argues that inclusion of Environmental Law provisions in State Constitution helps to boost international relations among states that leads to overall holistic global development as state consent is important for efficient functioning of international relations’<sup>53</sup>. I agree with this view because inclusion of HR in-relation to Environment provisions in State Constitutions, leads to legal claim upon states to protect environment and combat CC and this helps to maintain international relations as states enter into multilateral agreement to combat CC. For example, developed nations possess solar panel technology, thus developing nations can benefit from developed nations to combat CC.

### **States Duty to Protect HR to Good Environment**

It’s the duty of states to protect environment in order to prevent infringement of rights of people as CC interferes with HR as explained above.<sup>54</sup> ‘The Stockholm Declaration on Human Environment, 1972 highlights that man has right to quality environment and responsibility to protect it and the states have responsibilities to protect environment,

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<sup>49</sup>*Ibid*, at Page 220.

<sup>50</sup>See Gabriel Blouin Genest and Sylvie Paquerot, ‘Environmental human rights as a battlefield: a grammar of political confrontation’; *Journal of Human Rights and the Environment*; Volume 7, Issue 1; 2016; page 132.

<sup>51</sup>*Ibid*; at Page 135.

<sup>52</sup>See Article 28 of Universal Declaration of Human Rights; <[https://www.ohchr.org/en/udhr/documents/udhr\\_translations/eng.pdf](https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf)> assessed on April 8, 2020.

<sup>53</sup>See Joshua C Gellers, ‘Explaining the emergence of constitutional environmental rights: a global quantitative analysis’; *Journal of Human Rights and the Environment*, Volume 6, Issue 1, 2015; Page 75.

<sup>54</sup>See Bridget Lewis, ‘Environmental Human Rights and Climate Change; Current Status and Future Prospects’; Springer; 2018; Page 173. <<https://link-springer-com.libproxy.ncl.ac.uk/content/pdf/10.1007%2F978-981-13-1960-0.pdf>> accessed on June 9, 2020

different for both developed and developing countries”<sup>55</sup>. Similarly, “Aarhus Convention (AC) indirectly explains right to good environment in-relation to HR as the principles of both Stockholm and Rio Declarations have been adopted in (AC) and this convention encourages (PP), access to justice and access to information regarding environment”<sup>56</sup>.

As explained above under environmental dimensions, it’s evident that right to good environment includes right to protect health, right to adequate standard of living, right to life etc. Lewis says that these rights must be protected for HR concerns and to check that they should not lead to CC.<sup>57</sup> On the other hand, Boyle argues why should environment protection be treated as HR issue to combat CC.<sup>58</sup> Boyle accepts the views of Lewis about environmental dimensions of HR.<sup>59</sup> In fact, UNHRC Resolution 2005/60 has recognized link between HR, environment protection and sustainable development.<sup>60</sup> The key aim to link HR and environment is to curb CC impact at global level. UNHRC (2009) also supports same view.<sup>61</sup> Boyle further argues that CC has implications upon HR, to what extent are these qualified for HR violations?<sup>62</sup> Furthermore, HR violation litigation does not specify specific ground for CC and upon whom the liability will lie upon.<sup>63</sup> There’s need for legal rules and regulations for how much exploitation of natural resources must take place what developments must be carried out, rules and regulations for developing and developed countries, tackle transboundary harm should be understood. Boyle explains that if there’s no law, but however if activities in one state impacts upon the life of people in other state, then

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<sup>55</sup>See Declaration of the United Nations Conference on the Human Environment, 1972; <[https://www.soas.ac.uk/cedep-demos/000\\_P514\\_IEL\\_K3736-Demo/treaties/media/1972%20Stockholm%201972%20-%20Declaration%20of%20the%20United%20Nations%20Conference%20on%20the%20Human%20Environment%20-%20UNEP.pdf](https://www.soas.ac.uk/cedep-demos/000_P514_IEL_K3736-Demo/treaties/media/1972%20Stockholm%201972%20-%20Declaration%20of%20the%20United%20Nations%20Conference%20on%20the%20Human%20Environment%20-%20UNEP.pdf)> accessed on June 12, 2020.

<sup>56</sup>See Convention on Access To Information, Public Participation In Decision-Making And Access To Justice In Environmental Matters; <<https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>> accessed on June 12, 2020.

<sup>57</sup>See Bridget Lewis, ‘Environmental Human Rights and Climate Change; Current Status and Future Prospects’; Page 63; <<https://link-springer-com.libproxy.ncl.ac.uk/content/pdf/10.1007%2F978-981-13-1960-0.pdf>> accessed on June 12, 2020

<sup>58</sup>See Alan Boyle, ‘Human Rights and the Environment: Where Next?’; European Journal of International Law; Volume 23, Issue 3; 2012; page 613.

<sup>59</sup>*Ibid.*

<sup>60</sup>See Human Rights Resolution 2005/60; <<https://www.refworld.org/docid/45377c759.html>> accessed on June 12, 2020.

<sup>61</sup>See Resolution 10/4, “Human rights and climate change” ; <[https://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_10\\_4.pdf](https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf)> accessed on June 12, 2020.

<sup>62</sup>See Alan Boyle; ‘Human Rights and the Environment: Where Next?’; European Journal of International Law; Volume 23, Issue 3; 2012; page 618.

<sup>63</sup>*Ibid.*

this issue should be addressed.<sup>64</sup> He also argues that “people of a state should have access to information, there shall be scope of PP in decision making and people shall have access to justice without any discrimination irrespective of citizenship status.”<sup>65</sup> Broad discussion of state duties will be explained in Chapter-3.

On the other hand, I’ll discuss the challenges and solutions to challenges i.e. future aspects i.e. to combat CC and protect HR faced by states under International Law in further chapters.

### **Conclusion**

In this chapter, I have given an overview of HR in-relation CC. I have discussed HR Dimensions to CC. We learnt environmental rights recognized by states i.e. states have realized importance of HR to combat CC and protect environment. Furthermore, I have discussed HR to Good Environment under International Law though in detail it will be discussed in the next chapter. We will also learn in subsequent chapters about challenges and solutions to overcome the challenges, and if there is need for new Right for Environment and why Right to Good/Healthy Environment should be recognized as an independent right and how it’s recognition as independent right will gather attention of the world i.e. concern of state to protect environmental rights of people.

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<sup>64</sup>See Alan Boyle; ‘Human Rights and the Environment: Where Next?’; European Journal of International Law; Volume 23, Issue 3; 2012; page 634.

<sup>65</sup>*ibid*; at page 639.

## The Human Right for Good Environment under International Law

### Chapter-2

In this chapter, I'll discuss Human Right (HR) important for Right to Good/Healthy Environment under International Law to combat Climate Change (CC). By Good/Healthy Environment, I mean that Right to Life, Right to Adequate Standard of Living, Right to Water, Right to Health as discussed in Chapter-1 must be protected as these rights are important for the people. Similarly, the importance to protect environment to safeguard rights of the people is realized by states is evidenced from the fact that inclusion of HR provisions in-relation to environment is made in State Constitutions as explained in Chapter-1. When inclusion of HR provisions in-relation to environment to combat CC is made in State Constitutions, then International Instruments are signed by states to protect and HR in-relation to environment to combat CC, encourage CC Litigation, practice environmental regulation techniques to combat CC, encourage sustainable development. Thus, in this chapter I'll answer the question **“To what extent International Law protects the Right to Healthy/Good Environment?”**

#### **International Instruments**

International Instruments are prepared at the global level by where states work together and at last, they are ratified by states to implement at municipal level and they are not binding. For example, Stockholm Declaration is the most important form of treaty where it was agreed by states need for both common objectives and principles to preserve and enhance human environment.<sup>66</sup>

India is a party to many international instruments. Rajamani writes, India is a party to United Nations Framework on Climate Change (UNFCCC) and argued these instruments did not contain Greenhouse Gas Mitigation mechanisms for developing countries.<sup>67</sup> It's pertinent to mention India's stand to become party to international instruments to support to global move to combat CC. 'India has argued that decisions of Conference of Parties are binding upon

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<sup>66</sup>See 'Declaration of the United Nations Conference on the Human Environment, 1972' <[https://www.soas.ac.uk/cedep-demos/000\\_P514\\_IEL\\_K3736-Demo/treaties/media/1972%20Stockholm%201972%20-%20Declaration%20of%20the%20United%20Nations%20Conference%20on%20the%20Human%20Environment%20-%20UNEP.pdf](https://www.soas.ac.uk/cedep-demos/000_P514_IEL_K3736-Demo/treaties/media/1972%20Stockholm%201972%20-%20Declaration%20of%20the%20United%20Nations%20Conference%20on%20the%20Human%20Environment%20-%20UNEP.pdf)> accessed on June 11, 2020.

<sup>67</sup>See Lavanya Rajamani, 'India's approach to international law in the climate change regime'; Indian Journal of International Law; Volume 57, Issue 1, 2017; Page 2.

parties and it's important to learn that UNFCCC and Kyoto Protocol authorize COP to develop it as an independent legal regime<sup>68</sup>. After Stockholm Conference, 1972 India brought 42<sup>nd</sup> Amendment and incorporated Article 48A where states are under active obligation to protect environment i.e. duty of every citizen to protect forests, rivers, lakes, wildlife.<sup>69</sup> On the other hand, India had ratified Paris Agreement on CC on October 2, 2016.<sup>70</sup> In Paris Agreement, India suggested, the concept of Climate Justice and encourage sustainable pattern of production and consumption to combat CC, and this was made part of Paris Agreement.<sup>71</sup> In regards to the agreement the country has promised to reduce carbon emissions around 3 billion tones and increase forest cover.<sup>72</sup>

In the case of UK, Muizon and Glachant write that the implementation of UK Climate Change Levy Agreements in-relation to both International and Regional Agreements i.e. European Union and energy tax imposed by the UK Government.<sup>73</sup> The government has realized that it is important to protect and preserve environment and this is further promoted by tax rebates and trading emission scheme for corporate sector to encourage maximum participation.<sup>74</sup> On the other hand, Ruddle argues the fact that significance of Aarhus Convention (AC) on England continues to emerge from the date of ratification.<sup>75</sup> Ruddle further argues the fact that since the ratification of the convention, Public Participation (PP) has been encouraged in order to protect the Environment and access to justice has become easy.<sup>76</sup> All this explains the fact that by becoming a party to multilateral agreements, U.K. has achieved a lot by international treaties.

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<sup>68</sup>*Ibid*, at Page 14.

<sup>69</sup>See Syskool, 'The Stockholm Declaration 1972 and India'; <<https://syskool.com/stockholm-declaration-1972-india/>> accessed on June 11, 2020.

<sup>70</sup>See Pushpa Kumar Lakshmanan, Shachi Singh and S. AstaLakshmi, 'The Paris Agreement on Climate Change and India'; Journal of Climate Change, Volume 3, Issue 1, 2017; <[https://www.researchgate.net/publication/312672440\\_The\\_Paris\\_Agreement\\_on\\_Climate\\_Change\\_and\\_India/ink/59d71115458515db19c7a817/download](https://www.researchgate.net/publication/312672440_The_Paris_Agreement_on_Climate_Change_and_India/ink/59d71115458515db19c7a817/download)> accessed on June 11, 2020

<sup>71</sup>*Ibid*.

<sup>72</sup>*Ibid*.

<sup>73</sup>See Gildas de Muizon and Matthieu Glachant, 'The UK Climate Change Levy Agreements:Combining negotiated agreements with tax and emission trading';Edward Elgar, forthcoming 2003; Page 13 <[https://www.researchgate.net/publication/265098319\\_The\\_UK\\_Climate\\_Change\\_Levy\\_Agreements\\_Combining\\_negotiated\\_agreements\\_with\\_tax\\_and\\_emission\\_trading](https://www.researchgate.net/publication/265098319_The_UK_Climate_Change_Levy_Agreements_Combining_negotiated_agreements_with_tax_and_emission_trading)> accessed on June 11, 2020.

<sup>74</sup>*Ibid*, at Page 6, Page 9.

<sup>75</sup> See Brian Ka Ruddle, 'The Aarhus Convention in England and Wales'; Page 13;<<https://media.bloomsburyprofessional.com/rep/files/9781849465717sample.pdf>> accessed on June 12, 2020.

<sup>76</sup>*Ibid*.

However, it's important to note here that India is not a party to (AC).<sup>77</sup> On the other hand, India is a party to Basel Convention on hazardous wastes and formulated some of its provisions in Hazardous waste Management Rules.<sup>78</sup> Similarly, India is a party to UNFCCC, now changed with the Paris Agreement, 2015, whereby India has shown commitment to form National Environment Policy (NEP) and National Action Plan on Climate Change (NAPCC).<sup>79</sup> Thus, international treaties play an important as developing country, India has shown its commitment to combat CC as it has become party to International Agreements. Thus, it is learnt that treaties play an important role to combat CC and protect rights of the people.

### **Court Decisions to Encourage CC Litigation**

Opinions of Jurists, play important role in achieving Right to Healthy Environment at both national and international level. In 'Gabcikovo-Nagymaros Case'<sup>80</sup> it was explained by ICJ, protection of environment is important in order to protect HR and damage to environment infringes the rights of people.<sup>81</sup> McIntyre argues this case highlights important points of state-responsibility, Law of Treaties and International Law relating to environment.<sup>82</sup> I agree with McIntyre as court decisions are steps to protect and enhance this right.

In the case of India, the most important landmark cases in India are the M.C. Mehta Cases around which Environmental Law of India has come into shape. It was explained in M.C. Mehta case where the question was examination of mining activity on the ground water table.<sup>83</sup> "It was held that though mining was taking place for silica, but miners were destroying groundwater reserves as in the inspection by Environment Protection and Control Agency, it was discovered that pumps and pipes were being used to drain out the groundwater to carry

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<sup>77</sup>See United Nations Treaty Collection; <[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-13&chapter=27&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=_en)> accessed on June 12, 2020.

<sup>78</sup>See International Agreements on Environment and India; <<https://www.geographyandyou.com/international-agreements-environment-india/>> accessed on July 11, 2020.

<sup>79</sup>*Ibid.*

<sup>80</sup>See Case Concerning the Gabcikovo-Nagymaros Project (Hungary/Slovakia); Judgement of 25 September 1997; <<https://www.icj-cij.org/files/case-related/92/092-19970925-JUD-0-00-EN.pdf>> accessed on June 12, 2020.

<sup>81</sup>*Ibid.*

<sup>82</sup>See Owen McIntyre, 'Environmental Protection of International Rivers', Case Analysis of the ICJ Judgement in the Case concerning the Gabcikovo-Nagymaros Project (Hungary/Slovakia); Journal of Environmental law; 1998; page 84; <[https://www.researchgate.net/publication/259977280\\_Environmental\\_Protection\\_of\\_International\\_Rivers'\\_Case\\_Analysis\\_of\\_the\\_ICJ\\_Judgement\\_in\\_the\\_Case\\_concerning\\_the\\_Gabcikovo-Nagymaros\\_Project\\_HungarySlovakia/link/573198a408ae100ae55810e0/download](https://www.researchgate.net/publication/259977280_Environmental_Protection_of_International_Rivers'_Case_Analysis_of_the_ICJ_Judgement_in_the_Case_concerning_the_Gabcikovo-Nagymaros_Project_HungarySlovakia/link/573198a408ae100ae55810e0/download)> accessed on June 12, 2020.

<sup>83</sup>See M.C. Mehta v. Union of India & others on 18 March, 2004; <<https://indiankanoon.org/doc/1896562/>> accessed on June 12, 2020.

out mining activities.”<sup>84</sup> The court thus warned that illegal mining activities could lead to cancellation of mining license.<sup>85</sup> Thus, it can be learnt that violation of HR to water was taking place and the activities stopped by the orders of the court was to promote and protect HR and combat CC.

The Supreme Court had issued certain directions to industries who were performing the tanning business activity on the banks of river Ganges.<sup>86</sup> It was held by the court that this was a public nuisance and ordered various High Courts to give orders under Criminal Procedure Code as Ganges flows down through many states and the problem of water pollution should not be considered lightly.<sup>87</sup> The Court further held that the tanning activity is not only degrading the water quality but it’s also causing environment degradation.<sup>88</sup>

The case of M.C. Mehta, the court had to deal specifically with the impact of activities concerning manufacture of hazardous activities.<sup>89</sup> The leakage of oleum gas from factory resulted in death of person and affected the health of others and it’s a violation of Right to Life under Article 21 of the Constitution.<sup>90</sup>

The Supreme Court explained the Right to Health in M.C. Mehta case under Article 39(e); Article 47 and Article 48A of the Constitution of India.<sup>91</sup> The court explained that it’s duty of court to protect and secure health of the people and protect and improve environment and underlined importance of Compressed Natural Gas in commercial vehicles that is cheap and ecofriendly.<sup>92</sup>

Gill writes National Green Tribunal (NGT) that marked its beginning in 2010 ushered dawn for establishing green jurisprudence around environment and encourage sustainable development.<sup>93</sup> In M.P. Patil v. Union of India, NGT observed that development is necessary to satisfy needs, but should be regulated to preserve natural resources for the society.<sup>94</sup>

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<sup>84</sup>See P. Leelakrishnan, ‘Environmental Law in India’; Lexis Nexis, Third Edition, 2015; Page 143.

<sup>85</sup>See M.C. Mehta v. Union of India & others on 18 March, 2004; <<https://indiankanoon.org/doc/1896562/>> accessed on June 12, 2020.

<sup>86</sup>See M.C. Mehta vs Union Of India &Ors on 12 January, 1988; <<https://indiankanoon.org/doc/59060/>> accessed on June 12, 2020.

<sup>87</sup>*Ibid.*

<sup>88</sup>*Ibid.*

<sup>89</sup>See P. Leelakrishnan, ‘Environmental Law in India’; Lexis Nexis, Third Edition, 2015; Page 225.

<sup>90</sup>*Ibid.*; at Page 225 and Page 226.

<sup>91</sup>See M.C. Mehta vs Union Of India And Ors on 5 April, 2002; <<https://indiankanoon.org/doc/75464071/>> accessed on June 12, 2020.

<sup>92</sup>*Ibid.*

<sup>93</sup>See Gitanjali Nain Gill, ‘A Green Tribunal for India’; Journal of Environmental Law; Volume 22, Issue 3, 2010; page 474.

<sup>94</sup>See Gitanjali Nain Gill, ‘Environmental Justice in India: The National Green Tribunal and Expert Members’; Transnational Environmental Law; Published online: 02 December 2015; page 13;

However, in the case of UK, Macrory writes that the first stage was from 1989-2000 when call for Environmental Court was initiated in the report of Sir Robert Carnwath.<sup>95</sup> From 2001-2004, growing discussion of how to introduce environmental courts and tribunals.<sup>96</sup> “The case where consultation process was being carried out on future production of electricity in UK related to the new build power plants for electricity generation was unfair and breach of legitimate expectation that there would be fullest consultation on that particular matter, so that secretary of state’s statement in support of nuclear new build as part of the UK’s future electricity generating mix fell to declared invalid”<sup>97</sup> The government while assessing environmental crimes, explained in the case of ‘R v Thames Water Utilities’<sup>98</sup> imposed fine of 2,50,000 Pounds for discharge of untreated sewage through nature reserve, despite the fact the company was given warnings not to do such an unethical practice and the company was guilty of negligence.<sup>99</sup>

Broad discussion of CC Litigation will be there in Chapter-3 and Chapter-4.

### **Sustainable Development for Good Environment**

To progress towards Right to Good/Healthy Environment to combat CC, it’s important to encourage sustainable development (SD) i.e. use of natural resources. SD is important as it encourages development but without compromising with Environment i.e. prevention of degradation of environment. Read and Cato argue the fact that there’s a need to find out a proper definition of sustainability for holistic SD.<sup>100</sup> The reason is because CC is taking place continuously as pollution levels around the world are on a constant rise and until and unless we do not have a proper definition of sustainability we cannot decide what steps exactly should be taken by states to achieve right to good environment. Robinson argues the fact that there’s need for legally binding international Climate Agreement to overcome the impacts of

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<[https://www.researchgate.net/publication/285663178\\_Environmental\\_Justice\\_in\\_India\\_The\\_National\\_Green\\_Tribunal\\_and\\_Expert\\_Members/link/56a0845308ae2c638eba9461/download](https://www.researchgate.net/publication/285663178_Environmental_Justice_in_India_The_National_Green_Tribunal_and_Expert_Members/link/56a0845308ae2c638eba9461/download)> accessed on June 12, 2020

<sup>95</sup>See Richard Macrory, ‘Environmental Courts and Tribunals In England And Wales –A tentative New Dawn’; Journal Of Court Innovation; Volume 3, Issue 1; 2010; Page 63; <[https://law.pace.edu/school-of-law/sites/pace.edu.school-of-law/files/IJIEA/jciMacrory\\_Final\\_3-17\\_cropped.pdf](https://law.pace.edu/school-of-law/sites/pace.edu.school-of-law/files/IJIEA/jciMacrory_Final_3-17_cropped.pdf)> accessed on June 12, 2020.

<sup>96</sup>*Ibid*; at Page 65.

<sup>97</sup>See R. (on the application of Greenpeace Ltd) v Secretary of State for Trade and Industry; [2007] EWHC 311; <<https://app.cronerico.uk/law-and-guidance/case-reports/r-application-greenpeace-ltd-v-secretary-state-trade-and-industry?product=139>> accessed on June 12, 2020.

<sup>98</sup>See R v Thames Water Utilities; [2015] EWCA Crim 960 (03 June 2015); <[https://uk.practicallaw.thomsonreuters.com/D-033-1852?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/D-033-1852?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)> accessed on June 13, 2020.

<sup>99</sup>See Justine Thornton QC, ‘Significant UK Environmental Law Cases 2015/16’; Journal of Environmental Law; Volume 28, Issue 2; July 1, 2016; Page 9.

<sup>100</sup>See Rupert Read and Molly Scott Cato, ‘A price for everything?’: The ‘natural capital controversy’; Journal of Human Rights and the Environment; Volume 5, Number 2, 2014; Page 153.

CC.<sup>101</sup> I agree with Robinson as it will aim all states to be responsible enough to protect HR and combat CC.

SD also encourages cost effective and efficient development for future generations. It encourages HR to Healthy Environment. “Turner argues that HR to good environment provides cost effective, forward looking and practical method of dealing with environmental problems”<sup>102</sup>. He further writes that one of the merits of HR to Good Environment under International Law is State Sovereignty over its resources as sovereignty plays an important role in International Law to which International Environmental Law is its species.<sup>103</sup> He also argues that though states have entered into international treaties to protect environment, international recognition of Right to Good Environment will balance this principle as international recognition will led to discussion among states at bilateral level.<sup>104</sup> I agree with Turner because Recognition of Right to Healthy/Good Environment is an issue of debate today, as it’s been debated to recognize it as an independent right. I will discuss the importance of Recognition of Right to Healthy/Good Environment under International Law in Chapter-4 and also how it provides an impetus to HR in-relation to Environment to combat CC.

SD encourages holistic development i.e. Development where cooperation of all states is needed as environmental law has no boundaries. Furthermore, complex relationship between HR and Environment to combat CC, has been formed to combat CC. Thus, essential rights that include right to water, food, health etc. are important to be protected thus, the complex relationship has increased the area for a broad interpretation of (SD). Doussa, Corkery and Chartres argue that HR principles are essential in order to cope up with CC, as governments have realized the importance to protect environment as CC problem is an issue that needs to be tackled.<sup>105</sup> For example, Right to Life, Right to Adequate Standard of Living, Right to Water, Right to Health are some of the rights as discussed in Chapter-1 that are basically part of HR and overlapping of HR in-relation to Environment has offered remedies to combat CC.

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<sup>101</sup>See Mary Robinson, ‘Social and legal aspects of climate change’; Journal of Human Rights and the Environment; Volume 5, Issue 0, 2014; Page 16.

<sup>102</sup>See Steve Turner, ‘The Human Right to a Good Environment The sword in the stone’; Non-State Actors and International Law; Volume 4, Issue 2, 2004; Page 277.

<sup>103</sup>*Ibid*, at Page 279.

<sup>104</sup>*Ibid*, at Page 279, 280.

<sup>105</sup>See Hon John Von Doussa Qc, Allison Corkery & Renee Chartres, ‘Human Rights and Climate Change’; Australian International Law Journal; Volume 14, Issue 1, 2007; Page 161.

**Encouragement for Public Participation (PP)**

The Right to Good/Healthy Environment can be achieved if there's a proper direction for implementation. By this, I mean that not only governments of various states can achieve this aim but PP is absolutely important to achieve the target to protect right to Good Environment. Kravchenko writes that HR in-relation to environment is important in order to access information i.e. decisions of the government to combat CC, to encourage PP in environmental decision making to achieve the necessary outcomes because of overlapping between HR and Environment to combat CC.<sup>106</sup> I agree with Kravchenko because access to information and PP in Environmental matters is important because it's important to check public awareness in regards to environment to protect and promote HR and combat CC. Broad discussion of PP is done in Chapter-4. It's important to mention that when people participate to protect their environmental rights, it's learnt to what extent people are concerned and to what further steps does government need to take to protect Right to Life, Right to Adequate Standard of Living, Right to Water, Right to Health.

**Development of HR to Good Environment under International Law**

It's been argued that 'HR involve fundamental values, i.e. HR put a barrier on all wrongs that infringe rights of the people'<sup>107</sup>. HR help to generate legal ground for action as HR are recognized rights thus, CC calls for legal action as it infringes HR.<sup>108</sup> It's pertinent to mention that because HR are recognized as independent rights thus overlapping between HR and Environment will lead to lay down reforms at international level. To encourage HR to Good/Healthy Environment under International Law, it's important to encourage sustainable development, court decisions, international instruments signed with consent of states under international law to protect Right to Good/healthy environment, encourage PP.

So far, we have discussed the Right to Good Environment Under International Law. In the next chapter I'll focus on challenges faced by states in-relation to HR and Environment to combat CC.

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<sup>106</sup>See Svitlana Kravchenko, 'Procedural Rights As A Crucial Tool To Combat Climate Change'; Georgia Journal of International and Comparative Law; Volume 38, Issue 3, 2010; Page 618, 635.

<sup>107</sup>See Burns H Weston and David Bollier, 'Toward a recalibrated human right to a clean and healthy environment: making the conceptual transition'; Journal of Human Rights and Environment; Volume 4, Issue 2, 2013; Page 126.

<sup>108</sup>*Ibid*, at Page 127.

On the other hand, I'll argue HR in-relation to Environment to combat CC, that it's important to recognize right to healthy/good environment as independent right as this help to build separate environmental jurisprudence to protect rights of people in-relation to environment to combat CC. A detailed discussion is made in Chapter-4.

### **Conclusion**

In this chapter, I have discussed the HR to Good Environment under International Law i.e. states have made provisions in their state constitution to protect environment to protect rights of people, followed with the consent of states to sign International Instruments to protect environment, encourage CC Litigation, encourage SD and PP.

**Challenges Under for Right to Good Environment under International Law****CHAPTER-3**

It's been learnt till now that Overlapping between Human Rights (HR) Law and Environment has offered readies to combat Climate Change (CC). States under the International Law Regime face challenges in the implementation of HR in-relation to environment to combat CC. In this chapter I'll answer **"To what extent states face challenges under International Law in the implementation of Human Rights in-relation to environment to combat Climate Change?"**.

**Globalization and Development**

It's important to learn that globalization has posed environmental challenges, the key one is CC. The complex relationship between HR and Environment to combat CC, has posed significant challenges i.e. global warming as temperatures are on a rise and pollution levels are increasing.

Globalization has had negative impacts upon HR and environment that has led to global concern of CC.<sup>109</sup> It leads to commitments by states to protect environment that is obliged by states however, it leads to more consumption of energy that leads to CO<sub>2</sub> emissions.<sup>110</sup> In my opinion, governments must pledge to resort to eco-friendly energy production to combat CC. On the other hand, UNEP, Human Development Report has identified that globalization has led to change in labour markets and had made jobs and livelihood insecure.<sup>111</sup>

Apart from the above, it's important to consider corporate behaviour in relation to CC i.e. consequential shift towards environment degradation because of the commercial activities.<sup>112</sup> On the other hand, there is need for UK to change its policy in the case of Corporate Governance i.e. not to attract investments in sectors/activities that will lead to CC and infringe HR.<sup>113</sup>

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<sup>109</sup>See Peadar Kirby, 'Vulnerability and Globalization: mediating impacts on society'; Journal of Human Rights and the Environment; Volume 2, Issue 1, March 2011; Page 86.

<sup>110</sup>*Ibid*, at Page 95.

<sup>111</sup>See United Nations Environment Program, Human Development Report, 1999; page 90 <[http://hdr.undp.org/sites/default/files/reports/260/hdr\\_1999\\_en\\_nostats.pdf](http://hdr.undp.org/sites/default/files/reports/260/hdr_1999_en_nostats.pdf)> accessed on June 14, 2020.

<sup>112</sup>See Sally Wheeler, 'Climate change, Hans Jonas and indirect investors'; Journal of Human Rights and the Environment; Volume 3, Issue 1, March 2012; Page 92.

<sup>113</sup>*Ibid*, at Page 94.

In India, it has been questioned whether globalization has impeded environmental quality in India. India is the world's third largest emitter of CO<sub>2</sub>.<sup>114</sup> Post-Liberalization, industrial activities had increased in India and also with increasing urbanization in India has led to environmental degradation and also compromised with the environmental standards.<sup>115</sup>

Furthermore, CC activity is taking place because there's no proper legal regime i.e. states themselves grant permissions to industries to emit CO<sub>2</sub> from fossil fuels that is signifier of CC.<sup>116</sup> Thus, it's important to find out an alternative source of energy. 'The IPCC Report, 2014 underlines fact that anthropogenic greenhouse gas emissions (GHGs) have increased since the pre-industrial era, driven largely by economic and population growth, and now higher than ever'<sup>117</sup>. For example, as explained above with globalization in India, industrialization has taken place and more consumption of fossil fuels has led to CC and infringement of HR. I would like to mention that though globalization is important for economic development, still now alternatives need to be found to reduce dependency on fossil fuels to combat CC. Similarly, in case of UK it's been argued above that no investments should be welcomed in sectors that lead to CC and infringe HR. Also, Recognition of Right to Healthy/Good environment will help as proper legislation will be framed and it will be ensured that development will not take place at the cost of CC and infringement of HR.

### **Duties of State with Respect to Environment**

In this I'll explain duty of state to protect environment under international environmental law with special reference to India and UK. I'll also explain the importance of two principles i.e. precautionary and preventive to protect environment and how states have failed to achieve desired outcomes i.e. in terms of implementation of this principle.

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<sup>114</sup>See Muhammad Shahbaz, Hrushikesh Mallick, Mantu Kumar Mahalik, Nanthakumar Loganathan, 'Does Globalization Impede Environmental Quality in India?'; Munich Personal RePEc Archive, October 9, 2015; Page 6 <[https://mpira.ub.uni-muenchen.de/67285/1/MPRA\\_paper\\_67285.pdf](https://mpira.ub.uni-muenchen.de/67285/1/MPRA_paper_67285.pdf)> accessed on June 20, 2020.

<sup>115</sup>*Ibid*, at Page 4.

<sup>116</sup>See Henry Shue, 'Changing images of climate change: human rights and future generations'; Journal of Human Rights and the Environment; Volume 5, Issue 0, 2014, Page 50.

<sup>117</sup>See Report of Intergovernmental Panel On Climate Change, 2014; Page 4 <[https://www.ipcc.ch/site/assets/uploads/2018/05/SYR\\_AR5\\_FINAL\\_full\\_wcover.pdf](https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_AR5_FINAL_full_wcover.pdf)> accessed on June 16, 2020.

States have Duty to Respect, Duty to Protect and Duty to Fulfil all the requirements of the people in the context of environment.<sup>118</sup> This means states should make efforts to reduce pollution, encourage separate CC Litigation, encourage PP, regulation. Lewis argues that states have a duty to respect, i.e. obligation is imposed upon the states to respect HR in order to combat CC.<sup>119</sup> For example, greenhouse gas emissions should be reduced by states constantly as it is the significant aspect that leads to CC. UK is the first major economy set to reduce its greenhouse gas emission to zero by 2050.<sup>120</sup> However, India has pledged to reduce 33% to 35% in the emissions by 2030.<sup>121</sup> I would like to argue that UK's targets are historic and UK has understood the concern to protect the Right to Healthy Environment i.e. to protect HR and combat CC. The second duty is Duty to Protect i.e. states should protect the Right to Healthy environment i.e. to protect HR and combat CC.<sup>122</sup> Again, in this, the emission reduction targets is the perfect example, to protect environment. The last is duty to fulfil that includes duty to facilitate, promote and protect HR.<sup>123</sup> In my opinion duty to fulfil is the most important duty as it imposes obligation upon the states to take steps to protect HR and combat CC i.e. this duty will require to encourage implementation of Laws, encourage Public Participation (PP), develop substantive environmental rights to enhance the scope of litigation to protect HR to Healthy Environment.

State's duty to protect the rights of future generations, prevent environmental degradation, basically to restore right to healthy environment that will be ultimate justice for future generations.<sup>124</sup> Furthermore, it's important to recognize their duty for future generations to protect the environment and protect the complex relationship between HR and Environment

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<sup>118</sup>See Rebecca Bratspies, Do We Need a Human Right to a Healthy Environment; Santa Clara Journal of International Law; Volume 13, Issue 1, 2015; Page 65, 66.

Also See Committee on Economic, Social and Cultural Rights, Statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1AVC1NkPsgUedPIF1vfPMKOGNxs%2FCpnVM8K6XpeNimFvrj%2F4tQZvhH%2BXM9vEaJmHSX3FSXAcTmJ%2BWc3iPSLafnoFpGQ9KIHCXooWHCPCpQt>> accessed on July 11, 2020.

<sup>119</sup>See Bridget Lewis, 'Environmental Human Rights and Climate Change; Current Status and Future Prospects'; Springer; 2018; Page 175 <<https://link-springer-com.libproxy.ncl.ac.uk/content/pdf/10.1007%2F978-981-13-1960-0.pdf>> accessed on June 13, 2020.

<sup>120</sup>See UK becomes first major economy to pass net zero emissions law; (27 June, 2019); <<https://www.gov.uk/government/news/uk-becomes-first-major-economy-to-pass-net-zero-emissions-law>> accessed on June 13, 2020.

<sup>121</sup>See Jocelyn Timperley, 'The Carbon Brief Profile: India' ( *Country Profiles*, 14 March, 2019) <<https://www.carbonbrief.org/the-carbon-brief-profile-india>> accessed on June 13, 2020.

<sup>122</sup>See Bridget Lewis, 'Environmental Human Rights and Climate Change; Current Status and Future Prospects'; Springer; 2018; Page 177. <<https://link-springer-com.libproxy.ncl.ac.uk/content/pdf/10.1007%2F978-981-13-1960-0.pdf>> accessed on June 13, 2020.

<sup>123</sup>*Ibid*; at Page 179.

<sup>124</sup>See Himmy Lui, 'A Fiduciary Perspective on the State's Duty to Protect the Environment'; Auckland University Law Review; Volume 20, 2014; Page 110.

to combat CC.<sup>125</sup> The duty of states will help to outline proper recognition principle of HR in relation to environment to combat CC under International Law as it will impose obligation upon states to protect environment as it will become mandatory for states to adhere the principle recognized under International Law.<sup>126</sup>

For states, economic development is important for prosperity. Without economic development, state prosperity cannot take place as standard of living of people cannot rise. But with development, environmental degradation does take place. Thus, it's the duty of state to protect environment in order to protect and promote the complex relationship between HR and Environment to combat CC. "Bagley supports the view that there is inherently interactive and symbiotic relationship between business organizations and states to protect environment"<sup>127</sup>. The states by Corporate Social Responsibility impose obligation upon states to protect environment and thus, development and protection of environment should go together.

Apart from the above, international environmental damage is a breach of duty of state whereby states cause damage apart from its own state (transboundary harm) for example, by degradation of soil fertility, pollution activities such air, water etc. and thus environment has no borders and thus joint cooperation of all states is necessary to protect the environment.<sup>128</sup> 'It is pertinent to mention that International Environmental Law is based upon Precautionary Principle and Prevention Principle'<sup>129</sup>. Thus, states can apply Precautionary Principles to overcome damage caused to the environment especially pollution activities as it's the duty to state to protect the rights of people as this environmental degradation activity leads to CC.<sup>130</sup> It's been further argued that it's the responsibility of states to follow traditional classical rules/customs to protect environment as each state is different in terms of geography.<sup>131</sup>

States have a duty to implement the international instruments to which they have become party too. Collins argues that precautionary environmental HR has led to significant evidence

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<sup>125</sup>*Ibid*, at Page 113.

<sup>126</sup>*Ibid*, at Page 113, 114.

<sup>127</sup>See Constance E. Bagley, 'What's Law Got to Do With It?: Integrating Law and Strategy'; American Business Law Journal; Volume 47, Issue 4, Winter 2010; Page 589.

<sup>128</sup>See Yalda Khalatbari and Abbas Poorhashemi, "Environmental Damage": Challenges and opportunities in International Environmental Law'; CFILE Journal of International Law; Volume 1, Issue 1, 2019; Page 21, 22 <[https://www.researchgate.net/publication/337196117\\_Environmental\\_Damage\\_Challenges\\_and\\_opportunities\\_in\\_International\\_Environmental\\_Law/link/5dcad3234585151435068aed/download](https://www.researchgate.net/publication/337196117_Environmental_Damage_Challenges_and_opportunities_in_International_Environmental_Law/link/5dcad3234585151435068aed/download)> accessed on June 28, 2020.

<sup>129</sup>*Ibid*, at Page 24.

<sup>130</sup>*Ibid*, at Page 24.

<sup>131</sup>*Ibid*, at Page 25

of environmental threat to human health and threat to security of individuals.<sup>132</sup> The writer argues the fact that Rio Declaration which been signed by many countries to overcome serious threats, there's been inconsistent implementation of the declaration as environmental regulators have failed to implement the precautionary principle.<sup>133</sup> The writer further argues that precautionary principle may provide remedies to the governments of states to protect rights of the people.<sup>134</sup> Gill argues the fact that precautionary principle has been accepted as a fundamental tool in India as it promotes Sustainable Development (SD) i.e. good health for the people and healthy environment.<sup>135</sup> 'In India, pollution produces complex environmental issues involving scientific uncertainty and imprecise health risks'<sup>136</sup>. The writer argues that pollution threats have produced on the basis of improper evidence, incomplete information.<sup>137</sup> I agree with Gill because courts have time and again issued orders to promote SD and protect Right to Healthy Environment thereby protect HR and combat CC. The court explained that untreated tanneries discharged by industries into agricultural fields, waterways and rivers is environmental degradation.<sup>138</sup> Thus, judgment of the court explains to promote SD.

In UK, "Sabil argues the fact that precautionary principle has resulted in changes i.e. there is no exact interpretation of Precautionary Principle as many writers have interpreted the principle differently as there are no exact features, scope and there how it should be applied in practice"<sup>139</sup>. "Sabil had further written the words of Fisher that English courts have not used Precautionary Principle for justification as there is no exact interpretation of this principle"<sup>140</sup>.

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<sup>132</sup>See Lynda M Collins, 'Security of the person, peace of mind: a precautionary approach to environmental uncertainty'; *Journal of Human Rights and the Environment*; Volume 4, Issue 1, March 2013; Page 79.

<sup>133</sup>*Ibid*, at Page 80.

<sup>134</sup>*Ibid*.

<sup>135</sup>See Gitanjali Nain Gill, 'The Precautionary principle, its interpretation and application by the Indian judiciary: 'When I use a word it means just what I choose it to mean-neither more nor less' Humpty Dumpty'; *Environmental Law Review*; Volume 21, Issue 4; Page 292; <<https://journals.sagepub.com/doi/pdf/10.1177/1461452919890283>> accessed on June 15, 2020.

<sup>136</sup>*Ibid*, at Page 294.

<sup>137</sup>*Ibid*.

<sup>138</sup>See *Vellore Citizens Welfare Forum vs Union Of India & Ors* on 28 August, 1996; <<https://indiankanoon.org/doc/1934103/>> accessed on June 15, 2020.

<sup>139</sup>See Murtada Sabil, 'A Critical Evaluation of The Precautionary Principle in Environmental Law in The United Kingdom'; *Edinburgh Student Law Review*, Volume 3, Issue 2, 2017; Page 89.

<sup>140</sup>*Ibid*, at Page 91.

**Sustainable Development (SD): Criticism and Failure**

The states across world have failed to assess the environmental risks and sustainability for the future. Bosselmann argues the fact that overlapping between HR and Environmental Laws has not made much difference in order to have sustainable future.<sup>141</sup> The reason for this is because it requires assessment of the risks pertained to the environment and exact risks cannot be ascertained because CC predictions change every second.<sup>142</sup> The key loophole in overlapping between HR and environment is that HR Law focuses on moral judgement i.e. for the poor whereas in the environment practical value should be adopted i.e. to assess risks and future sustainability.<sup>143</sup> I agree with Bosselmann because though overlapping between HR and Environment has offered remedies still work needs to be done in this area. In my opinion, if Right to Healthy Environment is recognized as an independent right, it may offer solutions as states will be under legal obligations to protect this right that will directly promote HR and combat CC.

In India, there's no specific direction for environmental management i.e. forest cover is reducing, wildlife extinction, rain patterns are disrupting.<sup>144</sup> Villagers are dependent upon nature and increasing urbanization leads to economic disruption as villagers are losing their source of livelihood.<sup>145</sup> Thus, there isn't sustainable future in India.

In UK, government launched Sustainable Communities Plan in 2003, to implement regeneration projects to improve quality life in UK.<sup>146</sup> But it has been concluded until 2007, the economic conditions have not improved significantly as sustainable community was not able to be properly implemented.<sup>147</sup>

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<sup>141</sup>See Klaus Bosselmann, 'A vulnerable environment: contextualizing law with sustainability'; Journal of Human Rights and the Environment, Volume 2, Issue 1, 2011; Page 45.

<sup>142</sup>*Ibid.*

<sup>143</sup>*Ibid.*

<sup>144</sup>See V. Basil Hans and Jayasheela, 'Environmental Management and Sustainable Development in India: Issues and Challenges'; Journal of Global Economy; Volume 6, Number 2; March-April 2010; Page 83; <[https://www.researchgate.net/publication/46533245\\_Environmental\\_Management\\_and\\_Sustainable\\_Development\\_in\\_India\\_Issues\\_and\\_Challenges/link/548266a90cf2e5f7ceac4e81/download](https://www.researchgate.net/publication/46533245_Environmental_Management_and_Sustainable_Development_in_India_Issues_and_Challenges/link/548266a90cf2e5f7ceac4e81/download)> accessed on June 20, 2020.

<sup>145</sup>*Ibid.*, at Page 84.

<sup>146</sup>See Vida Maliene, Natalie Durney-Knight, Begum Sertysilisik, Naglis Malys, 'Challenges and Opportunities in Developing Sustainable Communities in the North West of England'; Challenges 2012; ISSN 2078-1547; Page 133; <[https://www.researchgate.net/publication/237008673\\_Challenges\\_and\\_Opportunities\\_in\\_Developing\\_Sustainable\\_Communities\\_in\\_the\\_North\\_West\\_of\\_England](https://www.researchgate.net/publication/237008673_Challenges_and_Opportunities_in_Developing_Sustainable_Communities_in_the_North_West_of_England)> accessed on June 20, 2020.

<sup>147</sup>*Ibid.*, at Page 149.

### **Litigation Burden on Human Rights Tribunals for Climate Change under Environmental Law**

CC litigation has number of loopholes. With the overlapping between HR and Environment to combat CC, HR tribunals are facing claims against violations caused towards environment that had led to CC. Shelton argues that HR tribunals are facing claims of violations for environmental degradation as to whether the government has complied with national laws and international instruments to which they are party to the convention.<sup>148</sup> HR tribunals have made it clear that pollution or other environmental harm is caused by states comes under the issue of state-responsibility where states have been negligent in performance of their duties.<sup>149</sup> I agree with Shelton that states should be responsible enough to perform their responsibility to combat CC and safeguard rights of the people. The overlapping between HR and CC after examining Shelton's views leads to conclusion that though overlapping between the two has led to offered many remedies to combat CC, it has increased burden upon HR tribunals. Furthermore, courts face problems when they have to decide environment cases i.e. whether violations that have been encountered have taken place under HR or under Environmental Law.<sup>150</sup> Though, it's legitimate for HR tribunals to intervene whether or not it is environmental harm or environmental degradation that leads to violation of HR. There's only one loophole that it imposes additional burden upon HR tribunals. It can be argued if we recognize environment i.e. Right to Healthy Environment as independent right, it will lead to creation of both separate legislation and courts in order to face the claims of environmental tribunals. It will be analyzed in detail in Chapter-4.

### **Geoengineering: Challenges**

Geoengineering basically means to combat CC impacts i.e. to reduce global warming effects without reducing greenhouse gas emissions. For example, "ocean fertilization can worsen CC, and can have serious biochemical effects on marine ecosystems"<sup>151</sup>. Furthermore, "stratospheric sulfur injections might not work, and could result in stratospheric

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<sup>148</sup>See Dinah Shelton, 'Developing substantive environmental rights'; Journal of Human Rights and the Environment, Volume 1, Issue 1, 2010, Page 89.

<sup>149</sup>*Ibid*, at Page 108.

<sup>150</sup>See Dinah Shelton, 'Legitimate and necessary: adjudicating human rights violations related to activities causing environmental harm or risk'; Journal of Human Rights and the Environment, Volume 6, Issue 2, 2015; Page 139.

<sup>151</sup>See William Daniel Davis, 'What Does "Green" Mean? Anthropogenic Climate Change, Geoengineering, And International Environmental Law'; Georgia Law Review; Volume 43, Issue 3, 2009; Page 923.

ozone depletion due to enhanced chlorine activation with an attendant spike in cancer rates”<sup>152</sup>. Moreover, geoengineering is quite expensive and requires technical knowledge i.e. technology advanced countries can implement geoengineering easily.<sup>153</sup> I would like to argue what about the undeveloped and developing countries. If governments of these countries increase taxes upon the citizens of their respective states, many people’s livelihood will suffer as they have meagre source of income and can’t afford to pay increased amount of taxes. Furthermore, this will infringe the HR of people as they will compromise with their standard of living.

On the other hand, implementation of geoengineering can result into several defects. Industrialized countries will say yes to implement geoengineering in order to mitigate the effects of CC and protect the infringement of HR of its citizens as industrialized countries possess technology, but countries that are not industrialized may not agree for geoengineering as it can claim there is not much impact of CC as they would have to import technology from other countries.<sup>154</sup> Similarly under International Law, i.e. if we examine legal perspective, geoengineering is used to reduce GHGs that are spread all over the globe and thus, if one state agrees to reduce GHGs, then other states may object to this activity as it disrupts weather patterns.<sup>155</sup> Furthermore, even if one state undertakes geoengineering, what’s the use because of transboundary pollution GHGs emissions by other states can reach the concerned state’s geographical area. Also, it can be argued what about high seas or Antarctica, as they are beyond National Jurisdiction.<sup>156</sup>

If we co-relate geoengineering with precautionary principle, geoengineering is difficult to implement as precautionary principle says to first assess the risks and then implement if there are no risks.<sup>157</sup> On the other hand, concerns are raised whether there will be adequate PP i.e. consent by people for geoengineering as poor people are vulnerable to changes in climate patterns.<sup>158</sup>

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<sup>152</sup>*Ibid.*

<sup>153</sup>*Ibid.*, at Page 926.

<sup>154</sup>*Ibid.*, at Page 928, 929, 930.

<sup>155</sup>See David A. Wirth, ‘Engineering the Climate: Geoengineering as A Challenge to International Governance’; Boston College Environmental Affairs Law Review; Volume 40, Issue 2, 2013; Page 421.

<sup>156</sup>*Ibid.*

<sup>157</sup>*Ibid.*, at Page 931, 932.

<sup>158</sup>See ChiaraArmeni, ‘Global Experimentalist Governance, International Law And Climate Change technologies’; International and Comparative Law Quarterly; Volume 64, Issue 4, October 2015; Page 886, 887.

**Intellectual Property Rights (IPR) Law and Climate Change**

States today face complications regarding the CC taking place. With CC, HR are infringed. Thus, to combat CC we need to find clean sources of energy, and intellectual Property (IP) protection conflicts with HR, the complex relationship of HR in-relation to environment is used as a mechanism to combat CC. UNFCCC requires state parties to put in efforts to combat CC by reducing global warming and furthermore, almost all states around the world are members of UNFCCC.<sup>159</sup> Thus, it's required by all states resort to clean energy techniques in order to combat CC. It has been realized that efforts are being made to resort to clean energy technology but still we haven't reached the mark, but still some clean sources of energy are solar, biofuels and wind technology.<sup>160</sup> The clean energy technology has been originated from developed countries and developing and least developing countries cannot create that same technology due to IPR regimes.<sup>161</sup> But with global commitments to combat CC, in order to overcome infringement of HR, negotiations have taken place for technology transfer, innovation, collaboration with developing countries but still there is no policy as such to recognize global strategy for technology transfer to promote HR and combat CC.<sup>162</sup> Biddle also supports the view that to address the issue of CC, it's important to have technological innovation that should be accessible to everyone in order to combat CC.<sup>163</sup> He argues the fact that the role of IPR to address the issue of CC is controversial i.e. whether IP protection will make it possible to access patentable technologies.<sup>164</sup> Both developing and developed countries counter argue while the former explains strict IP protection regime hinders to address important issues such as CC, the latter explains strong IP protection is essential for technological innovation.<sup>165</sup> Furthermore, 'patent regime has impeded CC negotiations UNFCCC conferences'<sup>166</sup>. World Intellectual Property Rights Organization (WIPO) Green Initiative is another significant factor where the parties are required to regulate the demerits of IP protection to achieve positive results, for example to combat CC.<sup>167</sup> I would like to argue

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<sup>159</sup>See United Nations Framework Convention on Climate Change, <<https://unfccc.int/resource/docs/convkp/conveng.pdf>> accessed on July 3, 2020.

<sup>160</sup>See Kavita Kapur, 'Climate Change, Intellectual Property, And The Scope Of Human Rights Obligations'; Sustainable Development Law & Policy; Volume 11, Issue 2, 2011; Page 59.

<sup>161</sup>*Ibid*, at Page 60.

<sup>162</sup>*Ibid*, at Page 61.

<sup>163</sup>See Justin B. Biddle, 'Intellectual Property Rights and Global Climate Change: Toward Resolving an Apparent Dilemma'; Ethics, Policy & Environment; Volume 19, Issue 3, 2016; Page 301.

<sup>164</sup>*Ibid*.

<sup>165</sup>*Ibid*, at Page 302.

<sup>166</sup>*Ibid*.

<sup>167</sup>See K. Raiser, H. Naims and T. Bruhn, 'Corporatization of the Climate? Innovation, intellectual property rights and patents for climate change mitigation'; EnergyResearch&SocialScience; volume 27, 2017; Page 7.

that though IP protection is important for technological innovation, but for global issues such as CC, it's important to have accessibility for everyone to encourage technological innovation to combat CC and despite patent protection, partnership should take place between developed and developing countries to make technology accessible at affordable costs. Also, Recognition of Right to Healthy/Good environment will lead to enactment of proper laws and might lead to overcome IPR barriers that may lead to combat CC and protect HR.

### **Conclusion**

In this chapter I have explained challenges that are faced due to the complex relationship between HR and Environment to combat CC. The key issue is globalization. Because every state wants to economically develop, with globalization, development takes place with compromise to environmental needs. States have a duty to protect the environment and development should not compromise with healthy environment. With complex relationship between HR and Environment to combat CC, the relationship mounts pressure upon the HR tribunals because the complex relationship between the two brings all claims to HR courts and tribunals. Similarly, IPR has put pressure upon developing countries as they cannot afford to purchase climate mitigation technology from developed countries.