

## CLIMATE LITIGATION IN INDIA: AN OVERVIEW

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### ABSTRACT

Climate litigation has been the new tool to advance climate justice. The Indian judiciary has paved way for climate litigation by giving reference to climate change as an important aspect in environmental litigations. The Indian judiciary is known for evolution of environmental jurisprudence at global parlance and would be soon known for climate jurisprudence. India's vulnerability in impacting climate change and the proactive steps undertaken by the judiciary as a guardian of the rights of its citizens suggest admission of new climate claims in the near future. This paper identifies the current position of climate litigation in India and the plausible solution for future climate claims. The research delves upon the existing legal solutions to render climate justice to climate claims. In addition, the research analysis the applicability of international principles and other judicial procedures in climate claims. Restorative justice has also been examined in the light of climate claims.

**Keywords:** *Climate Change, Climate Litigation, Human rights violations, Indian Judiciary and Restorative Justice*

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### I. Introduction

CLIMATE CHANGE in the anthropogenic yuga has been driving the earth's temperature to rise and has also resulted in adverse changes around us. The greenhouse gas emissions from human activities are threatening the balance of eco-system of the present and future generations. Among the harms caused, human rights violations are on an increase. Attempts

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have been made at the international, national and local levels to reduce the impacts of climate change on people and their surroundings. In 2015, the international community came together to sign a historic agreement to mitigate climate impacts and facilitate sustainable development. The Paris Agreement was adopted on December 2015, to ensure the global temperature does not rise to more than 2°C from pre-industrial levels.<sup>1</sup> The preamble to the Paris Agreement also emphasizes on ensuring measures to be undertaken to protect vulnerable communities from climate impacts.<sup>2</sup> When the legislature and policy regimes are unable to address climate crises, the judiciary has played an important role in various jurisdictions including the United States and India to ensure citizens climate protection.

This article examines the scope and progress of climate litigation in India. The article has been divided into eight parts. The first part lays out an understanding of the emergency situation caused globally and in India due to climate change. The second part introduces the concept of climate litigation and examines how climate litigations are increasing due to the lack of a concrete strategy to address climate harm. The third part proceeds with the common international principles developed to conserve and protect the environment in India and its application to climate claims. The fourth part describes and explores how public interest litigations in India facilitated environmental litigation and its scope in climate litigation. The fifth part examines the use of tortious liability in environmental jurisprudence and the sixth part analysis the importance of judicial review in climate litigations. The seventh part provides an analysis of the different categories of climate claims brought before the India judiciary. The eighth parts envisage on restorative justice as a means to address climate litigation in India and examines its feasibility in a developing country like India. The conclusion highlights that climate litigation can pave way towards providing an effective justice delivery system to the victims of climate change, when the legislature and the executive fails to protect them.

## II. Climate Litigation: Framing the Issue

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<sup>1</sup> UN Development Programme, Barbados & the Eastern Caribbean, “Historic Paris Agreement on Climate Change: 195 Nations Set Path to Keep Temperature Rise Well Below 2 Degree Celsius” *available at*: <https://www.bb.undp.org/content/barbados/en/home/presscenter/articles/2015/12/14/historic-paris-agreement-on-climate-change-195-nations-set-path-to-keep-temperature-rise-well-below-2-degrees-celsius.html> (last visited on Oct. 2, 2021).

<sup>2</sup> Conference of Parties, United Nations Framework Convention on Climate Change, *Report of the Conference of the Parties on Its Twenty-First Session, Adoption of the Paris Agreement*, UN Doc FCCC/CP/2015/L.9/Rev.1 (Dec.12, 2015)

Climate change litigation evolved due to the gaps in the legislative framework at the international and domestic levels to protect the rights of the people. Climate litigation has been playing an important role in influencing public debates and social norms.<sup>3</sup> Climate litigation is a form of litigation where petitioners file a suit against private or public entities for violating their legal rights.<sup>4</sup> As on May 2019, twenty-eight countries are having climate change litigations, policy report provided that low and middle-income countries including India have been seeing climate litigation growing in numbers and importance over the past few years.<sup>5</sup> Scholars have provided analysis on the influence of climate litigation on social norms, including:<sup>6</sup>

- (1) making of the political culture and public debate more climate-informed; (2) supporting and galvanizing grassroots climate campaigns; and (3) translating abstract scientific concepts into tangible impacts that the general public can understand and relate to better.

This shows the influence of climate litigation on the society at large. Climate change litigation has been growing across jurisdictions, where issues concerning interpretation of law on climate mitigation and adaptation measures are brought before the adjudicating authorities.<sup>7</sup> The recent trends in climate claims are mainly brought on matters pertaining to climate commitment compliance, violation of human rights and constitutional rights, corporate liability and adaptation cases.<sup>8</sup> In developing countries including India, climate claims brought before the adjudicating bodies are mainly relating to implementation of government policies to mitigate or adapt to climate crises.<sup>9</sup>

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<sup>3</sup> Grace Nosek, "Climate Change Litigation and Narrative: How to Use Litigation to Tell Compelling Climate Stories" 42 *William & Mary Environmental Law and Policy Review* 733 (2018).

<sup>4</sup> *Ashgar Leghari v. Federation of Pakistan* (2015) Case WP No 25501/2015 (Lahore High Court) 7.

<sup>5</sup> Joana Setzer and Rebecca Byrnes, "Global trends in climate change litigation: 2019 snapshot: Policy report", available at: [http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2019/07/GRI\\_Global-trends-in-climate-change-litigation-2019-snapshot-2.pdf](http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2019/07/GRI_Global-trends-in-climate-change-litigation-2019-snapshot-2.pdf) (last visited on Oct. 2, 2021)

<sup>6</sup> Jacqueline Peel and Hari M. Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* 224 (Cambridge University Press, Cambridge, 2015).

<sup>7</sup> Cf. Meredith Wilensky, *Climate Change in the Courts: An Assessment of Non-U.S. Climate Litigation* 26 *DUKE ENVTL. L. & POL'Y FORUM* 131, 134 (2015).

<sup>8</sup> Joana Setzer and Catherine Higham, "Global trends in climate change litigation: 2021 snapshot: Policy report", available at: [https://www.cccep.ac.uk/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation\\_2021-snapshot.pdf](https://www.cccep.ac.uk/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf) (last visited on Jul. 10, 2021).

<sup>9</sup> Joana Setzer and Lisa Benjamin, "Climate litigation in the Global South: constraints and innovations" 9 (1) *Transnational Environmental Law* 77 -101 (2020).

The coronavirus disease - 2019 (COVID -19) that emerged in 2019, declaring a global pandemic emergency by the World Health Organization has not just affected human health but also the ecosystem.<sup>10</sup> The COVID -19 has been generating large amounts of biomedical wastes in India, for example in Ahmedabad alone there has been an increase of about 1000 kg/day from 550 -600 kg/day during the first period of lockdown.<sup>11</sup> The waste generated from hospitals that include gloves, mask, used syringes have to be regulated better to reduce further health hazards and environmental pollution. The mismanagement of biomedical wastes caused by the pandemic can aggravate the climate impacts in India resulting in climate litigation.

Climate litigation is of recent origin in India. The Indian judiciary has been the guardian of ‘the rights of its citizens,’<sup>12</sup> when the legislature fails to address their concerns. The Supreme Court of India has also been known to be the ‘guardian of the social revolution.’<sup>13</sup> The role of the Indian judiciary has been envisaged in environmental litigations, where article 21 “right to life and liberty” was expanded to include right to environment.<sup>14</sup> The evolution of environmental jurisprudence in India are reflected in matters including air pollution<sup>15</sup>, natural resources<sup>16</sup> and wildlife protection<sup>17</sup>. In addition, international principles, public interest litigations and tort law have played an important role in deciding environmental issues. Climate related concerns are yet to be encompassed within the environmental jurisprudence in India. The Indian Judiciary must be equipped to deal with climate claims in the coming days. India has been reported to be one of the most vulnerable countries to be impacted by climate change,<sup>18</sup> that can result in losses including property, economy and human rights violations.

### III. Usage of International Principles in Environmental Litigation in India

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<sup>10</sup> Tanjena Rume and S.M. Didar-Ul Islam, “Environmental effects of COVID-19 pandemic and potential strategies of sustainability” 6(9) *Heliyon* (2020), available at: <https://doi.org/10.1016/j.heliyon.2020.e04965> (last visited on Jul. 10, 2021).

<sup>11</sup> Mohit Somani, et al., “Indirect implications of COVID-19 towards sustainable environment: An investigation in Indian context” 11 *Bioresource Technology Reports* (2020), available at: <https://doi.org/10.1016/j.biteb.2020.100491> (last visited on Jul. 10, 2021).

<sup>12</sup> Ravi P Bhatia, “Evolution of Judicial Activism in India” 45 (2) *Journal of the Indian Law Institute* 262 (2003).

<sup>13</sup> Austin Granville, *The Indian Constitution: Cornerstone of a Nation* 169 (Oxford University Press, 2<sup>nd</sup> edn., 2000).

<sup>14</sup> *A. P. Pollution Control Board-II v. M.V Nayudu* (2000) 1 SCC 62; *K.M. Chinanappa and T.N. Godavarman Thirumulpad v. Union of India* (2002) 10 SCC 606; *M.C. Mehta v. Union of India* (2004) 6 SCC 588.

<sup>15</sup> *M.C Mehta v. Union of India*, AIR 1997 SC 734.

<sup>16</sup> *Rural litigation and entitlement Kendra v. State of Uttar Pradesh*, 1989 Supp (1) SCC 504.

<sup>17</sup> *T.N. Godavarman Thirumulpad v. Union of India* (2006) 5 SCC 25.

<sup>18</sup> David Eckstein, “Global Climate Risk Index 2021: Who Suffers Most from Extreme Weather Events? Weather-related Loss Events in 2019 and 2000-2019”, available at : <https://germanwatch.org/en/19777> (last visited on July 10, 2021).

International principles like the polluter pays, precautionary, inter-generational equity sustainable development, and the doctrine of public trust have been used extensively by Indian court in deciding environmental issues. Amongst the international principles, scholars have given prominence to the principles of precautionary, public trust and inter-generational equity in invoking climate claims.<sup>19</sup> In this context the principles and doctrine of precautionary, public trust and inter-generational equity will be studied to see how Indian courts can decide climate claims in the future.<sup>20</sup>

India has been engaging itself in understanding the norms formulated in the various international conventions on climate change like the UNFCCC (1992), Kyoto Protocol (1997) and Paris Agreement (2015). Along these lines at the domestic level, the Indian government introduced the Energy Conservation Act, 2001, National Environment Policy (2006), National Action Plan on Climate Change (NAPCC) in 2008.<sup>21</sup> Unfortunately the policies have not yet achieved their goals. It is important for India to adopt the measures proposed by the IPCC,<sup>22</sup> since the impact of climate change is likely to affect the food production, water supply, coastal settlement and deltas, forest and mountain ecosystems, health, and supply energy security of the country. Litigation plays an important role in justice delivery system when the legislature and the executive failure. Climate claims are increasing as the impacts of climate change are affecting persons and property causing irreparable damages.<sup>23</sup>

The Supreme Court, High Courts and National Green Tribunal have been relying on international principles in addressing environmental issues in India. These principles have been analysed to examine the possible strategies to be adopted by Courts in addressing climate claims in the coming days.

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<sup>19</sup> Lavanya Rajamani and Shibani Ghosh, "India" in Richard Lord, Silke Goldberg et al. (eds.) *Climate Change Liability: Transnational Law and Practice* 151 (2012).

<sup>20</sup> United Nations Framework Convention on Climate Change, 1992, art.3. Recognizes the principles of precaution, public trust and intergenerational equity.

<sup>21</sup> Malini Parthasarthy "India for Emission Cut Target with Equitable Burden sharing" *The Hindu* (November 29, 2009), available at: <http://www.hindu.com/2009/11/29/stories/2009112958120100.htm>. (last visited on Oct. 10, 2021).

<sup>22</sup> Intergovernmental Panel on Climate Change, "Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Climate Change 2007: Impacts, Adaptation and Vulnerability, Summary for Policymaker" 19-20 (2007).

<sup>23</sup> Elisa de Wit, Sonali Seneviratne et al. "Climate change litigation update" available at: <https://www.nortonrosefulbright.com/en-in/knowledge/publications/7d58ae66/climate-change-litigation-update> (last visited on Oct. 2, 2021).

The precautionary principle facilitates in preventing environmental degradation and damage. The State has also been cast with a duty to ensure precautionary measures are undertaken to prevent environmental deprivation. Environmental actions are taken “to anticipate, prevent and attack” the problems of environmental harm.<sup>24</sup> Further, absence of scientific evidence should not be used as a reason to not take measures to “prevent environmental degradation”<sup>25</sup> if “there are threats of serious and irreversible damage.”<sup>26</sup> The industry who is responsible for developmental activities must show that “the proposed action is environmentally benign.”<sup>27</sup> Impacts of climate change can be considered as threats to the environment and by applying precautionary principle, state action can be challenged for falling short in addressing climate mitigation and adaptation measures.<sup>28</sup>

The doctrine of public trust enables the Government to protect public resources for the welfare of the society.<sup>29</sup> As a trustee, the State on behalf of its citizens has a duty to conserve and protect public resources including the climate system.<sup>30</sup> The public-trust doctrine has been playing a vital role in environmental jurisprudence in India. The Supreme Court’s decision affirms this when it stated that:<sup>31</sup>

Our Legal system-based on English common law-includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all-natural resources which are by nature meant for public use and enjoyment...The State as a trustee is under a legal duty to protect the natural resources.

The courts also emphasized that the common law principle has been part of the Indian legal system.<sup>32</sup> Climate change litigation can be brought under the purview of public trust doctrine

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<sup>24</sup> *Vellore Citizens’ Welfare Forum v. Union of India* (1996) 5 SCC 647, at para. 11.

<sup>25</sup> Intergovernmental Panel on Climate Change, “A Report of Working Group III of the Intergovernmental Panel on Climate Change - Climate Change 2001: Mitigation” (2001). According to s. 10.4.2.2 of the report, precautionary principle guides policymakers to take steps “when possibly dangerous, irreversible, or catastrophic effects are identified”, though “scientific evaluation of the potential damage is not sufficiently certain.”

<sup>26</sup> *Supra* note 24

<sup>27</sup> *Supra* note 24.

<sup>28</sup> *Supra* note 25

<sup>29</sup> Doctrine of public trust is an invention of the English common law though its history can be traced back to the Roman civil laws’ concept of *res communis* or common heritage of mankind. The English common law had observed the public trust doctrine during the thirteenth century and from then onwards its spread throughout the English empires and other jurisdictions including India and the United States. See. Paul A. Barresi, “Mobilizing the Public Trust Doctrine in Support of Publicly Owned Forests as Carbon Dioxide Sinks in India and the United States” 23 *Colorado Journal of International Environmental Law and Policy* 39 (2012).

<sup>30</sup> *Supra* note 24

<sup>31</sup> *M.C. Mehta v. Kamal Nath* (1977) 1 SCC 388, at para. 34

<sup>32</sup> *Reliance Natural Res. Ltd v. Reliance Indus.*, SCC Civ. App. No. 4273 (May 7, 2010), at para. 85.

based on assigning the State the responsibility of protecting national public trust resources for the future generation.<sup>33</sup> Such claims raise the matters of fundamental right and inter-generational equity of an individual, as well as balancing the functioning of the three governmental branches, namely the judiciary, legislative and executive.<sup>34</sup>

Inter-generational equity principle was first recognized in the Stockholm Declaration on the Human Environment.<sup>35</sup> In *Intellectual Forum, Tirupathi v. State of AP*<sup>36</sup>, the court decided that public trust doctrine and inter-generational equity principle are part of environmental rights under article 21 of the Constitution. Indian Supreme Court used inter-generational equity for the first time in protecting forest resources by stating “the present generation has no right to deplete all the existing forests and leave nothing for the next future generations”.<sup>37</sup> Climate change litigations can be brought under the preview of being an inter-generational problem, as the current generation has been facing impacts of climate change and if measures are not taken the future generation can also be burdened. The inter-generational principle can also provide justice to the present generation who are treated by the impacts of climate change.<sup>38</sup>

#### IV. Public Interest Litigation and Environmental Litigation

Public Interest Litigation (PIL) developed in India in the 1980s to voice the concerns of the marginalized section of the society. PIL has been considered as a “new era of judicial activism” in India.<sup>39</sup> With the development of PIL, the Supreme Court relaxed the rule of *locus standi* and broadened the scope of aggrieved persons by allowing public-spirited citizens, institutions, non-governmental organizations and other parties to file a case on behalf of a person who is unable to file a suit.<sup>40</sup> Over the years the ambit of PIL has included environmental claims other

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<sup>33</sup> Climate change mitigation claims compelling governments under public trust doctrine has been applied in countries like Ukraine, the Philippines, Pakistan and the United States Federal and State Courts. See. UN Environment Programme, *The Status of Climate Change Litigation: A Global Review*, 24 (May 2017).

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

<sup>35</sup> UN Stockholm Declaration on the Human Environment, 1972, principle 1, 2, 3, 5, 6 and 11.

<sup>36</sup> AIR 2006 SC 1350, the court stated that “all human beings have a fundamental right to a healthy environment commensurate with their well-being...ensuring that natural resources are conserved and preserved in such a way that present as well as the future generation are aware of them equally”.

<sup>37</sup> *State of Himachal Pradesh v. Ganesh Wood Products* (1995) 6 SCC 363 at para. 46; *Indian Council of Environmental Action v. Union of India* (1996) 5 SCC 281 at para. 26; *AP Pollution Control Board v. M. V. Nayudu* (1999) 2 SCC 718 at para. 52; *T.N. Godavarman Thirumulpad v. Union of India* (2006) 1 SCC 1 at para. 88, 89.

<sup>38</sup> Elizabeth D. Gibbons, “Climate Change, Children’s Rights, and Pursuit of Intergenerational Climate Justice” 16 (1) *Health and Human Rights Journal* 19-31 (June 2014).

<sup>39</sup> Gitanjali Nain Gill, “Human Rights and the Environment in India: Access through Public Interest Litigation” 14 *Environmental Law Review* 200 (2012).

<sup>40</sup> *S.P Gupta v. Union of India*, 1981 Supp SCC 87, at para. 17

than claims from individuals on their fundamental rights.<sup>41</sup> This can be seen in the case of *Rural Litigation & Entitlement Kendra (RLEK) v. Union of India*<sup>42</sup>, where the court directed the closure of lime- stone quarries that was causing ecological degradation. In the Vellore Citizens Forum case<sup>43</sup>, a PIL was filed to stop water pollution caused by tanneries situated in Tamil Nadu. The courts directed the government to take immediate action to stop further pollution.

In environmental matters, PIL has been noted to be an effective justice delivery system to the victims of environmental degradation.<sup>44</sup> With the scope of the *locus standi* widened, public-spirited citizens and organizations can file suits. Environmental suits that hold states accountable for not performing their functions have been addressed.<sup>45</sup> Judges have the authority with regard to PILs to decide innovative solutions, direct officials, monitor policy changes and enforce orders. Public spirited people and the judiciary can facilitate in bringing justice to victims of climate change with the help of PIL.

PILs have been used across jurisdictions to address climate claims before adjudicating bodies. To illustrate, in *Center for Social Justice Studies et al. v. Presidency of the Republic et al.*, the Colombian Constitutional Court allowed the petition to protect the rights of indigenous communities from mining and logging activities.<sup>46</sup> Further, in 2015 a claim was brought before the Commission of Philippines to investigate “the human rights implications of climate change and ocean acidification and the resulting rights violations in the Philippines”.<sup>47</sup> This shows that PILs are growing in climate claims and the courts in India can see such claims in the future.

## V. Tort Law and Environmental Litigation

Torts has been used by adjudicating bodies globally in environmental claims to protect private property from pollution from a long time.<sup>48</sup> Environmental issues in India before the enactment

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<sup>41</sup> *M.C Mehta v. Union of India* (1987) 1 SCC 395; *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420.

<sup>42</sup> 989 Supp (1) SCC 504.

<sup>43</sup> *Vellore citizens welfare forum v. Union of India*, (1987) 4 SCC 691.

<sup>44</sup> *Supra* note 39 at 203 .

<sup>45</sup> *Almrita Patel v. Union of India*, WP No. 888 of 1996; *M.C. Mehta v. Union of India*, AIR 1997 SC 734.

<sup>46</sup> (November 10, 2016) Judgment T-622/16

<sup>47</sup> *In re Greenpeace Southeast Asian*, Case No. CHR-NI-2016-001

<sup>48</sup> Donald D Dewees, “The Role of Tort Law in Controlling Environmental Pollution”18 (4) *Canadian Policy/Analyse De Politiques* 425 (1992).



of environmental laws were dealt under the provision of nuisance in common law.<sup>49</sup> The award for damages in tortious liability with respect to environmental claims was low in India and it was not a comprehensive mechanism to deter environmental harms.<sup>50</sup> For a tort claim to be invoked, first it has to be proved that it was the defendant's fault and second a relationship between the defendant's act and environmental damage has to be established.<sup>51</sup> One of the unique features of tort law applied in Indian environmental cases, was the inclusion of absolute liability by the Supreme Court in the landmark decision of *M.C. Mehta v. Union of India*.<sup>52</sup> The court provided that when an:<sup>53</sup>

Enterprise is engaged in hazardous or inherently dangerous activities and an accident occurs causing environmental or health damage, the enterprise is absolutely and strictly liable to compensate all who are affected by the accident.

The courts held that, "the measure of compensation must be correlated to the magnitude and capacity of the enterprise" in cases relating to hazardous substances.<sup>54</sup> In *Deepak Nitrite v. State of Gujarat*,<sup>55</sup> the court broadened the scope of compensation and provided "compensation to be awarded must have some broad correlation not only with the magnitude and capacity of the enterprise, but also with the harm caused by it".<sup>56</sup> Climate litigants can rely on absolute liability principle for recourse when climate change causes irreparable damage.<sup>57</sup>

One of the major challenges faced by adjudicating bodies in climate litigations has been with regard to establishing liability on the defendants. This can be seen in the case of *Macquarie v. Hodgson*<sup>58</sup>, where the Australian court held that the plaintiffs were unable to establish that the nuisance was caused by the emission from the defendant's coal plant. The court also stated that it is difficult to bring action of nuisance against emission of carbon dioxide as it is "colourless, odourless and inert."<sup>59</sup> Though Tort law can be direct and concrete in establishing liability

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<sup>49</sup> Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India: Cases Materials and Statutes* 88, 89 (Oxford University Press, 2002).

<sup>50</sup> *Id.*, at 89

<sup>51</sup> Charu Sharma, "Remedies for Environmental Harm: Dharmic Duty and Tort Liability in India-Is there a Common Ground" 8 *Macquarie Journal of International and Comparative Environmental Law* 51 (2012).

<sup>52</sup> (1987) 1 SCC 395.

<sup>53</sup> *Id.*, at 421. Also see, Robert F. Blomquist, "Comparative Climate Change Torts" 46 *Valparaiso University Law Review* 1063 (2012).

<sup>54</sup> *Supra* note 51 at 420-21.

<sup>55</sup> (2004) 6 SCC 402.

<sup>56</sup> *Id.*, at 407.

<sup>57</sup> *Supra* note 19 at 167.

<sup>58</sup> *Macquarie Generation v. Hodgson* [2011] NSWCA 424, p 35-67

<sup>59</sup> *Id.*, at 45.

when compared to violations of human rights or fundamental rights, there is still concerns regarding establishing standing and harm caused in climate claims.

## VI. Scope of Judicial Review in Climate Litigation

Judicial review confers the court with the power to monitor the legislature on the rule making power. Judicial review can be construed as “the power of the court to determine whether the acts of legislature and executive are consistent with the Constitution or Constitutional values”.<sup>60</sup> The recourse for seeking judicial review include writs, appeals for review, references to courts and injunctions.<sup>61</sup> In *Tata Cellular v. Union of India*, the court provided that judicial review of administrative action could be claimed on the ground of “illegality, irrationality, proportionality and procedural impropriety.”<sup>62</sup>

Judicial review can be based on *Wednesbury*’s unreasonableness, where the court will hold the administrative working does not have moral standards or logic.<sup>63</sup> *Wednesbury*’s unreasonableness test provides that, if a reasonable man cannot make a decision in an unreasonable situation, the situation has to be unreasonable.<sup>64</sup> In the review process the courts will only consider the decision-making process and not the decisions made by the administrative authority. Judicial review can be a powerful instrument in climate change matters, when the administrative authority makes a decision without looking into policies that prevent harmful effects of climate change.<sup>65</sup>

The test of proportionality in judicial review has been considered as the “main pillar of constitutional adjudication.”<sup>66</sup> The proportionality test is of European Origin and provides that a public authority has to ensure decision making is done in a reasonable manner in consonance

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<sup>60</sup> Justice Dr. B.S. Chauhan, “Judicial Review”, available at: [http://www.nja.nic.in/Concluded\\_Programmes/2018-19/P-1110\\_PPTs/8.Judicial%20Review.pdf](http://www.nja.nic.in/Concluded_Programmes/2018-19/P-1110_PPTs/8.Judicial%20Review.pdf) (last visited on Oct. 3, 2021).

<sup>61</sup> G.P. Singh and A. Aradhe, *M.P. Jain & S.N. Jain: Principles of Administrative Law* 495 (Lexis Nexis, India, 6th edn., 2010).

<sup>62</sup> (1994) 6 SCC 651.

<sup>63</sup> *Indian Railway Construction Co. Ltd. v. Ajay Kumar* (2003) 2 SCC 579 at 591.

<sup>64</sup> *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948) 1 KB 223.

<sup>65</sup> *Supra* note 19 at 163.

<sup>66</sup> Moshe Cohen-Eliya and Iddo Porat, “Proportionality and the Culture of Justification” 59 *American Journal of Comparative Law* 464 (2011).

to the general purpose of the power conferred to them.<sup>67</sup> The judiciary applies the proportionality test to determine whether the act of the government actions violates constitutional rights. The proportionality test in judicial review process helps in ensuring a balance between rights and interest of people. Courts can use the proportionality test to determine equity in cases relating to climate change by assessing the acts of the government with respect to climate actions.<sup>68</sup> In addition, if an administrative authority does not follow the procedure established by law to prevent the impacts of climate change, climate litigants can approach the courts.<sup>69</sup> Articles 14, 19 and 21 provides for protection for principles of natural justice, when administrative decisions are unfair and unreasonable, judicial review helps in keeping a check on the decision making process.<sup>70</sup>

When the administrative authorities and the legislature fails in implementing the laws, the judiciary pursues measure to render justice to the people. In the future, climate claims will be addressed by the judiciary when the administrative and legislative processes fail in following measures to protect people from climate change impacts.

## VII. Climate Litigation in India

Climate litigation in India has not evolved as much as it has progressed in countries like the United States and the European Union. United States has been leading in climate litigation over the past two decades.<sup>71</sup> Suits including regulating vehicular pollutants emitting greenhouse gases,<sup>72</sup> to violation of constitutional right to life caused by government policies allowing fossil fuels to carry on their business at harmful levels<sup>73</sup> have been dealt by the Courts in the United States. The New Zealand Court has also delivered an important climate claim that has paved way for future litigations, a notable litigation was the *Thomson's case*<sup>74</sup>, where the plaintiff questioned the targets set by the New Zealand's Government at the Paris Agreement. Also, in *Smith v. Fonterra Co-Operative Group Limited*<sup>75</sup>, claim was brought against major New Zealand facility emitters of greenhouse gas for violating their duty to prevent climate change.

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<sup>67</sup> Kai Moller, "Proportionality: Challenging the critics" *International Journal of Constitutional Law* 709 -711 (2012).

<sup>68</sup> *Supra* note 19 at 162.

<sup>69</sup> *Chairman, All India Railway Rec. Board v. K. Shyam Kumar* (2010) 6 SCC 614

<sup>70</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>71</sup> *Supra* note 8.

<sup>72</sup> *Massachusetts v. Environment Protection Agency*, 549 US 497 [2007].

<sup>73</sup> *Juliana v. United States*, 947 F. 3d 11597, 1171 (9th Cir. 2020).

<sup>74</sup> *Thomson v. Minister of Climate Change Issues*, 2017 No. 793 JR

<sup>75</sup> [2020] NZHC 419.

There has been a growing number of cases holding companies liable for climate litigation recently. The Indian Judiciary can see these matters being presented before it in the coming days.

The first reference in India to the term “global warming” was seen in an environmental case in the 1990s.<sup>76</sup> Climate litigation in India has been of recent origin and the courts have been developing new strategies to resolve harm caused to victims of climate change. The recent development of climate decisions in India can be classified into four categories, namely claims against the decisions of the government, failure to implement policies, demand for new policies and challenging defense taken by the government on their duty to prevent climate change.<sup>77</sup> The common concerns addressed in these categories are based on violations caused by “climate change, global warming and international negotiations.”<sup>78</sup>

Climate litigation challenging government decisions in regulating climate change was addressed in *Om Dutt Singh v. State of Uttar Pradesh*,<sup>79</sup> where the issue raised was with respect to construction of an irrigational plant that would produce methane emission contributing towards the increase of greenhouse gases mission in the country. In the case of *Sukhdev Vihar Residents’ Welfare Association v. Union of India*<sup>80</sup>, the National Green Tribunal (NGT) approved the establishment of a waste-to-energy plant project that facilitated in reduction of greenhouse gas emission. In addition, the NGT has also provided decisions stating that government notifications are not in consonance with the Paris Agreement and the Rio Declaration.<sup>81</sup>

The second category of claims, based on litigants approaching the court for implementation of government laws or policies with regard to climate change can be seen in the decision of *Gaurav Bansal v. Union of India*,<sup>82</sup> where the petitioner challenged the implementation of the National Action Plan on Climate Change (NAPCC) by the State and Central Government.<sup>83</sup> This case paved way for future climate litigants to challenge the implementation of the NAPCC

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<sup>76</sup> *Environmental and Ecological Protection Samithy v. Executive Engineer* (1991) 2 KLT 493.

<sup>77</sup> Shibani Ghosh, “Litigating Climate Claims in India” 114 *American Journal of International Law* 45 (2020).

<sup>78</sup> *Ibid.*

<sup>79</sup> NGT App No. 521/2014 (May 7, 2015).

<sup>80</sup> NGT App No. 22 (THC)/2013 (Feb. 2, 2017).

<sup>81</sup> *Society for Protection of Environment and Biodiversity v. Union of India*, NGT App No. 677/2016 (Dec 8, 2017).

<sup>82</sup> NGT App No. 498/2014 (July 23, 2015).

<sup>83</sup> *Ibid.*

before the NGT. *Mahendra Pandey v. Union of India*,<sup>84</sup> was an important litigation that drove the Delhi Government to submit their State Action Plan on Climate Change (SAPCC) to the central government. Another important litigation decided by the NGT was on directing a coal power plant to stop their functioning as the plant was causing ashes.<sup>85</sup> The NGT justified by stating that “important co-benefit of such [a]n initiative would be lesser GHG emissions-i.e. lesser carbon footprint in thermal power generation.”<sup>86</sup> The Courts have also relied on international instruments including sustainable developmental goals 13 (climate action) and 16 (peace justice and strong institutions), the Paris Agreement and also India’s National Determined Contribution under the Paris Agreement before passing the decisions such as approval of construction of airports.<sup>87</sup> The Kerala High Court in a recent decision provided, the Kyoto Protocol “reminds the nation to strive for the policies and measures to minimize adverse effects on climate change and to promote sustainable forms of agriculture in the light of climate change conditions”.<sup>88</sup>

The third category, where direction requiring governments to formulate new policies addressing climate change has seen courts relying on international climate instruments to emphasize the need for climate protection.<sup>89</sup> In a case where the petitioner challenged the setting up of a windmill farm, stating that an environmental and climate impact had to be undertaken by the authorities. The central government included regulations to include windmill farms in clean development mechanism projects.<sup>90</sup> One of the noted cases in India was the case of *Ridhima Pandey v. Union of India*,<sup>91</sup> where a minor sort for direction from the court to provide notice to the governments to include climate impacts before administrative decisions were made with regard to development. Even though the final order of the NGT was not very responsive towards the petitioner, the tribunal stated, “there is no reason to presume that Paris Agreement and other international protocols are not reflected in the policies of the Government of India or are not taken into consideration in granting environment clearances”.<sup>92</sup>

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<sup>84</sup> NGT App No. 470/2016 (Jan 2, 2019).

<sup>85</sup> *Ratandeep Rangari v. State of Maharashtra*, NGT App No. 19/2014 (WZ).

<sup>86</sup> *Id.*, at para 34.

<sup>87</sup> *Supra* note 77 at 47.

<sup>88</sup> *Manu Anand v. State of Kerala*, MANU/KE/0461/2016.

<sup>89</sup> *Supra* note 77 at 48.

<sup>90</sup> *Kallpavalli Vrishka Pempakamdarula Paraspar Sahayaka Sahakara Sangam Ltd. v. Union of India*, NGT App No. 92/2013 (Aug. 25, 2015).

<sup>91</sup> NGT App. No. 187/2017 (Jan. 15, 2019).

<sup>92</sup> *Id.*, at para 3.

The fourth classification focuses on the government defending their decisions on matters concerning climate change.<sup>93</sup> In *M/S Singh Timber Traders v. State of U.P.*,<sup>94</sup> government referred to climate concern as a basis for this decision-making, as cutting down trees would increase greenhouse gas emission and also reduce carbon sequestration. In addition, in a case dealing with promotion of green energy and development of energy generation, the State Electricity Regulatory Commission of Rajasthan contended that their regulations were based on the NAPCC and the “need to generate green energy”.<sup>95</sup>

From the above analysis it can be construed that climate litigation has been growing in India. The Indian judiciary has been known for evolving robust environmental jurisprudence that facilitates different dimensions of environmental concerns. Indian courts will be seen employing new mechanism in the future to address climate claims under constitutional and statutory laws to ensure climate protection to the people. In a recent decision of *Association for Protection of Democratic Rights* case,<sup>96</sup> this can be seen. The claim brought before the court was regarding felling of trees by the West Bengal Government for construction and developmental purpose. In March 2021, the Supreme Court directed an expert body to be formulated to overlook the decision with regard to felling of trees and also noted that “the issue assumes significance from the perspective of climate change as a growing national and international concern”.

The Supreme Court, Hight Court and the National Green Tribunal must anticipate future litigations on climate change to deal with matters relating to violation of human rights due to climate impacts. Climate litigation is the only hope for India as a remedy against climate change where there is no robust legal framework to protect the country’s citizens, property and ecosystem.

## VIII. Climate Litigation and Restorative Justice

### Concept of Restorative Justice

Restorative justice has been an important redressal system in the society that helps in healing and empowering victims. The concept of restorative justice has been evolving across

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<sup>93</sup> *Supra* note 77 at 48.

<sup>94</sup> MANU/UP/2993/2014.

<sup>95</sup> *Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission* (2015) 12 SCC 611.

<sup>96</sup> *Association for Protection of Democratic Rights v. State of West Bengal*, SLP (C) 25047 of 2018.

international and domestic jurisdictions to encompass voices of crime victims, who are otherwise ignored by the society.<sup>97</sup> The widely recognized definition of restorative justice was given by Tony Marshall, who defined it as “a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.”<sup>98</sup> In addition, the United Nations Office on Drugs and Crime (UNODC) provides that restorative justice has been a mechanism by which the needs of the victims, offenders and community towards a criminal behaviour are balanced to heal and resolve the harm caused.<sup>99</sup>

Therefore, the main features of restorative justice can be examined in four important aspects.<sup>100</sup> First, the process involves formulating resolution of the crime by the offender, victim and the community. Second, restorative justice ensures an outcome that is tangible. For example, setting up a mediation process between the victim and the offender or conducting family group discussions to find solutions. Third, the offender has to accept the wrong committed and provide recourse to the crime committed. Fourth, the objective of restorative justice is to heal the victim with the help of the community and offender rather than providing a retributive mechanism. Further, for the restorative process to succeed in its objectives, the UNDOC provides for certain essential components to be fulfilled, such as there should be “an identifiable victim, voluntary participation by the victim, an offender who accepts responsibility of his/her criminal behaviour” and the offenders voluntary participation.<sup>101</sup>

Restorative justice was first introduced in 1989 in New Zealand<sup>102</sup> and then in Australia<sup>103</sup> to render restoration of victims who were young adults. The success of restorative justice mechanism in providing constructive solutions to the victims, offenders and the community expanded its scope and ambit even to environmental crimes arising from harm caused to nature or man-made environment.<sup>104</sup>

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<sup>97</sup> Tony F Marshall, “The Evolution of Restorative Justice in Britain” 4(4) *European Journal of Criminal Policy and Research* 31 (1996).

<sup>98</sup> *Id.*, at 21, 37.

<sup>99</sup> United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programs* 6 (United Nations, New York, 2006).

<sup>100</sup> *Supra* note 97 at 30, 31.

<sup>101</sup> *Supra* note 99 at 11.

<sup>102</sup> The New Zealand Children, Young Persons, and Their Families Act, 1989.

<sup>103</sup> Christine Alder and Joy Wundersitz (eds.) *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* 45 (Australian Institute of Criminology, Canberra, 1994).

<sup>104</sup> *Supra* note 97 at 33.

## Environmental Crimes and Restorative Justice

Environmental crimes are generally referred to any harm illegally caused to the environment for the benefit of industries, groups or persons.<sup>105</sup> The harm can be caused in the form of unlawful management and trading of natural resources, that include ‘flora and fauna’, and contamination of soil and water from unlawful disposal of waste.<sup>106</sup> Environmental crimes include a comprehensive list of unlawful activities including ‘illegal trade in wildlife; smuggling of ozone-depleting substances and illicit trade of hazardous waste.’<sup>107</sup> The concept of environmental crimes does not have a universally accepted definition.<sup>108</sup> Scholars have attempted to offer few definitions to understand the concept of environmental crimes, where the concept has been defined as, ‘An environmental crime is an act committed with the intent to harm or with a potential to cause harm to ecological and/or biological systems and for the purpose of securing business or personal advantage.’<sup>109</sup> Another definition states that environmental crimes is ‘an unauthorized act or omission that violates the law and is therefore subject to criminal prosecution and criminal sanction.’ The definition stresses on harm caused to people’s health and safety as well as the environment by unlawful actions undertaken by individuals, groups or industries for their benefit.<sup>110</sup> Therefore, it can be summed that environmental crimes encompasses all offences enshrined in the statutes or established under the common law to protect and conserve the environment.<sup>111</sup> Criminal liability has been enforced on environmental violations mainly due to the lack of deterrence provided by administrative and civil laws or due to societal demands to bring criminal actions to prohibit further environmental violations.<sup>112</sup> Moreover, criminal sanctions are imposed when the wrong done is beyond the ‘limits of toleration.’<sup>113</sup> Climate change has impacted the basic needs of

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<sup>105</sup> Combating crimes that have serious impacts on the environment: state of knowledge on approaches, available at: <http://www.unicri.it/topics/environmental/outreach> (last visited on Oct. 2, 2021).

<sup>106</sup> *Ibid.*

<sup>107</sup> Environmental Crimes, available at: <http://www.unicri.it/topics/environmental> (last visited on Oct. 2, 2021).

<sup>108</sup> Mary Clifford (ed.) *Environmental Crime: Enforcement, Policy and Social Responsibility* 6 (Aspen Publishers Inc., Gaithersburg, 1998).

<sup>109</sup> *Id.*, at 26

<sup>110</sup> Yingyi Situ and David Emmons (eds) *Environmental Crimes: The Criminal Justice System’s Role in Protecting the Environment* 3 (Sage Publications, Thousand Oaks, 2000).

<sup>111</sup> Virender Sindhu, “Environmental crimes: An analysis” 3(1) *International Journal of Advanced Educational Research* 274 (2018).

<sup>112</sup> *Id.*, at 277.

<sup>113</sup> Catriona McKinnon, “Climate crimes must be brought to justice” available at: <https://en.unesco.org/courier/2019-3/climate-crimes-must-be-brought-justice> (last visited on Oct. 2, 2021).



mankind causing threat to human security and existence which are beyond all limits of tolerations.<sup>114</sup> Hence, climate injustices can be construed to be a crime against humanity.

International climate negotiations from the United Nations Framework on Climate Change (UNFCCC)<sup>115</sup> in 1992 to the Paris Agreement in 2015<sup>116</sup> have been trying to make strategies to reduce emissions caused by anthropocentric activities at the international and domestic levels to prevent adverse impacts of climate change. The UNFCCC objectives provide ‘stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.’<sup>117</sup> To ensure climate justice, the actions enshrined in the Paris Agreement has to be enhanced by nations to help achieve the objectives of the UNFCCC.<sup>118</sup>

Studies show that due to the rise in sea levels caused by global warming, cities like New York, Mumbai, and Shanghai will be at the risk of submerging by the end of the century<sup>119</sup>. Kiribati Island in the Pacific has already witnessed the impacts of rising sea levels. The islanders are experiencing extensive coastal erosion, not just of the beaches, but also of the land. This is threatening their livelihood and ecology<sup>120</sup>. The situation has been increasingly alarming as there could be many more such instances like the Kiribati Island if the causes of rise in sea level are not adequately addressed. Hence, a justice mechanism that prevents further harm as well as heal the victims of climate change is the need of the hour.

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<sup>114</sup> *Ibid.*

<sup>115</sup> Available at: [https://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf) (last visited on Oct. 2, 2021).

<sup>116</sup> *Supra* note 2.

<sup>117</sup> *Supra* note 2 at art. 2.

<sup>118</sup> Rosemary Lyster “Climate Justice, Adaptation and the Paris Agreement: A Recipe for Disaster?” 26 (3) *Environmental Politics* 439 (2016).

<sup>119</sup> Major cities threatened by rapid sea level rise, new reports find, (February 22, 2016) available at: <http://www.climatechangenews.com/2016/02/22/major-cities-increasingly-threatened-by-rapid-sea-level-rise-new-reports-find/> (last visited on October 2, 2021).

<sup>120</sup> Coastal Erosion, available at: <http://www.climate.gov.ki/category/effects/coastal-erosion/> (last visited on Oct. 3, 2021).

India is one of the major emitters of greenhouse gases and also the most vulnerable country to be impacted by climate change.<sup>121</sup> Recent events such as the Tsunami in the Southern coastal region (2004), Uttarakhand earthquake (2013) where more than 5,000 people lost their lives, drought in heavy rain fed parts of the country, heat waves across the nation causing 2,500 deaths in multiple states (2015), water stress are some of the impacts already being experienced. The global surge in temperature has caused meltdown of the Himalayan ice sheets and glaciers which has caused irreparable harm to the environment and people.<sup>122</sup> As the poor in India have less adaptive capacity<sup>123</sup> and the legal frame is not comprehensive enough to address climate issues, restorative justice can be a means to bring climate justice.

The main purpose of restorative justice is to ensure the victims of crime are empowered and included in the justice delivery system. Hence, identifying the victims of crime is of primary importance in restorative approach.<sup>124</sup> Victims of climate change can be specific persons, group of persons whose life, health or property has been directly impacted due to climate change. In addition, climate impacts can cause ‘loss of natural resources that are not renewable’ causing harm to the future generations.<sup>125</sup> Therefore, remedies need to include intergenerational justice also. Environmental restoration requires restoration over generations and hence the healing process has to be transferred from the present to the future generations.<sup>126</sup>

Environmental crimes in India have been remedied under the Indian Penal Code and specific provisions of environmental statutes for many years. Courts have also decided cases imposing criminal liability with regard to environment cases, one such decision was that of *State of Madhya Pradesh v. Warren Anderson*<sup>127</sup> where the magistrate imposed criminal liability on eight persons including the chairman of the company for violating section 304A of the Indian Penal Code.<sup>128</sup>

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<sup>121</sup> Jocelyn Timperley “Carbon Brief Profile: India” *CarbonBrief*, available at: <https://www.carbonbrief.org/the-carbon-brief-profile-india> (last visited on Oct.3, 2021).

<sup>122</sup> Damian Carrington “A third of Himalayan ice cap doomed, finds report” *The Guardian*, available at: <https://www.theguardian.com/environment/2019/feb/04/a-third-of-himalayan-ice-cap-doomed-finds-shocking-report> (last visited on Oct. 2, 2021).

<sup>123</sup> Anonna Dutt “Vulnerable sections likely to bear brunt of global warming” *Hindustan Times* (November 11, 2019), available at: <https://www.hindustantimes.com/india-news/vulnerable-sections-likely-to-bear-brunt-of-global-warming/story-QMuKOce80yXYqYIO1NlyGO.html> (last visited on Oct.10, 2021).

<sup>124</sup> Brian J Preston “The use of restorative justice for environmental crime” *Paper presented to EPA Victoria Seminar on Restorative Environmental Justice* 8 (March 22, 2011).

<sup>125</sup> *Ibid.*

<sup>126</sup> *Supra* 124 at 12.

<sup>127</sup> Cr Case No. 8460/1996.

<sup>128</sup> Indian Penal Code of 1921, s. 304A, deals with ‘Causing death by negligence’.

Restorative approach has been existing in Indian dispute resolution process from ancient times where community centric redressal system was prevalent.<sup>129</sup> Restorative justice principles have been used commonly in cases dealing with crimes against women and children. The main features of restorative justice comprise of ‘repair, restore, reconcile and reintegrate the offenders and victims’ to the society.<sup>130</sup> Restorative approach has not been used in environmental cases in India, but it has much to offer as a process. Restorative processes can provide a better adaptation and mitigation process to environmental harm as it empowers change from the bottom up.<sup>131</sup> Environmental victims, include victims of climate violations and include indigenous communities, women, children, future generations and environment who usually have no voice in decision making. Restorative justice can help balance the climate inequities caused by offenders such as companies, governments and individuals, as it is concerned about needs and roles in a crime.

### **IX. Way Forward for Climate Litigation in India**

Until now, the Courts in India have envisaged climate change only as a discussion statement while deciding matters on right to a healthy environment,<sup>132</sup> rather than considering it as the main mooted point. The Indian Judiciary needs to take a more proactive step in addressing climate claims as an important aspect of right to life, considering the vulnerable position faced by India’s citizens. The Courts have been successful in settling environmental claims using various strategies including PILs and judicial reviews, extending these mechanisms to climate claims would facilitate better justice delivery system in matters relating to climate change.

One of the main issues that can be anticipated by the Indian judiciary in the coming days is with regard to climate claims relating to corporate liability and responsibility. There might be complication with regard to holding them liable due to the fact that these companies are registered in the developed countries including the United States, and as a developing country, India has been dependent on foreign direct investments for its economic growth. However, various jurisdictions have addressed corporate liability under climate claims, which can be

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<sup>129</sup> “Perspectives of Justice: Restorative Justice and Child Sexual Abuse in India” 55, *available at*: <https://nludelhi.ac.in/download/publication/2017/Perspectives%20of%20Justice.pdf> (last visited on Oct. 3, 2021).

<sup>130</sup> S. Latha and R. Thilagaraj “Restorative Justice in India” 8 *Asian Journal of Criminology* 309-319 (2013).

<sup>131</sup> Femke Wijdekop, “An IUCN Report Restorative Justice Responses to Environmental Harm”, *available at*: <http://files.harmonywithnatureun.org/uploads/upload864.pdf> (last visited on Oct. 10, 2021).

<sup>132</sup> *State of MP v. Uday Singh*, AIR 2019 SC 1597.

instrumental for the Indian judiciary in addressing such claims. For example, *in re Greenpeace Asia case*<sup>133</sup> 50 ‘carbon major’ companies were accused of violating human rights of Filipinos due to their industrial activities. In *Lliuya* case, a German utility were charged with compensation for causing melting of glaciers due to their industrial activities.<sup>134</sup>

Another important claim that can be brought before the Indian courts would be pertaining to extreme weather patterns and the failure of government/defendants to take proper steps in preventing climate impacts. Such claims were brought in *Harris County’s* case<sup>135</sup> and *York County* case,<sup>136</sup> courts in both the cases directed review of actions taken by the defendants with regard to preventing climate risks. The Indian courts can take cognizance of the existing international decisions to address claims relating to climate change to render justice.

## X. Conclusion

The contributions made by the Indian judiciary towards climate litigation has been growing. Climate litigation can be brought under various laws including the constitutional and statutory laws in India. The Indian judiciary’s wide scope of interpretation enabled under the Indian Constitution would see evolution of climate jurisprudence in the coming days. Where the legislature and the executive have failed in protecting the rights of the citizens, the judiciary has always stepped in as a guardian. With climate litigation the interest of the present and future generations would be addressed by the courts. As the global community focuses on measures to achieve stabilization of emission levels in the atmosphere, the Indian judiciary has been looking at techniques to facilitate measure to help victims of climate change adapt to the adverse impacts in a sustainable manner. In addition, the COVID -19 pandemic has also been challenging for developing countries including India with regard to accumulation and disposal of waste, which can also contribute towards climate crises.<sup>137</sup> The challenges caused by COVID - 19 on climate change are to be further examined and the Courts in the coming days would be addressing such claims.

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<sup>133</sup> *Supra* note 47.

<sup>134</sup> *Lliuya v. RWE AG*, Frankfurter Allgemeine Zeitung, Dec. 15, 2016.

<sup>135</sup> *Harris County v. Arkema*, No. 201776961 (Harris Co. Dist. Ct. Nov. 16, 2017).

<sup>136</sup> *York County et al. v. Rambo et al.*, No. 5:19-CV-00994, Class Action Complaint (N.D. Cal. Feb. 22, 2019).

<sup>137</sup> Samuel Asumadu Sarkodie and Phebe Asantewaa Owusu, “Impact of COVID-19 pandemic on waste management” *Nature Public Health Emergency Collection* 1-10 (2020).

Climate claims can widen the scope of art. 21 of the Constitution of India to include right to be protected against climate change and a duty will be cast on the citizens and the under the fundamental duties and the directive principles of state policy respectively to ensure protection against climate change. In addition, claims can be brought before the NGT to approve developmental projects only after considering impacts on the climate system. Climate claims can be brought against the government for not taking adequate measures to adapt to and mitigate climate change. Restorative approach can be another important tool used by the judiciary to render climate justice in India. The active role of the victim, offender and community to facilitate in resolving climate violations is the need of the hour. Thus, it is imperative to look at climate litigation as a means to render equity and climate justice in India.