

**Constitution of India and Environmental Governance:
Administrative and Adjudicatory Process**

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Lecture 23

United Nations Framework Convention on Climate Change

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5. CLIMATE CHANGE - LAW AND JUSTICE

5.A.UNFCCC

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The fourth module focused on environment and development interface, the legal inquiries in relation to that. We now move on to two important aspects of environmental law enquiry in the area of commons global, national and local commons. The next 2 modules, the fifth and the sixth are devoted to legal inquiries and the concern over the protection of and the management of two major commons, one climate change and another on diversity.

The two are picked precisely for the reason that they are of contemporary relevance, significance and importance and over which there has been a lot of work being done in developing the legal frame at the international level followed by legislative and administrative actions at national levels. As a matter of fact, these were the two areas of environmental law which are still evolving. There is an element of rawness about them.

There is a lot of energy in the working of and crafting of different aspects of the law. While on the one side on climate change the law is still in a state of fluid development, in case of biological diversity or biodiversity it has more or less settled down. We start with climate change under the caption climate change, law and justice, in this fifth module. And within that we have 4 sections. We will first start with the international framework law. In the second section we will get into a protocol in relation to that. The third section deals with the latest law that is just being evolved in the international level four years back what is referred to as the Paris Agreement and then move on to the domestic Indian law and the action plan with regard to climate change. We start with the framework law, The United Nations Framework Conventional Climate Change 1992.

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But first let us view a small cartoon. It is a telling commentary on our way of life in a unthinking way we contribute to what is being described as global warming. While coming up with pretends as and pretensions that we would just like to keep our environment clean and not contribute to global warming. Against this is back drop, we look to what law has been doing and how the legal safeguards are being protected or provided for, to take care of the climatic conditions of the world.

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I. THE SETTING



- **CLIMATE CHANGE** : Significant, Long-Term Changes In The Global Climate- **CHANGE IN GLOBAL TEMPERATURE & WEATHER PATTERNS** –
- **CAUSE** : concentration of GHGs in the earth's atmosphere (- such as carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), perfluorocarbons (PFCs), hydrofluorocarbons (HFCs), and sulfur hexafluoride (SF₆) - out of which CO₂ accounts for two-thirds of the emissions, as a result of burning of fossil fuels] - since the time of the Industrial Revolution—steady rise in mean global temperatures: “**historic anthropogenic emissions**”-**CONTRIBUTION OF INDUSTRIALISED NATIONS**
- **IMPACTS** : BOTH SHORT-TERM AND LONG-TERM - **NATURAL CALAMITIES** ; **CATAclysmic IMPACTS ON HUMAN HEALTH, LIFE, LIVELIHOOD, LIFE-STYLE, WELL-BEING; DEVASTATING AND IRREVERSIBLE IMPACTS ON FLORA, FAUNA, ECO-SYSTEMS- SEVERITY OF IMPACT EXPERIENCED BY**



Climate change, what is special about that? Climate keeps changing all the while. It is seasonal, and so what is so special about that. It is not that the usual normal natural change in the climatic conditions, of warm weather during the summer, heavy rains during the autumn and chilling cold during the winter. That is not what we are referring to. The real matter of concern about this global common, the global climate is about climate change which actually refers to significant long-term changes in the global climatic conditions.

Such changes in global temperature and weather patterns as would affect, alter and have a long-term impact on the environmental condition that we live in, so as to affect our quality of life as well besides affecting the life and life forms all around us. That is what we are referring to. That kind of a change which has serious impact, which has serious impact if not taken care of, if the trend is not arrested then it would lead to serious irreversible consequences of even putting life and life forms on earth at present at the danger of extinction even.

So, when we refer to such significant changes in the climatic condition, the first and the foremost thing that we have to note is the cause. The cause is supposed to be as the science has conveyed to us is because of the concentration of what are referred to as, the green house gases, GHG for short, in the atmosphere. These green house gases which are in the form of carbon dioxide, methane, nitrous oxide, per fluorocarbons, hydro fluorocarbons and sulphur hexafluoride.

Of these the carbon dioxide is supposed to account for two thirds of those emissions that have gotten into the atmosphere and got concentrated and locked up in the atmosphere and the quality of these green house gases or GHGs is that they get locked for over 100 years and would result in sudden changes in the atmospheric temperature conditions and this has been happening. It is a phenomenon that has been happening since the time of industrial revolution. There has been a steady raise in the mean global temperatures.

From the ice age to the present age, the global temperature has always been increasing at a very marginal manageable level. But in the last 150 years since the ushering of the industrial revolution the change has been very rapid. The increase has been very high and these have caused so much of change in the atmospheric condition that the global temperature is constantly on the rise and it has reached almost the tipping point.

These are also what is referred to as the historic anthropogenic emissions because these are the emissions which are not natural but which are the result of the industrial activity that we have gotten into and through this queuing of these gases into the atmosphere and getting it locked up there in the atmosphere for hundreds of years they have contributed to the change in the global temperature.

Obviously as it has been stated that this is primarily the contribution of industrialized nations which started the industrial revolution and even continue with that even now. In terms of impact, what impact it would have? As we are already witnessed to it, it has both short term and long-term impacts. It causes natural calamities unprecedented proportions. They have cataclysmic impacts on human health, life, livelihood, lifestyle and well-being. The impacts are devastating and at times irreversible on plant life, animal life, the ecosystem.

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MOST VULNERABLE SECTIONS OF SOCIETY ; SMALL ISLAND NATIONS AND ARCHIPELAGOES .

IPCC: Created in 1988 by the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP) –provides governments at all levels with scientific information that they can use to develop climate policies - Its reports are also a key input into international climate change negotiations- it reported: the long-term effects of global warming would include a general rise in sea level around the world, resulting in the inundation of low-lying coastal areas and the possible disappearance of some island states; the melting of glaciers, sea ice, and Arctic permafrost; an increase in the number of extreme climate-related events, such as floods and droughts, and changes in their distribution; and an increased risk of extinction for 20 to 30 percent of all plant and animal species.



And unfortunately, the severity of these impacts is felt at the most in the most intensive way by the vulnerable sections of society the POA sections and globally small island nations and archipelagos. There is a scientific body called IPCC, Intergovernmental Panel on Climate Change. This was created by the Meteorological Organization, WMO and the United Nations Environment Programme in the year 1988.

It is a group of scientists spread all over, all over the world and they, this is the network, there is a platform which provides through them with the information that they have been able to gather, disseminate and make available to the world information, scientific, verifiable information to all the governments at all levels and international bodies, who can use these information to develop climate policies.

It is a report or a key input into the entire international climate change negotiations. In fact, if there is one international legal document in the environmental sphere which is essentially based on scientific evidence. It is this law concerning climate change and this information comes from IPCC. What does its report say? Its periodic reports convey that the sudden changes in the global atmosphere, temperature that is occurring over a period of time has long term effects of global warming and this results in a general rise in the sea level around the world, resulting in

inundation of low-lying coastal areas and the possible disappearance of some island states.

It would lead to melting of glaciers, the sea ice and Arctic frost. It increases the number of extreme climate related events, such as floods and droughts and even in the distribution of the rain fall, the floods, there has been a sudden change. The river takes changes its course all of a sudden. There will be a huge impact of a cyclonic condition. We in India, we witnessed that Tsunami which was unprecedented and so is the case in different parts of the world and now we have this Corona virus. And an increased increase in the temperature as it is happening now, it risks the extinction of 20 to 30 percent of all plant and animal species if this trend is not arrested. A warning signal.

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- - IMPACTS, GLOBAL IN SCOPE AND UNPRECEDENTED IN SCALE-
"IDEA OF COMMONS" AND "COMMON CONCERN OF HUMANITY"
: CLIMATE CHANGE - EMERGENCE OF GLOBAL COMMITMENT TO
CONTAIN DAMAGE & RESTORE INTEGRITY OF THE "GLOBAL
COMMONS
- 1992, "Earth Summit": United Nations Framework Convention on
Climate Change (UNFCCC) , first step in addressing the climate
change problem - 197 ratifications- near universal membership



Something which is alarming that we need to really take note of and that is what the scientific community gives to the entire globe as a message that the impacts that we are experiencing now which will become more severe as we go on, is global in scope and unprecedented in scale. The entire idea of commons and the common concern of humanity is at peril. Climate change is something which need help to be tackled globally with a framework of a law and through international co-operation and then operationalize with the national level so as to ensure that the global climate is taken care of so that our lives, the lives of future generation are then well taken care of and so there has been an emergence of a global commitment to contain this damage and

restore the integrity of the global commons.

In the 1992 Earth summit about which we had referred earlier, the United Nations Framework Convention On Climate Change was unfurled as the first step in addressing the climate change problems and this is something that we need to take note that it is for the first time for an international summit, and an international convention the membership which it had and it continues to have is something which is almost global in its reach. After the United Nations Organization, perhaps this is the first major international environmental arrangement which had as many as 197 ratifications of member nations. That means it has a near universal membership. So, whatever this particular framework law gives is binding on all the countries of the world without any exception as you can make out.

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II. UNFCCC, 1992



- BUILDS UP ON THE VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER, 1985 AND THE MONTRAL PROTOCOL, 1987 AND THE GENERAL ASSEMBLY RESOLUTIONS, STARTING FROM 1988, ON PROTECTION OF GLOBAL CLIMATE FOR PRESENT AND FUTURE GENERATIONS OF HUMANKIND
- ACKNOWLEDGED, HISTORICAL AND CURRENT GLOBAL EMISSIONS OF GHGs ORIGINATED IN DEVELOPED COUNTRIES- STRESSED THE NEED FOR DEVELOPED COUNTRIES TO TAKE IMMEDIATE MEASURES, AS A FIRST STEP TOWARDS COMPREHENSIVE RESPONSE STRATEGIES AT ALL LEVELS THAT TAKE INTO ACCOUNT ALL THE GHGs, WITH DUE CONSIDERATION OF THEIR RELATIVE CONTRIBUTIONS TO THE ENHANCEMENT OF THE GREENHOUSE EFFECT –ALSO TO FACTOR IN THE LEGITIMATE PRIORITY NEEDS OF DEVELOPING COUNTRIES FOR ACHIEVING SUSTAINABLE ECONOMIC GROWTH AND ERADICATION OF POVERTY



What does this Convention contain and convey? Way back in 1985, there was another international convention on the protection of the ozone layer which had developed certain gaps in the stratospheric atmosphere and to plug that an international arrangement was worked out putting obligations on the stage to stop releasing what are referred to as the chlorofluorocarbons and switch to an alternative technology so that this ozone layer which is very important for the protection of the earth is taken care of and that was followed by a protocol in the year 1987, to work out the modalities of this particular convention on protection of ozone layer.

And then subsequently starting from 1988, in the general assembly of United Nations several resolutions were passed that it is not just sufficient that we take care of the ozone layer but we also take care of the global climatic conditions for the sake of the present generations of people and also for future generations of humankind. And what did this particular convention convey? For the first time as you can note 197 countries subscribed to that so developed, developing, underdeveloped, less than developed nations, all of them congregated and agreed, it was a clear agreement and a clear acknowledgement that historic and current global emissions of greenhouse gases which originated in developed countries has caused this global warming all over the world.

So, for industrial development of a handful of nations, the rest of the world is made to pay a price. It stressed the need for developed countries to take immediate measures as a first step towards comprehensive response strategies at all levels taking into account all the greenhouse gases, with due consideration of their relative contribution to the enhancement of what is referred to as the greenhouse effect. An effect that is caused by raising the temperature in an atmosphere which is artificially created as you would see in a green house, in an herbarium.

Same is the case, the entire world has become a kind of a herbarium, a green house in which the increasing effect of the warming is being experienced and while measures are being taken by the developed countries, to take measures, to see to it that the current global emissions are brought under control and so the development strategies of them would change, it should also factor the need for developing countries also to achieve sustainable economic growth and to eradicate poverty in them. So, this was the mandate given through this Framework Convention.

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- **OBJECTIVE: STABILIZATION OF GHG CONCENTRATIONS TO PRE-1990 POSITION**
- **PRINCIPLES:** - (i) EQUITY; (ii) CBDR - developed country Parties should take the lead; (iii) Parties shall be guided by the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change; (iv) PRECAUTION - prevention, mitigation and Adaptation and (v) SUSTAINABLE DEVELOPMENT - integrated with national development programmes.
- **OBLIGATIONS OF INDUSTRIALISED COUNTRIES (ANNEX-I COUNTRIES)**
(consisting of members of the Organisation for Economic Co-operation and Development and several countries with "economies in transition") :
(i) MITIGATION; (ii) JOINT IMPLEMENTATION; (iii) FINANCIAL AND TECHNICAL ASSISTANCE, BESIDES TRANSFER OF TECHNOLOGY; (iv) MEETING



What has been its objective? The objective is the stabilization of GHG concentration to the pre-1990 position which is supposed to be the manageable level of the global climatic condition. What are the principles that guide it? We have already seen that these principles, how they have steered the entire negotiation on climate change, when we discussed the various principles. As many as four principles are involved here.

The principle of equity, the principle of common but differentiated responsibilities, which actually means the developed country parties have taken the primary obligation to clear up the ecological debt that have created through the concentration of greenhouse gases to pay for that and also equip all other countries to have a cleaner, greener environment so that the climatic conditions are brought under manageable levels.

Third principle the parties are to be guided by the specific needs and special circumstances of developing country parties, especially those that are particularly vulnerable to adverse effects of climate change. As has been warned by IPCC that it is the weaker sections of society who really take brunt or the burden of the climate change. They suffer the most and it is those small island nations which get inundated and so they suffer the most and so their interest should be the top priority along with the interest of all other countries.

And so the fourth principle that we need to take note of and to adopt in ensuring the climatic conditions are restored to the pre-1990 position, is the principle of precaution or prevention of further change in the climatic condition, mitigation of whatever that has already occurred and adaptation to these changes as quickly as possible for all the countries and finally, observance of the principle of sustainable development and getting it integrated with national development programs.

So, all these are encapsulated in this international legal arrangement UNFCCC, United Nations Framework Convention on Climate Change. What does it mandate? It imposes a very clear unmistakable obligation on industrialized countries. In the annex to the convention called Annex-I, a list of countries are given which are the industrialized countries which are primarily responsible for this climate change of concentration of GHGs into the atmosphere over a period of time.

And these are the members of the organization for economic co-operation and development and several countries with (economics) economies in transition, which is the other way of saying industrialized developed countries. United States, USSR then, the Soviet Union and then later the Soviet Republic and much later we have other countries like France, Germany, Britain and other developed countries. So, all these are put under one cluster and they are imposed with clear obligation. What are they? Number 1, obligation on mitigation, mitigation of reduction, reduction of contribution of the greenhouse gases into the atmosphere to be reduced to pre-1990 level, number 1. Second, to give effect to that, they may amongst themselves jointly implement plans and programs of action for reduction.

And third, to help build the capacity of the developing countries and less developed countries to extend financial and technical assistance and even transfer of such state of the art technology, cleaner technology to them, so that they will not commit the same mistake as has been committed by the industrial nations of releasing these green house gases into the atmosphere, that green house gas free technology which is otherwise known as cleaner technology and that which they are having the ability to develop over a period of time and they have actually practiced that now to transfer the technology.

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THE COSTS OF ADAPTATION OF THE MOST VULNERABLE COUNTRIES.
* CORE ELEMENTS OF UNFCCC:
(a) INDUSTRIALIZED NATIONS- RESPONSIBLE FOR HISTORIC EMISSIONS-
ECOLOGICAL DEBT:- OBLIGATIONS- (i) GHG EMISSION REDUCTION TO LESS
THAN 1990 LEVEL ; (ii) DEVELOPMENT OF CLEANER TECHNOLOGY ;
TECHNOLOGY TRANSFER AND MAKING RESOURCES AVAILABLE TO THE
DEVELOPING WORLD TO SWITCH OVER TO CLEANER TECHNOLOGY- SET
ASIDE A SMALL BUT SIGNIFICANT PERCENT OF GDP, IN AN INTERNATIONAL
FUND FOR THE PURPOSE
(b). DEVELOPING & LESS DEVELOPED COUNTRIES: MAKE BEST USE OF
TECHNOLOGIES AND RESOURCES MADE AVAILABLE TO BUILD AND
STRENGTHEN THEIR CAPACITY, TO BE ABLE TO SHOULDER THE
RESPONSIBILITY OF ECOLOGICAL RESTORATION AND CONSERVATION,
ALONG SIDE ALLEVIATION OF POVERTY AND ACHIEVING A SUSTAINABLE
LEVEL OF ECONOMIC DEVELOPMENT, IN COURSE OF TIME
❖ OBJECTS TO BE ACCOMPLISHED IN A TIME-BOUND MANNER BY THE
CoPs, THROUGH PROTOCOLS AND OTHER ARRANGEMENTS



And fourth, bearing the cost of adaptation of the most vulnerable countries. There is an ecological debt, you have to pay for that and you have actually made the developing and underdeveloped countries to pay for your wrong and so it is time that you pay back and so that all others will also develop like you but in a healthier and a cleaner environment. So, in effect what is the core aspect of the United Nations Framework Convention on Climate Change? It has two components.

One component, the industrialized nations which are responsible for historic emissions have to clear the ecological debt and also are responsible for current emissions and so their obligation of reduction of GHG emissions is less than the 1990 level. Number 2, they have to develop cleaner technology and whatever that technology that they have developed which is clean, they have to transfer the technology and making resources available to the developing world to switch over to cleaner technology set aside as small but significant percentage of their GDP in an international fund for that purpose. And what is the position of developing and less developed countries?

One, they should make best use of the technologies and resources that are going to be made available by the developed ones to build and strengthen their capacity. So, there is no more business as usual. Just do not take any kind of developmental project come their way, developmental projects which actually stress on cleaner technology that should be adopted by

them to make available, to build and strengthen their capacity to be able to shoulder in course of time the responsibility of ecological restoration and conservation, alongside alleviation of poverty and achieving a sustainable level of economic development, in course of time. So, the object of this particular Framework Convention as you could make out it is a Framework Convention.

It actually is laid on the broad frame. So it is almost like agreeing in principle that these are the commitments we will make and in course of time we are going to accomplish that over a period of time. And for that there are what are referred to as the conference of parties within this community of nations which are parties to this particular arrangement, you have these very parties whose representatives would constantly meet, regularly meet in periodic intervals and when they meet they should be able to deliberate as to the ways and means and modalities as to how to accomplish whatever task that has been assigned and achieve those goals that are set in the objectives of this particular arrangement.

And so, the conference of parties or the COPs through protocols to be established over a period of time in other arrangements should be able to accomplish the mission within a time frame of about two decades time. That is the mandate of this Framework Convention. It does not actually give operational rules of practice but it lays down the basic frame. The details have to be worked out. From 1992 onwards this frame is being worked out. How it has panned out in the last 28 years is the subject of enquiry in the next 2 sections that we are going to enquire into.

The second one would be a protocol, a discussion that we are going to have, the Kyoto Protocol of 1997 and in the third section we will refer to the latest development that has occurred through the Paris agreement in the third section. So the second and third section refer to the subsequent developments which have put this particular frame of law into practice at the global level and its impacts and the results that are obtained will be the subject matter of discussion in the second and the third section of this enquiry.