

**Constitution of India and Environmental Governance:  
Administrative and Adjudicatory Process  
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Lecture 25  
Paris Agreement and Climate Justice**

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**5.3. PARIS AGREEMENT AND CLIMATE  
JUSTICE**

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In the Framework Convention on Climate Change 1992 gave the hope for the humanity of getting climate justice by giving a very strong moral and legal basis for pursuing and achieving the same. The Kyoto Protocol underwrit in the year 1997 ended up more as a compromise of different kinds of interests predominated by the convenience of the industrialized nations, but with the expiry of the Kyoto Protocol in the year 2012, and with very little hope for any further development in that regard, a community of nations came to a kind of a stalemate.

A stalemate of no future positive development to ensure that climate justice would at some point

of time in future would be achieved and the global climatic conditions would get stabilized. It literally evaporated as the series of climate negotiations pointed. The return of United States at the climate negotiations, as was referred to in the previous section actually added to the problem for along with its return US was very keen that developing countries like India and China who have been developing so fast and in the process, contributing to the carbon kitty of the globe in a very substantial way, also need have to undertake responsibilities like the industrialized nations.

And this argument of United States was supported by European Union as well and it looked as though the developing countries were being marginalized in this entire debate, especially when most powerful of nations, most economically affluent of nations start, started taking one side of insisting on each of the states to come up with their own commitments and not to really think about the past of who contributed how much and who wore that ecological debt for how long.

Well the dice was cast. And this was how things would be in the days to come. And the negotiations continued regardless of whatever kinds of apprehensions that countries like India and others had. And in the year 2015, the (globe) global community came to an agreement in Paris, a Paris agreement and climate justice is the theme for the section for our consideration and appraisal. As we do that, we start with a little background to the same.

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## I. RUN UP TO THE AGREEMENT



- DURBAN CoPs (2011): COMMITMENT TO CREATE A NEW, COMPREHENSIVE, LEGALLY BINDING CLIMATE TREATY BY 2015 - BESIDES ANNEX-1 COUNTRIES, IT WOULD REQUIRE ALL OTHER MAJOR CARBON EMITTERS LIKE, CHINA AND INDIA TO LIMIT AND REDUCE THEIR CARBON EMISSIONS – NEW TREATY PLANNED FOR IMPLEMENTATION IN 2020, TO FULLY REPLACE KYOTO PROTOCOL.
- DOHA CoPs (2012): EVERY COUNTRY, REQUIRED TO SUBMIT THEIR DETAILED PLANS FOR REDUCTION OF THEIR GREEN HOUSE GAS EMISSIONS, BEFORE THE PARIS CoPs, 2015- INTENDED NATIONALLY DETERMINED CONTRIBUTIONS (INDCs) - BY DEC.10,2015, 185 COUNTRIES SUBMITTED THEIR PLANS- VOLUNTARY MEASURES FOR REDUCTION BY 2025-30, TO APPROXIMATE TO THEIR 2005 POSITION (U.S, 26-28%; CHINA, AROUND 60%; INDIA, 30-33%)- IT WAS FELT THAT THE IMPLEMENTATION OF PLANS FOR ACHIEVING INDCs, AMONG THE DEVELOPING COUNTRIES, COULD BE ACHIEVED ONLY WITH INTERNATIONAL ASSISTANCE



In the year 2011, the clear indication of the direction in which the global climate negotiations would move was pointed out in the Durban conference of parties. Here the consensus was arrived at, was made to arrive at, to create a new comprehensive, legally binding climate treaty by the year 2015. But it will have a different kind of a texture, different kind of an obligation and along with the Annex-1 countries, remember the industrialized developed countries, along with them it would require all other major carbon emitters like China and India, Brazil and quite a few others to limit and reduce their carbon emissions.

And this would be the new obligation that would be read into the new law, along with some of the obligations it was agreed to under the earlier arrangement. And the new treaty was planned to be implemented in 2020 to fully replace the Kyoto Protocol of 1997. That means the Kyoto obligations would continue to operate till around the time when it was right for the implementation of the new accord in Paris in 2015 to 2020. When it would be finalized and formed up by the contribution of the conference of parties.

The next conference of parties that Doha came up with another clearing position, a kind of a homework which required that every country and please remember not just the developed countries, not just the leaders among the developing countries who were going to break into the

big league of developed countries, but every country, every single country under the globe was required to submit their detailed plans for reduction of their greenhouse gas emissions before the Paris conference of parties, when they are going to form up a new environmental climate deal.

These were referred to as intended nationally determined contributions INDCs for short. These are voluntary measures on the part of a country that look, as of now, we are contributing so much to the carbon concentration into the atmosphere and over a period of time this is the plan that we have that we would reduce so much over a period of time. It is a voluntary measure but you need to come up with your plan. So just do not look for international assistance all the while when technology would actually help you in tiding over the difficulty of carbon concentration.

But alongside that you also make your own efforts and to assure the international community that you are doing everything possible with your own means or with any assistance, then you need to come up with a clear plan of action as to how much you can reduce all by yourself. As a matter of fact, just before the conference in Paris in the year 2015, 185 countries had submitted their plans, their plans of INDCs, voluntary measures for reduction by the year 2025-30 to approximate to their position that was there in 2005.

In fact United States committed that we will reduce it by 28 percent, China said we will reduce it up to 60 percent and India assured that it will reduce it to anything between 30 to 33 percent of their position in the year 2005. Of course, it was not sufficient. But by around 2050 that was the expectation through the initiation of this process in Paris and the forming of the agreement by 2020, by 2050 the global climatic conditions would get stabilized through a series of measures that the states would undertake and put into operation.

It was felt that the implementation of plans for achieving INDCs among the developing countries could be achieved only with international assistance because they do not have sufficient

resources, the knowhow, the technology that is required and so they still look up to the international community, to provide them the help so that they will measure up to that expectation, and this is what they are going to accomplish by around 2025-30 and this is their work plan. That was the situation that was there in Paris.

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## II. THE PARIS AGREEMENT, 2015



- THE AGREEMENT, REPLACING THE KYOTO PROTOCOL, CLAIMS THAT ITS IMPLEMENTATION WOULD REFLECT EQUITY AND OBSERVE THE PRINCIPLE OF CBDR AND RESPECTIVE CAPABILITIES, THAT CONSTITUTED THE CORE OF UNFCCC.
- IT IS AN UNIQUE ARRANGEMENT IN MANY RESPECTS. EVEN THE FORM AND STRUCTURE OF THIS ARRANGEMENT IS QUITE DIFFERENT FROM OTHER INTERNATIONAL ENVIRONMENTAL AGREEMENTS. THE FIRST PART IS DEVOTED TO "DECISIONS", WHICH READ MORE LIKE THE CONCLUSIONS AND MINUTES OF A GLOBAL CONCLAVE, REplete WITH DECLARATIONS, INVOCATION OF PRINCIPLES AND COMMITMENTS. THE SECOND PART IS THE "AGREEMENT" PROPER, WHICH DOES NOT BIND ANY ONE FOR ANYTHING! THIS IS A GLOBAL BUT NONBINDING AGREEMENT, AIMING TO LIMIT THE INCREASE OF THE WORLD'S AVERAGE TEMP. TO NO MORE THAN 2 °C (3.6 °F) ABOVE PRE-INDUSTRIAL LEVELS.



The Paris agreement amidst much fanfare, wherein almost all the global leaders converged and participated in the deliberations. It was considered to be a major spectacle of an international global meet where there has been a clear commitment amongst all the nations to restore normalcy to the global climatic condition. And everyone asserted the sincerity of the purpose of each one of the members can never, ever be doubted and as a demonstration of their combined commitment, we have an agreement.

We have an agreement to put into application over a period of time. So, the agreement replacing the Kyoto Protocol claims that this treaty or this agreement it was not called treaty, it was an agreement that this agreement would be implemented in the true spirit of United Nations Framework Convention on Climate Change of 1992. So, it would come within the frame of the

Framework Convention and it would reflect equity and observance of the principles of common but differentiated responsibilities and respective capabilities of nations.

It is a unique agreement in a number of respects. The form, the texture and the structure of this arrangement is quite different from most of the other international environmental agreements. In its first part there are decisions made. Actually, the decisions read more like the conclusions and minutes of a global conclave, full of declarations, invocations of principles and commitments.

The operative part is the second part and that is the agreement proper. But the agreement is something which does not bind anyone for anything compulsorily. It is a very interesting agreement. It is a global agreement, but a non-binding agreement aiming to limit the increase of the world's average temperature to no more than 2 degrees centigrade or 3 point 6 degree Fahrenheit above pre-industrial levels.

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- AFTER SIGNING THE AGREEMENT AND RATIFYING IT, THE PARTIES HAVE THE OPTION OF RE-CONSIDERING THEIR DECISION AND WITHDRAW FROM IT, AS LATE AS 2020!
- IT SEEKS TO INCREASE THE ABILITY TO ADAPT TO THE ADVERSE IMPACTS OF CLIMATE CHANGE AND FOSTER CLIMATE RESILIENCE AND LOW GREEN HOUSE GAS EMISSIONS DEVELOPMENT, IN A MANNER THAT DOES NOT THREATEN FOOD PRODUCTION.
- IT HAS COMMITMENTS, NOT BY WAY OF IMPOSITION, BUT WHERE EVERY COUNTRY SETS ITS OWN EMISSION REDUCTION TARGETS [- INTENDED NATIONALLY DETERMINED CONTRIBUTIONS- INDCs-] AND ACHIEVE IT, OVER A PERIOD OF TIME
- IT EMPHASISES COOPERATION, TRANSPARENCY, FLEXIBILITY AND REGULAR REPORTING OF PROGRESS IN ACHIEVING THE INDCs AND NO MORE! LIABILITY FOR NON-COMPLIANCE AND ITS ENFORCEMENT, ABSENT.
- THESE ARE NOT ENFORCEABLE FOR NON-OBSERVANCE, SINCE IT DOES NOT HAVE ANY MECHANISM TO ENFORCE, BESIDES LACKING IN SPECIFICITY, NORMATIVE CHARACTER OR OBLIGATORY LANGUAGE REQUIRED TO CREATE BINDING NORMS. THERE WILL BE ONLY A " NAME AND SHAME" SYSTEM!



After signing the agreement and ratifying it, the parties have the option of reconsidering their decision and withdraw from it as late as 2020, a very unique piece of an international legislation that you become a party but you can choose, pick and choose when you want to get out of it, but you have to do it before 2020. It seeks to increase the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development in a manner that does not threaten food production.

It has commitments not by way of any imposition but aware every country sets its own emission reduction targets, the INDCs as was mentioned earlier to achieve it over a period of time. It emphasizes cooperation, transparency, flexibility and regular reporting of progress in achieving them and nothing more. Liability for noncompliance and its enforcement is absent. These are not enforceable for non-observance because the agreement does not contain any mechanism to enforce it. It lacks specificity. Normative character or obligatory language required to create a binding obligation on anyone. The only thing that it provides for is for naming and shaming system.

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- *IT CONTAINS A SET OF PRINCIPLES AND POLICY PRONOUNCEMENTS, THE DETAILS OF WHICH ARE STILL BEING WORKED OUT, LONG AFTER ITS RATIFICATION!*
- *THE INDUSTRIALISED AND DEVELOPED COUNTRIES, PLEDGED TO MOBILIZE \$100 BILLION A YEAR IN CLIMATE FINANCE BY 2020 AND AGREED TO COMMIT \$100 BILLION A YEAR, THEREAFTER, UNTIL 2025. THIS IS STILL AN ASSURANCE ON PAPER. THE LESS DEVELOPED COUNTRIES (LDCs-) ARE HOPING AGAINST HOPE THAT THIS WOULD SOME HOW BECOME A REALITY, BEFORE THE END OF 2020! BY THE END OF 2018, IT IS REPORTED THAT ONLY ABOUT \$10.3 BILLION COULD BE RAISED.*
- *IT IS A VERY FRAGILE ARRANGEMENT. U.S. HAS ALREADY GIVEN NOTICE OF EXITING FROM THIS ARRANGEMENT, TO COME INTO EFFECT BEFORE THE END OF 2020! THE CLAIM THAT THIS NEW CLIMATE DEAL, WEDDED TO UNFCCC, APPEARS TO BE NO MORE THAN AN EMPTY PROMISE !*



It however contains a set of principles and policy pronouncements, the details of which are still being worked out long after its ratification. The industrialized developed countries however pledged to mobilize hundred billion dollars a year in climate finance by 2020 that means over a period of five years they will be able to raise 500 billion dollars. And they have also further agreed that after the agreement comes into force to commit additionally every year hundred billion dollars for further period of five years until 2025 for climate finance.

But actually this is just an assurance on paper. The less developed countries are still hoping that this would become a reality at least before the end of the year 2020. But as reported, by the end of 2018, they could raise only no more than 10 point 3 billion dollars and no more. The Paris Agreement is a very fragile agreement. United States, the biggest emitter until the earlier dispensation and one of the major emitters even now, has already given a notice of exiting from this arrangement.

And that is to come into effect before the end of 2020 because they are not just satisfied with voluntary measures for developing nations, but binding commitments by them is one that it is insisting upon. And since that is not happening, it is saying that it quits for them. The claim that this new climate deal wedded to the framework convention, as you can make out appears to be no more than an empty promise.

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- SINCE THE PARIS AGREEMENT, THE PROGRESS TOWARDS EMISSION TARGETS HAS BEEN MIXED- WHILE CHINA REPORTED ACHIEVING ITS 2020 TARGETS, BY 2017 ITSELF (!), SOME OF THE EU COUNTRIES EXPRESSED ABOUT THEIR DIFFICULTY IN EVEN REACHING 60% OF WHAT WAS SOUGHT TO BE ACHIEVED DURING THE PERIOD AND THE PROGRESS OF U.S WAS LESS THAN CLEAR.
- A NUMBER OF INTERNATIONAL RESEARCH ORGANISATIONS HAVE, HOWEVER, NOTED THAT THE CONSTANT INCREASE IN CARBON EMISSIONS HAVE SHOWN NO SIGNS OF ABATEMENT.
- THE DEVELOPMENTS SINCE THE AGREEMENT HAVE NOT INSPIRED MUCH CONFIDENCE IN ACHIEVING THE GOALS SET. ENSURING "CLIMATE JUSTICE", THROUGH SUCH NEGOTIATIONS, IT SEEMS, IS JUST A CHIMERA!



And that is to come into effect before the end of 2020 because they are not just satisfied with voluntary measures for developing nations, but binding commitments by them is one that it is insisting upon. And since that is not happening, it is saying that it quits for them. The claim that this new climate deal wedded to the framework convention, as you can make out appears to be no more than an empty promise.

After the Agreement was signed and ratified a couple of years later in terms of the progress that is made in achieving whatever that has been promised, because between 2015 and 2020, there was a promise by all the countries through their voluntary submissions of a plan of action that in the five years they will show so much of progress, the progress that has been achieved is not very encouraging. Of course, China reported that it has already achieved 2020 targets by 2017 itself. We all know that we need to take it with loads of salt. Some of the European Union countries express their difficulty, even reaching 60 percent of what they promised.

And the progress of United States was less than clear. A number of international research organizations which have actually monitored this progress very meticulously they have however came up with a discarding note. They found that there has been evidence of a constant increase in carbon emissions and there have been little signs of its abatement, an alarming signal. The

development since this agreement has not inspired much confidence in achieving the goals set. Ensuring climate justice through such negotiations, culminating in the Paris agreement it seems is just a chimera.

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- IN NONE OF THE DELIBERATIONS, DECISIONS, ACTION PLANS, GUIDANCE DOCUMENTS, METICULOUSLY EVOLVED AND CRAFTED, THERE IS ANY MENTION OF FIXING ANY LIABILITY FOR NON-COMPLIANCE AND ENFORCING THE SAME ON THE REAL, ACTUAL PLAYER RESPONSIBLE FOR CLIMATE INJUSTICE ALL THE WHILE- THE INDUSTRY. IT IS LIKE "AN ELEPHANT IN THE ROOM" SITUATION. EVERY ONE KNOWS BUT NO BODY DARES TO ACT AND TAKE DECISIVE MEASURES IN MAKING THE "CORPORATES ENVIRONMENTALLY RESPONSIBLE".
- IN CONTRAST TO THIS BLEAK, UNINSPIRING AND UNHELPFUL SITUATION, THERE IS A WHIFF OF FRESH AIR AND HOPE. INDIA HAS ASSUMED GLOBAL LEADERSHIP IN THE RENEWABLE ENERGY SECTOR, MAKING EARNEST EFFORTS IN DRIVING THE REST, BY EXAMPLE, TOWARDS, SECURING CLIMATE JUSTICE, LACK OF SUPPORT FROM THE GLOBAL CLIMATE NEGOTIATIONS, NOTWITHSTANDING!



The most striking aspect that we need out to look here in none of the deliberations the decisions, action plans, guidance documents have all meticulously prepared, there is neither a mention of fixing any liability for noncompliance and enforcement on the real actual player responsible for climate injustice all the while. That is the industry. It is like an elephant in the room situation. Everyone knows that it is there, but nobody dares to act and take decisive measures in making the corporates environmentally responsible on the climate sector. In contrast to this bleak, uninspiring and unhelpful situation there is a (wish) whiff of fresh air and hope.

Of all countries, India has taken the global leadership now in the renewable energy sector, making earnest efforts in driving the rest of the world, by example, towards securing climate justice with or without the international climate negotiations support for them as it has panned out in the last 28 years. Lack of support from the global climate negotiations notwithstanding,

India is striving ahead in this regard. India makes a very interesting case study. And that shall be the subject matter in the next section of our deliberation to bring to a close our discussion on the climate law and justice and that is in the next section.