

***The role and relationship of climate justice and common but differentiated responsibilities & respective capabilities (CBDR-RC) principle in the international climate change legal framework***

*Historical evaluation, developments, challenges & future outlooks of CBDR-RC principle & climate justice*

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## ***Abstract***

*This thesis aims to establish the relationship between climate justice and common but differentiated responsibilities - respective capabilities (CBDR-RC) Principle, it also examines how the application of CBDR-RC principle helps in the realization of climate justice. This thesis is an attempt to fill the gap in the literature which will be very helpful for the scholars, academicians, students and the international community to understand that how these two concepts and their relationship are very important to decide the effectiveness of international climate regime. In the present times, climate change is one of the biggest threats to the mankind and its disastrous results can be seen all over the world in various forms. This problem of climate change has alerted the governments and they are seeking to take steps in order to combat climate change by setting targets and accompanying timelines. In this league, the Paris agreement (2015) is said to be one of the most important and effective step for climate change mitigation. But the question is whether the Paris agreement really that effective to combat climate change or, to be specific, does the international climate change framework including Paris agreement is strong enough to act as legally binding measures on the nations. The intention behind the addition of these terms into the climate change mitigation laws was to combat climate change in such a way that nations who needs to develop more doesn't lose that opportunity and shouldn't be deprived from the "right to development" and from their basic "human rights". The CBDR-RC principle deals with the "right to development" of the nations and the Climate justice concept deals with the measurement of the effects of Climate change in relation with both environmental justice and social justice in context with issues like human rights and the collective responsibility towards climate change. Understanding the linkage between CBDR-RC and Climate justice is important to make effective legislations as one concept helps in the realization of the other.*

***Keywords:*** *Climate change, Climate justice, Common, Differentiated, Responsibility, Development, Human Rights, Legal Framework, Mitigation.*

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**List of Abbreviations**

BRICS \_\_\_\_\_ Brazil, Russia, India, China and South Africa Group  
CBDR-RC \_\_\_\_\_ Common but Differentiated Responsibilities - Respective Capabilities  
CoP \_\_\_\_\_ Conference of Parties  
GHGs \_\_\_\_\_ Greenhouse Gases  
IPCC \_\_\_\_\_ Intergovernmental Panel on Climate Change  
LDCs \_\_\_\_\_ Least Developed Countries  
SIDs \_\_\_\_\_ Small Island Developing States  
NDCs \_\_\_\_\_ Nationally Determined Contributions  
UN \_\_\_\_\_ United Nations  
UNDP \_\_\_\_\_ United Nations Development Programme  
UNEP \_\_\_\_\_ United Nations Environment Programme  
UNFCCC \_\_\_\_\_ United Nations Framework Convention on Climate Change

## **Chapter 1 - Introduction**

## 1.1 Conceptualization

With all the different debates going around the term “climate change” it can be seen that climate change has evolved over the years from an environmental issue to an economic, political, development and a human right issue (Parry, 2009). Climate change with its adverse effects is not only limited to these issues but it also has an aspect of injustice related to it (Cameron, Shine & Bevins, 2013). Various reports of different United Nations bodies like United Nations Development Programme (UNDP) and the Intergovernmental Panel on Climate change (IPCC) are reiterating that the world is soon reaching to the limit of emitting greenhouses gases (Klugman, 2011; Barros et al., 2014). The industrialization era(s) are the most responsible for this problem, apart from giving innovations and new techniques to the world Industrialization has also caused the increase in CO<sub>2</sub> emissions as there was a complete lack of check and balance on them (Mgbemene, Nnaji & Nwozor, 2016). Nations in their quest of achieving economic prosperity have forgotten the consequences that the world has to face in the coming years (Stern & Fankhauser, 2016). Immediate actions to tackle climate change demands an estimated 40 to 70 percent reduction in Green House Gases by 2050 from 2010 levels (IPOC, 2014) which seems to be quite ambitious and hard-to-achieve in the times where there is an absence of a strong legally binding climate change mitigation agreement.

When climate change took the shape of legal & political issue, the countries were divided into the categories of developed, developing and least developed on the basis of their respective capabilities with the principle of Common But Differentiated Responsibilities (CBDR) attached to it (UNFCCC, 1992). It is a paradox that development requires a notable increase of energy access and usage all around the world but the problem is that fossil fuels are still the cheapest, easily available and considered to be more reliable sources of energy compared to the other green or renewable sources (Humphreys, 2014). Countries are still putting a lot of funds to extract fossil fuels to generate energy which itself is an alarming situation and seems to be a hindrance to the ambitious goals of achieving the target of the reduction of CO<sub>2</sub> emissions by 2%.

After thirty years of discussions & engagements countries have come together to adopt legal framework mainly focused on burden-sharing arrangements to combat climate change. During Conference of Parties (COP) 21 in December 2015, Paris Agreement was adopted which later came into force in November 2016 to work as an instrument to regulate Climate change mitigation measures and it could be considered as one of the hero in Climate change international legal framework but there is a need to analyze that after three years of its existence does it really serving the purpose for which it was created or we need more stringent legal measures to ensure Climate justice though Common but Differentiated Responsibilities & Respective Capabilities (CBDR-RC)

principle. In the preamble of Paris Agreement both Common But Differentiated Responsibilities & Respective Capabilities (CBDR-RC) principle and Climate justice have been mentioned<sup>1</sup> which makes them very much relevant in terms of International Climate change Legal framework, (CBDR-RC) principle has been mentioned several times in the Paris Agreement which shows its importance when it comes to undertake the mitigation measures.

The questions of Climate justice arise when those most vulnerable to climate change are least responsible and have the fewest resources to adapt<sup>2</sup>. The developed and the advanced developing nations like Indian, China and Brazil are continuously using the fossil fuels as their primary source of energy with an approach to shift towards the clean sources but the continuation with the fossil fuels is degrading the environment and especially for those who have not contributed at all or very least for the climate change. This indeed shows that the groups which have the least say in polluting the environment is deprived of the access to a clean environment. There are three basic aspects of injustice lead by climate change (i) climate change is hitting the poorest first and worst, (ii) Those most affected did not cause it and are powerless to stop it and (iii) The polluters aren't paying<sup>3</sup>. In 2009, thousands of people have protested on the streets of Copenhagen during the UNFCCC Climate change Conference (COP 15) demanding for climate justice (Lander et al., 2009). This demand was a result of the disastrous, destabilizing and disrupting effects of Climate change experienced by the vulnerable groups (Tokar, 2014). The whole discourse of Climate justice revolves around three topics: climate change, human rights and right to development. Climate change and its effects are inseparably linked to various questions of justice. As far as Climate justice is concerned, it is a vast concept with different meanings for different people but as stated by various professionals and academicians in their writings CBDR-RC principle is something that goes hand in hand with Climate justice and could be the most appropriate & efficient way available in international climate change law regime to ensure Climate justice. The principle of CBDR-RC demands for three main elements: Common Responsibility, Differentiated Responsibilities and the Different Capabilities of the nations. These three elements have very fine line of demarcation between them; Common Responsibility means the collective responsibility of all nations towards the protection of environment. Common responsibility is likely to apply where the resources are shared but they are subjected to common legal interest (Sands & Peel, 2012) whereas the Differentiated Responsibilities element talks about the ratio in responsibilities a nation can fulfil. The different capabilities element is also very important as it establish the potential of a nation to

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<sup>1</sup> UNFCCC, C. (2015). Paris agreement. FCCCC/CP/2015/L. 9/Rev. 1.

<sup>2</sup> Submission to the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) by the Mary Robinson Foundation – Climate justice on March 01, 2013. Available at <https://unfccc.int/resource/docs/2013/smsn/un/306.pdf>

<sup>3</sup> The Triple Injustice of Climate change. (n.d.). Retrieved July 15, 2018 from [http://www.unesco.org/education/tlsf/mods/theme\\_c/popups/mod19t04s01.html](http://www.unesco.org/education/tlsf/mods/theme_c/popups/mod19t04s01.html)

respond to climate change mitigation measures taking aspects like economical condition, social structure, etc. in consideration (Mahadeva, 2013). One of the biggest problems that the climate legal framework has faced and is facing is the demand of dilution of CBDR-RC principle which is a big hindrance in the achievement of Climate justice.

“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”

- Martin Luther King Jr.

## **1.2 Literature Review:**

Climate change, equity and justice are complex concepts and are interconnected to each other (Levy & Patz, 2015). Various academicians and social scientists have started writing about these concerns more actively after the UN Conference on Environment Development, 1992 (also known as Earth Summit)<sup>4</sup>. It was this summit which has influenced the upcoming literature & discussions on climate change. A large portion of the existing literature on climate change in relation to climate justice and CBDR-RC is more technical and scientific rather than legal in character. There are few writings that aim to analyze the legality of Paris agreement (Bodansky, D 2016) and also the enforcement aspect of the agreement (Voigt, 2016). Some of the institutions like World Bank have assessed the legal dimension of climate change in relation with human rights in their reports and books (McInerne et al., 2011).

Other United Nations institutions like United Nations Development Programme (UNDP) had also come up with literature in this field, the Human Development Report (UNDP, 2007) analyze that climate change is affecting human development. It presents that how climate change would be violating the human rights of the poor people and of the coming generations. Various chapters of these reports are focused on climate risks, mitigation and social justice. NGOs and various civil society organisations have produced literature that only focus on human rights. Mary Robinson Foundation’s report named “Incorporating Human Rights into Climate Action” attempts to assess that how various countries are ensuring to restore human rights rights in climate action. The research concludes with suggestions on how states may better integrate human rights into their policies to combat climate change. (Mary Robinson<sup>5</sup> Foundation - Climate justice, 2014)<sup>5</sup>.

It can be seen from the existing literature that they are very much focused on human rights and their connection with climate change. Legal profession bodies such as International Bar Association have

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<sup>4</sup> <http://www.un.org/geninfo/bp/enviro.html>

<sup>5</sup> <https://www.mrfcj.org/pdf/2014-10-20-Incorporating-Human-Rights-into-Climate-Action.pdf>



also produced a report on Climate justice and human rights where the legal aspects of establishing human rights as one of the principles of Climate justice have been described (International Bar Association, 2014). The examining and analysing of the cause and impacts of Climate change has been mainly done by professional in the natural science field (Trapp et al., 2017) rather than the social scientists which creates a clear impression that almost every literature on climate change would be carrying references from natural science field. The other space in the literature has been acquired by the political aspect of the climate change (Bond, 2012; Nightingale, 2017). The aim of this thesis is, however, to add the legal relationship between climate change, climate justice and CBDR-RC.

Climate justice is relatively a new concept and has emerged in the year 2000 during the First Climate justice summit in The Hague on the sidelines of the Sixth Conference of the Parties (COP 6) (Porta & Parks, 2014). Since its existence various papers, journals and articles have been written stating its origin and importance but there is hardly any literature that establish and explicitly explains a relationship between climate justice and CBDR-RC principle. Both of these terms are repeatedly used together in the literature (Cameron et al., 2013; Eckersley, 2015) which clearly marks their importance together in the international legal climate change framework. After the enactment of Paris Agreement it was believed that the countries would easily be able to control the adverse effects of climate change through a mechanism delivered by the agreement but the non-serious behaviour of the nations towards the provisions of the agreement is making it difficult to mitigate with climate change and also obstructing the achievement of climate justice. Along with the climate justice concept, the principle of CBDR-RC has been a topic of research by various scholars where they have reviewed the nature of the principle in terms of commitment and compliance (Rajamani, 2000; Bortscheller, 2009).

Through the literature available, one can understand the concepts of climate justice and CBDR-RC principle in political and scientific terms which also makes it difficult to understand the legal importance of both these terms. Particular assessment of Paris Agreement's legal character is somewhat available in the pre-existing literature but it misses the relation of Climate justice and CBDR-RC. In the existing literature it has been said that Climate justice is important but on the one hand the legal instruments like Paris Agreement which acts as a "Soft-Law" put controversies whether these highly ambitious goals of establishing climate justice are only for the papers. Therefore, a literature is needed that can explain the need of strict legal measures to achieve climate justice through principles like CBDR-RC in the present or future climate change legal framework.

### **1.3 Objective, Importance and Justification (Practical Utility)**

The objective of this thesis is to establish a relationship between the CBDR-RC principle and Climate justice in the international legal climate change framework and how the effective application of the former can help in the achievement of the later, this objective is set to be achieved by examining the role of Climate justice in international climate change legal framework, the relationship between Climate change and Climate justice?, the role of CBDR-RC in international climate change legal framework? and the role of Climate justice and CBDR - RC principle in the future of climate change legal framework.

The topic of this thesis is of utmost importance as it will create a concept on how the pre-existing principles in the International legal Climate change framework can establish Climate justice in the 21st Century along with this, the thesis will give an insight on the legal nature of the Paris Agreement also whether its legal nature is effective is assessed. The thesis is relevant academically in a way that the topic to be discussed here will give a deep insight on legality of Climate justice and CBDR-RC, this research will work as an academic text on understanding the legal obligations to combat climate change internationally and will help the academic fraternity to rely upon as a resource for the further studies.

This research is going to explore and address the implications of Climate justice & CBDR-RC in the present time. This research is also very important from legal, governance & policy perspective as it is necessary to establish and understand that how CBDR-RC should be understand today as opposed to when it first emerged with respect to climate change framework in 1992. Arguments are now made by the US and some other countries; including developing countries that middle income countries like China and India should not be given as much benefit from CBDR-RC principle as sub-saharan African countries (Bortscheller, 2009). This study will present strong argumentation that why there is an urgent need to revise the categories of countries on the basis of the transition in their economies in order to make CBDR-RC principle serve its true purpose and to secure Climate justice for all.

It is evident that a good amount of literature is available on CBDR-RC principle as it is a very old and repeatedly used principle. We can found literature on Climate justice but there is no or very limited literature that talks about the achievement of Climate justice through CBDR-RC and their correlation. This research will try to fill the gap on the changing dimensions of Climate justice (on how Climate justice differs from one group to another) and about the urgent need of CBDR-RC and its legal implications in today's world. New development and evolution in CBDR-RC & Climate

justice will be explored by this research. This study also aims to examine the Paris agreement in context of its legal character, enforcement and compliance in the climate change regime.

#### **1.4 Research Question:**

The thesis will answer the following question -

**How Climate justice and Common but Differentiated Responsibilities & Respective Capabilities (CBDR-RC) principles are connected to each other in context with their usage in the international climate change legal framework?**

The following Sub Questions will be answered in order to address the main research question:

1. What is the role of Climate justice in international climate change legal framework?
2. What is the relationship between Climate change and Climate justice?
3. What is the role of CBDR-RC in international climate change legal framework?
4. What is the role of Climate justice and CBDR - RC principle in the future of climate change legal framework?

#### **1.5 Methodology**

The thesis will be based on the qualitative research method to address the legality of CBDR-RC principle in relation to Climate justice as applied in Climate change Regime. The thesis will rely on both primary and secondary sources of information in which primary sources include legislations and treaties and secondary sources includes academic writings & research on Climate justice & CBDR-RC. In this thesis, there is an element of doctrinal research where the meaning of the two terms and their potential relationship based on the literature would be analysed. The thesis will be based on normative approach of improving the international legal climate change framework particularly the CBDR-RC principle to ensure complete enforceability, compliance and effectiveness of international climate change laws.

### **Chapter 2 - Understanding Climate change and Climate justice**

#### **2.1 The science of climate change**

Climate change means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods. (UNFCCC, 1992, Article 1.2).<sup>6</sup> The Intergovernmental Panel on Climate change (IPCC) has defined Climate change as “a change in the

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<sup>6</sup> [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)

state of the climate that can be identified (e.g. using statistical tests) by changes in the mean and/or the variability of its properties, and that persists for an extended period, typically decades or longer. It refers to any change in climate over time, whether due to natural variability or as a result of human activity.”(IPCC, 2007). It has been stated in IPCC’s same report that this definition of Climate change is different from the one used by United Nations Framework Convention on Climate change (UNFCCC).<sup>7</sup>

It has been reiterated regularly about Climate change that it is the most immediate and biggest threat for the world. This statement can’t be denied because of the continuous and devastating effects of climate change and the shortage of effective mitigation actions to combat it. The publication of IPCC’s first assessment report in 1990 came up with a lot of criticism of overstressing the human lead causes of green house gas emissions and also for displaying the possible effects of global warming (Houghton, Jenkins & Ephraums, 1990). With the help of various researches the scientific footing of climate change is now fully developed. The research suggests that the climate is changing way more rapidly than estimated and cannot be underestimated as a threat of future (Stern, N. 2013). According to IPCC the three decades from 1983 to 2012 were likely the warmest 30-year period of the last 1,400 years. (Allen et al., 2014). The congregation of greenhouse gases in the atmosphere has reached to unmatched level in the last eight hundred thousand years (Solomon et al., 2007). The speed and extent of the adverse effects of climate change in the last few years have proved the insufficiency and unsuccessful efforts to tackle it. Even after the presence of Legal Instruments like Kyoto Protocol of 1997, the greenhouse gases emissions have been on a continuous rise. The Kyoto Protocol was adopted in 1997 and came into force in 2005<sup>8</sup>, it is also seen as the world’s first greenhouse gas emissions reduction treaty (Höhne, 2006). It includes quantified emission limitation and reduction targets and is based on the principle of Equity and Common but differentiated responsibilities and respective capabilities (CBDR-RC)<sup>9</sup>. The Kyoto Protocol further came up with two commitment periods, the 1st commitment period under the Kyoto Protocol was from 2008-2012<sup>10</sup> and the 2nd commitment period for the period 2013- 2020 was adopted in 2012 by the by the Doha Amendment of the Kyoto Protocol.<sup>11</sup>

Kyoto Protocol, 1997 being the world's only legally binding treaty to reduce greenhouse emissions does not seem to be successful in controlling climate change as the countries that were put under the obligation was all major developed ones but the developing countries like China and India were exempted under the obligations (Jacoby, Prinn & Schmalensee, 1998). In the coming chapters the

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<sup>7</sup> [https://www.ipcc.ch/publications\\_and\\_data/ar4/syr/en/mains1.html](https://www.ipcc.ch/publications_and_data/ar4/syr/en/mains1.html)

<sup>8</sup> <https://unfccc.int/process/the-kyoto-protocol>

<sup>9</sup> [https://unfccc.int/files/press/backgrounders/application/pdf/fact\\_sheet\\_the\\_kyoto\\_protocol.pdf](https://unfccc.int/files/press/backgrounders/application/pdf/fact_sheet_the_kyoto_protocol.pdf)

<sup>10</sup> [https://ec.europa.eu/clima/policies/strategies/progress/kyoto\\_1\\_en](https://ec.europa.eu/clima/policies/strategies/progress/kyoto_1_en)

<sup>11</sup> [https://ec.europa.eu/clima/policies/strategies/progress/kyoto\\_2\\_en](https://ec.europa.eu/clima/policies/strategies/progress/kyoto_2_en)

need to accept and analyze the transitions in economies and their energy usage from the 20<sup>th</sup> to 21<sup>st</sup> century is established so that the climate change combating mechanism and the legal framework can work effectively. The evolution of research on the science of climate change and its possible effects demands for strong and effective counter measures of which an attempt was witnessed during the UNFCCC Conference of the Parties (COP) in December 2015 at Paris in the form of Paris Agreement.

### **2.1.1 The effects of climate change on different country groups**

The biggest challenge of climate change is that those who are most vulnerable to its effects very often are the least responsible for it (UNFCCC, 2005). It is very well known that the Least Developed Countries (LDCs) and Small Island Developing States (SIDs) are the biggest victims of climate change, it has been reported that SIDs contribute extremely low to the Greenhouse gas emissions in comparison to the industrialized countries (UNFCCC, 2005).<sup>12</sup> Least Developed Countries (LDCs) are also deprived of recovering techniques from the adverse effects of climate change, in most of the LDCs the economic growth is majorly depends on factors related to climate. These countries put a lot of time and efforts to reduce poverty but Climate change has the potential to undo what all have been performed (UNDP, 2011).<sup>13</sup> Not only LDCs and SIDs but the developing countries are also impacted by climate change, it has been predicted that sudden shifts of pattern in the climate in developing countries will soon cause extreme shortages of water and a higher risk to human health (UNFCCC, 2007). Like LDCs and SIDs, the developing countries are also very much vulnerable to the effects of climate change as they have to channelize their resources for both economic development and climate mitigation which acts as challenge for them.

It would be unfair not to mention that the developed countries are not affected by climate change, in fact they are sometimes affected very grievously but the strong economic growth and mitigation technologies and infrastructure help them to recover in short time without any challenges. The Developed countries together are undoubtedly the biggest polluter of the environment in the history as they have utilized the fossil fuels to boost up their economic growth and development (Agarwal, 2002), but in the present times developing countries like Brazil, China and India are among the biggest contributors to Greenhouse gases (King, Cole, Tyldesley, & Hogarth 2012). Climate change doesn't differentiate in affecting the countries whether SIDs, LDCs, Developing or Developed but only the resources to combat and absorb its effects differ between the countries; therefore it is important for, especially for the countries that have the resources, methods and technology to

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<sup>12</sup> [https://unfccc.int/resource/docs/publications/cc\\_sids.pdf](https://unfccc.int/resource/docs/publications/cc_sids.pdf)

<sup>13</sup> <http://www.undp.org/content/dam/undp/library/corporate/fast-facts/english/FF-Climate-Change-in-Least-Developed-Countries.pdf>

mitigate climate change for taking a step forward and to come together to form a global partnership to reverse the effects of climate change and to achieve climate justice for all.

### **2.1.2 Climate change encompassing the justice issue**

The problem of climate change gives birth to various difficult issues related to economics, science and politics. Apart from these issues it also raises the complex issues of justice. All the countries are equally vulnerable to climate change but the countries that don't have economic resources suffer the most to global warming. In a world where nations talk about responsibilities, it should be established that rich nations have an obligations towards the poor nations.

In the Fourth Assessment Report by the IPCC it was mentioned that climate change is explicit, advancing and is mainly because of human activities (IPCC, 2007), therefore it is the responsibility of those who are capable to fight the climate change problems should come up for the incapables. Where on one hand the discourse on climate change and safety is related with the adverse effects of climate change, the important concept of 'climate justice' involves the causes and effects of climate change. In the present times, the reflections of justice at all the levels whether regional, national or global are required to effectively tackle and adjust to challenges arising from climate change. The importance of Justice in relation to climate change has been repeatedly mentioned by various authors in the literature, in a book called "The International politics of the environment: actors, interests, and institutions" (Susskind, Ozawa, Hurrell & Kingsbury, 1992) there is a complete chapter on "The unavoidability of justice" in relation to climate change which was again used in the book "Climate justice: Vulnerability and Protection" (Shue, 2014). This chapter mainly focus on the allotment of the costs at international level to deal with climate change problems, the repetition of this type of writing establish the fact that justice is inseparable from climate change and that climate change is an issue of Justice. In various climate change negotiations the concerns for distributive justice have been seen prominently and suggested by the participants as an effective reaction to climate change (McBee, 2016).

Climate change is an issue of justice because its different long term affects the realization of human rights in various forms, this can be understood by a simple example related to the availability of food, the right to sufficient food has been enshrined as a human right in various international laws<sup>14</sup> and it is generally known that climate change disrupts the production and availability of good food. Climate change is not only an environmental challenge but encompasses a lots of social issues, United Nations Development Programme (UNDP) in one of its report has defined climate change as a "human tragedy in the making" (Opschoor, 2008). It needs to be seen as an issue of justice as it

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<sup>14</sup> Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, 1966

acts as a hurdle in the achievement of human rights and have great impacts on the poor sections of the developing world with a demand of strong actions from the developing and the least developed nations instead of those who have all the resource to undertake these actions. Renowned economist and author, Dr. Amartya Sen in his book “The idea of justice” has rightly said that, “A calamity would be a case of injustice only if it could have been prevented and particularly if those who could have undertaken preventive action had failed to try. Reasoning in some form cannot but be involved in moving from the observation of a tragedy to the diagnosis of injustice.” (Sen, 2009, p. 14) This is what is happening in the present case of climate change, as it is a result of the actions of developed and industrialized nations those who have exploited the fossil fuels without due care about the future effects of the same and also they have not taken any preventive action that they could have taken to reverse the effects of climate change like the US is doing in current times, being a developed country they should have taken the responsibility to take measures and help others to combat climate change by providing funding, technology, etc. This is a clear case where Climate change takes the shape of an issue that is causing injustice with a very large section of people in the world. Though the responsible international group accepts that the disastrous problem of climate change is coming to us, understands the cause and identify the steps need to tackle it, the major actions to be taken are still getting delayed and therefore the impacts of climate change hinders human development, establishment of human rights, and result in injustice.

It is very important to analyze and understand that Climate has always changed but what is so alarming about the situation in present times; the end of ice age is one of the examples of the climate change (Clark, 1995). The serious tension over climate change currently is because it is affecting the life on earth in every manner and most importantly has given rise to the injustice against humanity. Climate change is affecting human life adversely by creating danger towards food, shelter, health, life, human rights and development. In 2008, the Human Rights Council acknowledge the effects of climate change on human rights by recognising that it “poses an immediate and far-reaching threat to people and communities around the world.”<sup>15</sup> This was one of the landmark steps in relating climate change with human rights by the virtue of justice enshrined in the achievements of human rights while combating climate change, other conventions and agreements have seen the repeated use of climate justice which has certainly developed from the simple concept of environmental justice which is purely physical and scientific in nature.

### **2.1.3 Transformation of Environmental Justice to Climate justice**

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<sup>15</sup> United Nations Human Rights Council resolution 7/23. “Human rights and climate change” (28 March 2008) [http://ap.ohchr.org/documents/e/hrc/resolutions/a\\_hrc\\_res\\_7\\_23.pdf](http://ap.ohchr.org/documents/e/hrc/resolutions/a_hrc_res_7_23.pdf)

“Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.” - United States Environmental Protection Agency.<sup>16</sup> Environmental justice originated as a campaign to raise the debate in the field of environmental politics which eventually had a great impact on the path towards climate justice. The beginning of environmental justice movement has been traced from the protests against the disposal of PCB-tainted soil at a new landfill in Warren County of North Carolina in 1982 (Schlosberg & Collins 2014). The refusal to accept the dumping of extremely noxious waste in a poor & African-American locality brought various environmental & civil rights activists which lead to the development of a nationwide movement for environmental justice. In the past few years, the discourse of environmental justice has been encapsulated by the rising and vigorous climate justice movement. The difference in both climate and environmental justice movement is that Climate justice accepts the impact of climate change on both environment and human life with the perspectives of justice, equity and human rights. Poor sections of the countries from Asia, South America, Africa, and the Pacific Island nations contend that climate change is not only an environmental issue but a issue of justice too (Cox, 2012). It has been seen that the most vulnerable people to the effects of climate change has often not involved in the forums to discuss this issues of climate change which again creates a need of justice in this context.

The concept of climate justice for the first time was recognised in 1999 in a report named Greenhouse Gangsters vs. Climate Justice (Bruno, Karliner & Brotsky, 1999) by the San Francisco-based Corporate Watch group. The origin of the concept of Climate justice can be traced from the First Climate Summit that took place in The Hague in November, 2000.<sup>17</sup> During the summit one of the first large-scale public assembly of thousands of Climate justice activists was held, this summit was organised on the sidelines of UN Climate change Conference of Parties (COP 6) and was an additional platform to act place for important discussion “to raise the critical issues that are not being addressed by the world’s governments” (Bullard, 2000). Following the climate justice summit two other important forums took place where climate justice activists and international NGOs gathered on the sidelines of UN conferences in Bali, Indonesia, in August 2002<sup>18</sup>, and during UN Climate change conference of Parties (COP 8) in New Delhi, India, in October 2002<sup>19</sup>. During the UN Conference in Bali, an alliance of international NGOs, from India, United States, Malaysia, South Africa and the region of North America designed one of the first declarations explaining climate change from the perspective of climate justice and human rights (CorpWatch, 2002) which

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<sup>16</sup> <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>

<sup>17</sup> <https://corpwatch.org/article/alternative-summit-opens-call-climate-justice>

<sup>18</sup> <https://corpwatch.org/article/bali-principles-climate-justice>

<sup>19</sup> <http://unfccc.int/cop8/>



led to the development of the “Bali Principles of Climate justice”. These principles were aimed to “build an international movement of all peoples for Climate justice” (Bali Principles of Climate justice, 2002, para. 19). In the end of the text of Bali Principles of Climate justice it is mentioned that they are “Adopted using the "Environmental Justice Principles" developed at the 1991 People of Color Environmental Justice Leadership Summit, Washington, DC, as a blueprint” which is a solid proof of transformation of Environmental Justice to Climate justice. Not only this, these principles explicitly talks about what all Climate justice has to include in order ensuring justice for everyone while combating climate change. The focal point of the Bali Principles and the other declarations was to transform the debate of climate change from purely environmental, scientific & technical perspective to human rights, justice and equity (Agyeman, Doppelt, Lynn & Hatic, 2007). One of the landmark time period in this shift is October 28, 2002 in New Delhi, India where the poor people, youth, indigenous people and farmers from approximately 20 countries in more than a thousand numbers marched for climate justice (Roberts, 2007) on the occasion of Climate justice Summit taking place on the sidelines of UN COP 8 and was aimed to begin structuring for climate justice on an global level. The representatives were gathered “to provide testimony to the fact that climate change is a reality whose effects are already being felt around the world (Delhi Climate justice Declaration, 2002, para. 1).<sup>20</sup> These summits and declarations contributed in shaping the climate justice concept into an important and concrete one, in the next section its legality, role and importance will be discussed.

## **2.2 The rationality of climate justice**

The examination of justice by various authors is mainly based on the standard reasoning related to the subject matter of justice but not on the representation of how different groups and societies perceive justice personally, also the interpretation of their personal preferences are not considered while analysing justice. The rise of justice is not based on personal preferences; but has evolved from a contemplated and rational discourse in which the individual preferences automatically got blended. This section mainly outlines the perspectives of justice in the legal context and principles of justice; it will also provide an overview on the importance of climate justice keeping the intergenerational justice as one of the main basis.

Regardless of being debated since the old times, the concept of justice has continuously being seen as one of the most revitalizing, perforating and arguable notion. In the discourse related to the concept of justice the issue concerned to the “meaning of justice” is the one that have ceaselessly evolved. To understand & establish the rationality of climate justice it is important to ponder upon

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<sup>20</sup> <https://corpwatch.org/article/delhi-climate-justice-declaration>

the various theories containing the meaning of justice given by scholars and philosophers, this will lead to a connection between the meaning of justice and the significance of its use in the climate change context. There are various theories of justice given by philosophers but the one which sounds the fittest in the climate change is by a remarkable political thinker of the past, Aristotle. He said that “justice consists in what is lawful and fair; with fairness involving equitable distributions and the correction of what is inequitable” (Pomerleau, 2013). The other important explanation of justice was by given by John Rawls, who examined justice in terms of paramount identical freedom of basic rights and duties for everyone in the community (Rawls, 1999). The explanations of justice by both Aristotle and Rawls are based on the principles of fairness, equity, rights and duties for everyone in the community which can be easily seen embedded in the concept of Climate justice. From the above study, it can be stated that climate justice is rational as it comprises the quality of Transitional Justice, Corrective Justice and Distributive Justice. According to the International Centre of Transitional Justice, “Transitional justice is a response to systematic or widespread violations of human rights.”<sup>21</sup> The concept of Corrective justice is the one that focus on the connection between law and morality (Hamburger, 1965). The other important concept of distributive justice means just allocation of collective merits and burdens by a group to its constituents; in simple terms, distributive justice refers to the fair distribution of goods in a society (Konow, 2001). Climate justice follows all the principles of these three types of justice, firstly it places the protection of human rights on the forefront; secondly it focuses on the enforcement of laws to combat climate change with a sense of morality and thirdly climate justice assures the allocation of resources in an equitable form among all the groups. In present times, it is important for Climate justice activists to demand for the inclusion of the principles of Retributive Justice which refers theory of justice that holds the offenders accountable and impose punishments in the proportion of the wrong done (Cahill, 2007). Though the concept of retributive justice is aggressive in nature but in order to protect the environment and to ensure climate justice this kind of approach is needed.

The coming sections in this chapter will give more insight on the rationality of climate justice by putting forth its principles, legal perspectives and importance.

### **2.2.1 Principles of Climate justice**

From the above mentioned content in this thesis, it is clear that Climate justice follow the principles of equity, respect for human rights, protection of vulnerable groups and equal access to resources. The origin of the principles of Climate justice can be easily traced from the legal instruments like The Rio Declaration on Environment and Development (1992) And United Nations Framework

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<sup>21</sup> <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>

Convention on Climate Change (1992); both of these treaties have mentions about the principle of equity and human rights as the bedrock of their implementation and enforcement (Declaration, 1992; UNFCCC, 1992). Though the term “climate justice” was not explicitly used in these two treaties but indirectly they have laid the path for the establishment of the principles for climate justice. The principle of equity has been debated in the context of climate change by various scholars on different basis like the per capita right (Grubb, 1989), on the basis of past responsibilities (Hyder, 1992), under the duty to pay for basic needs (Smith, 2013) and most importantly under the notion of “grandfathered” emissions (Bodansky, 1993).

Utilitarianism, Liberal egalitarianism, Market justice, Mutual advantage, Communitarianism and Meeting needs; these wide principles were also proposed to achieve long-term sustainability of climate justice (Okereke & Dooley, 2010). These principles were proposed to examine the interpretations of equity to be involved and embedded in the race to create an agreement (which later emerged as Paris Agreement) post the Kyoto Protocol. The principles of climate justice directly trace their origins to the Bali Principles of Justice, 2002; the Bali Principles was the result of an international collaboration of various groups that have gathered in Johannesburg for the Earth Summit in 2002. These groups have come up with a number of principles<sup>22</sup> which were aimed at attaching a human centred approach to climate change (CorpWatch, 2002). The Bali principles were significant in reshaping the discourse of Climate change to a human rights and climate justice outlook. The work of “Mary Robinson Foundation - Climate justice” is also very influential in terms of defining the principles of climate justice, similar to the Bali Principles they are also focused on the linkage of human rights and development through Climate justice and to protect the rights of the most vulnerable to climate change. These principles also focus on the equitable distribution of resources to combat climate change and to share its impacts in a fair manner.

Mary Robinson Foundation - Climate justice has adopted the following principles of Climate justice as the driving force to their work in advocating for climate justice:

1. Respect and Protect Human Rights
2. Support the Right to Development
3. Share Benefits and Burdens Equitably
4. Ensure that Decisions on Climate change are Participatory, Transparent and Accountable
5. Highlight Gender Equality and Equity
6. Harness the Transformative Power of Education for climate stewardship

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<sup>22</sup> <https://www.ejnet.org/ej/bali.pdf>

## 7. Use Effective Partnerships to Secure Climate justice<sup>23</sup>

These principles form the basis of the concept of climate justice very strong in the international climate change regime as they all are gazing towards the establishment of a framework that can combat climate change while not violating the human rights and encouraging development for everyone. It also indicates that there is a need to make the discussion on climate change more inclusive by hearing to the grassroots and indigenous people about their methods and resilience and indicates the urgency of aggressive mitigation techniques to be adopted by developed countries. These principles of Climate justice would work effectively when there is a sense of legal binding attached to them and the legal perspectives of climate justice are discussed in the next section.

### 2.2.2 Legal Perspectives of Climate justice

Climate justice is a concept that has a legal dimension attached to it ensuring its effectiveness in the society, its discourse has come up with various climate changed based litigation over the years. A global trend to combat climate change with the help of litigation and lawsuits is rapidly growing, law has given the power to various groups and individuals to approach courts to decide and hold governments and Corporates accountable for the damage they are causing to the environment and ultimately to the human life. Litigation has come up as a new aspect of climate action, where people can demand for aggressive measures to reduce the greenhouse gas emissions. Litigation, as a method of achieving climate justice has not only grown in number over the time but has also influenced the opinion and attitude of the public & companies (Popielarski, 2016). In the present times, as a part of climate action citizens are challenging their own governments and big oil companies that fail to act against the risk of climate change they are causing. It has been reported in a survey done by United Nations Environment Program and Columbia Law School<sup>24</sup>, lawsuits related to climate change has increased around nine hundred cases in twenty four countries as of March 2016 to May 2017 and the courts will continue to be the institution insuring justice against climate change (Burger et al., 2017).

The landmark climate justice lawsuit came up in 2015 in the Netherlands, a Non-governmental Organisation named Urgenda Foundation representing nine hundred Dutch citizens sue the Dutch Government to cut down the greenhouse gas emissions (Cox, 2016). In the history, this was the first instance where citizens challenged their own government to demand justice against climate change and has also won. The Dutch Government was ordered by the Court to cut down the greenhouse gas emissions by at least 25 percent by the year of 2020 in comparison to 1990 levels. The verdict of the court read, "The state must do more to avert the imminent danger caused by climate change, also in

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<sup>23</sup> <https://www.mrfcj.org/principles-of-climate-justice/>

<sup>24</sup> <http://columbiaclimate.com/files/2017/05/Burger-Gundlach-2017-05-UN-Envl-CC-Litigation.pdf>

view of its duty of care to protect and improve the living environment.”<sup>25</sup> Followed by this verdict, the Dutch government has taken some major steps to combat climate change such as announcing a coal exit (Wynn, 2016). This particular case has inspired many other groups for similar kind of litigation in the world including U.S., Belgium and Germany.

Over the last ten years, there has been an increase in number and urgency of laws and treaties related to climate change mitigation decade. These laws have also come up with various rights & duties and litigation has come up with a tool to check their application in the practical world not limiting it to papers. In the era of adverse climate change, the litigation acts as a bridge between the legislative and enforcement side of the international climate change legal framework. Seeing the importance of climate change litigation various countries has come up with special courts and tribunals dealing with environmental and climate change related lawsuits (Burger et al., 2017), one of the prominent example of these types of institution is the National Green Tribunal of India which has played an instrumental role in ensuring climate justice through litigation. The availability of these types of judicial institutions is necessary in every country so that the citizens have a tool to take climate action and get it enforced with the help of judiciary. The only area that have been explored by the litigation in context of climate justice is to get the carbon emissions reduced and it has hardly seen that other principles of climate justice to be taken into considerations, human rights and right to development are the important principles that can also be think upon in these lawsuits.

### **Chapter 3 - Climate justice in the international climate change legal framework**

#### **3.1 Role of climate justice for an effective climate change legal framework**

The demand for collaborative efforts to face the continuously growing menace of climate change depends on the intensity of the problem, the sources, the outcomes and the different impacts. The ones who were the most responsible for the Climate change historically are often the most well equipped to address and avoid climate change. The injustice caused by climate change is noticed over generations as the mounting effects of human actions on environment can remain for centuries into the time ahead. The transformed temperature that we are observing today worldwide is because of the utilization of fossil fuels in the previous industrial development eras and this will be a connecting and continuous affect as the future generations will have to tussle with the outcomes of the current choices and actions. Immediate efforts are required to stop climate change from escalating and to pacify green house emissions from the prevailing sources.

The establishment of Climate justice is obvious because of the unbalanced dispensation of the effects of climate change as the externalities of climate change affects the world at large and is not

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<sup>25</sup> <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7196&keyword=urgenda>

restricted to a particular region (IBA, 2014). The concept of climate justice as mentioned in the previous chapter focuses on the “realization of responsibility” by the countries who have polluted the environment the most to take actions in much more powerful manner, this also leads to one of the notable principles of climate justice used in international legal climate change framework known as the “Polluter-Pays Principle”. The concept of climate justice, in the era of disruptive climate change demands for the cost bearing for pollution by those who cause it (Kimuyu, 2018). Therefore, climate justice recognises that the industrially developed nations have contributed the maximum to climate change throughout the last two centuries because of which the developing countries, LDCs and SIDs experience the devastating effects (Bruce, Lee, & Haites, 1996). Following this climate justice entreat to pursue climate change discourse with human rights and development in the climate change legal framework so that it can be fair and just for the most climate change prone people (International Council on Human Rights Policy, 2008). Elementary climate justice principles in the context of international legal climate change framework have been scandalously argued and confronted (Soltau, 2009). Therefore, recognizing the fitting legal principles of climate justice in the climate change framework is of significance<sup>26</sup> with a challenge to acquire consent of all involved stakeholders. Achieving legitimate and normative consent can pave a path for the establishment of climate justice globally with the help of the climate change legal framework.

In the recent past, the concept of justice has got a position in the international treaties & agreements to deal with the issue of human-caused climate change. Realizing the threat to the coming generations many conferences and summits have been organized, one of them was The Rio Summit in 1992 that welcomed the principle of preventive action which acknowledges that in the clear possibility of devastating damage by climate change, shortfall of full technical surety should not become a reason to delay in protective measures. In continuation to this, the UNFCCC has also recognised the equity onus as a part of the climate justice and recommended the principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC) by affirming the commitments in Article 4(1) of the UNFCCC<sup>27</sup> to all parties. As discussed in the previous sections that UNFCCC is the primary body dealing with the framework on climate change, it can also be observed that it strongly follows the guidelines of the “no-harm rule” from the International Law which states that the no-harm rule is a well-known principle of customary international law which makes a country legally obliged to prevent, minimize and control the risk of environmental threat to other countries (Birnie, 2009). These principles of justice on assimilation into the

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<sup>26</sup> Committee on The Legal Principles Relating to Climate change, Legal Principles Relating To Climate change, (Sofia Conference, 2012), (International Law Association, Sofia 2012)

<sup>27</sup> <https://unfccc.int/resource/docs/convkp/conveng.pdf>

international legal system are not seen as commanding the framework in climate change mitigation policy and also they are not very effective. Before the existence of Paris agreement, the international legal framework was facing a continuous opprobrium for not observing climate injustice as an important concern created by climate change (Adelman, 2010). Various legal profession bodies have also presented their views on the climate change discourse; the International Law Association (ILA) in its report on Legal Principles Relating to Climate change under “Draft Articles on Climate change” has identified climate justice concerns within the legal framework of the UNFCCC (Brunnée & International Law Association 2014; Schwarte & Frank, 2014). In the said principles, the draft articles were added to indicate the crucial principles that the countries should consider in the establishment and working of powerful regime on climate change. In the principles, Draft Article 4 and Article 5 talks about “Equity” and “CBDR-RC” respectively are recognising both intergenerational and intragenerational equity as important notions of climate justice. Climate justice fundamentally includes both inter and intra generational equity as important tools in extenuating the adverse impact of climate change on the present & unborn generations and also between the people of the same generation based on their economic status. Climate justice also recognises gender equality as a key component as the women will inordinately carry the tribulation of climate change (McKinney & Fulkerson, 2015). The increase in migration due to climate change causes the women more prone to exploitation and impoverishment (McInerney, 2017). The meaning of Climate justice differs from groups to groups as the possible inferences of climate change in context of justice are diverse and complicated. Climate justice is not only a swift backing to act lawfully but it is also a genesis of considering actions as acceptable for the good of all (Forsyth, 2014).

### **3.2 Current legal complexities in establishing climate justice**

In the past two decades, notable evolution and accomplishments have been observed in the international climate change legal framework but the international institutions are still facing the disintegrated and disseminated perspective relating to climate justice (International Law Commission, 2006). This disintegration is caused because of the numerous spheres of related international legal pursuit, not only the legal pursuit but the complication of international economic and development pursuits. Multiple fields of international law are related to the issues lifted by climate justice, but the law in the present times was not structured in a way to tackle climate change impacts and in a view is not suitable to address climate justice. In this section, the challenges in banking on the present international legal climate change framework to combat climate change and ensuring climate justice are focused upon.



The attempts to use the climate change law to achieve climate justice on national & international levels have been wide-ranging and comprehensive. For instance, a large number of countries have developed schemes within their climate change regime to reduce green house emissions like the European Unions' "2020 climate & energy package"<sup>28</sup> and "2030 climate & energy framework".<sup>29</sup> Not only the developed groups but the rapidly developing countries like India have also cleared its approach to mitigate climate change through its "Intended Nationally Determined Contribution"<sup>30</sup>. It is to be noted that all these national commitments and policies are legally binding or created in such a way that they have to be followed in a strict manner to meet the compliance requirements. On the other side international climate change laws made up of international treaties and conventions which are aimed at conserving the environment from the contemptuous effects of human actions lack the legally binding elements (Zovko, 2005). Many scholars in the past has emphasized that the international climate change legal framework is protective in character to mitigate the risk of climate change (Birnie & Boyle, 1994).

As discussed in chapters above, the main international legal instruments governing the climate change legal issues are the UNFCCC, the Kyoto Protocol and the Paris Agreement. From the text of these agreements a clear observation can be made out that principles of (i) Common But Differentiated Responsibilities & Respective Capabilities, (ii) Intergenerational equity, (iii) Intragenerational equity and (iv) Right to development has been emphasized in shaping up of these. Before Paris Agreement, Kyoto Protocol was supposed to administer the carbon emissions of different countries but it was extensively condemned because of its non effectiveness. The US, being one of the biggest polluter countries of the world has only signed the Kyoto Protocol but never took steps to ratify it and eventually did not ratify which makes the Kyoto Protocol non-binding on US to respect the greenhouse emission curtailment commitments.

Also the advanced developing nations like India and China which are the top emitters of greenhouse gases, as parties to the Kyoto Protocol, are exempted from emission diminutions due to their "developing nations" status and hence do not fall in line with the CBDR principle (Feldon, 2006). In context of achieving climate justice in line with CBDR-RC principle it is globally accepted that unless countries come forward to a mutually defined burden sharing of the impacts, there is no possibility to achieve an instrument that can ensure climate justice (Brunnée, 2012). Paris agreement in 2015 emerged as a landmark treaty in the climate change framework and was considered as the "problem solver" against problem of climate change while achieving climate justice. In the Paris Agreement, the mention of principles of equity and the CBDR-RC principle has

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<sup>28</sup> [https://ec.europa.eu/clima/policies/strategies/2020\\_en](https://ec.europa.eu/clima/policies/strategies/2020_en)

<sup>29</sup> [https://ec.europa.eu/clima/policies/strategies/2030\\_en](https://ec.europa.eu/clima/policies/strategies/2030_en)

<sup>30</sup> <http://pib.nic.in/newsite/PrintRelease.aspx?relid=128403>



been significantly done whereas climate justice as a separate concept got only a single mention in the preamble of the Paris Agreement, which on one hand recognise the importance of climate justice while taking action to combat climate change but also shows the lack of ambition for its achievement. The ineptitude of the international legal framework urge the implementation of climate justice principles stays an everlasting curtailment on the legal framework's efficacy and acts a challenge while transmuting climate justice issues into real action (Tavoni, Chakravarty & Socolow, 2012). Simultaneously, in the nub of the din of various views on climate justice, the greenhouse gas emissions are on rise leading to the continuous adverse effects on the world. It is noticeable that the standard framework stays antagonistic to unanimous concept of climate justice (Grasso & Markowitz, 2015). Constructive opinions were contained in the "High Ambition Coalition" during COP 21 in Paris (Streck, Keenlyside & Unger 2016) and assurances of partnerships & support beyond the standard infrastructure of climate change gave many people high hopes regarding the impetuous solutions. But on the other side withdrawal by big nations from these agreements, such as withdrawal of US from Paris Agreement, Canada from Kyoto Protocol, the failure of Copenhagen conference (Spak, 2010) and the position of many developed western states in recent dialogues counsel a strike against the essential principles of climate justice that were included in the preceding climate change agreements (Posner & Weisbach, 2010). From the announcements of developed nations at COP 21 it was explicit that they were backing for the notion of statutory categorization and attempting to emphasize their view that justice requires developing nations to contribute more towards the efforts to combat climate change.<sup>31</sup>

A principled examination of climate change international legal framework shows that there is a economic conditions, international relations and justice claims are strongly correlated and can be used by nations in future negotiations related to climate change. Various forums within the climate change regime emphasised on the significance of interrogating the level to which the climate justice can be achieved in the international legal climate framework and also to understand whether the concern for climate justice is influenced by other relative factors (Sikor & Newell, 2014)

### **3.3 Climate justice within UNFCCC**

The demand for collaborative efforts to face the continuously growing menace of climate change depends on the intensity of the problem, the sources, the outcomes and the different impacts. In the UNFCCC, the implementation of the equity principle is one of the fundamental ideas through which climate justice can be achieved in the international legal climate change. For justice to be realized as the ultimate goal, equity in the international climate change regime could be viewed as a

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<sup>31</sup> Yeo S, Evans S. Explainer: why 'differentiation' is key to unlocking Paris climate deal. Carbon Brief; December 7, 2015. Available at: <http://www.carbonbrief.org/explainer-why-differentiation-is-key-tounlocking-paris-climate-deal>

technique of proceeding justly towards climate justice. Though the concept of “climate justice” was not explicitly used in the legal text of UNFCCC 1992, it contains the term “equity” in the text. Article 3 of the UNFCCC 1992 includes the mention regarding equity that has led the discourse of climate justice in the climate discussions since 1992. Article 3 (Principles) of the UNFCCC 1992 is as follows:

“In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof”.<sup>32</sup>

In the sections below it is explained that how climate justice concept shaped out of the equity principle in UNFCCC and what all development it has seen in the framework, the role of UNFCCC in discussion climate justice issues is also touched upon.

### **3.3.1 Arguments about Climate justice within the UNFCCC**

The UNFCCC has always focused on the significance of assuring climate justice by putting collaborative efforts to combat climate that are equitable and non-discriminatory in nature. UNFCCC had come up and systematized the principle of CBDR-RC to deal with the issues of developing and the under-developed world regarding the unbalance in past contribution of greenhouse gas emissions keeping climate justice as an ultimate goal. It has been seen that the justice approach mostly dominate and hinder international climate discussions (Huntjens & Zhang, 2016). The major elementary reason for the prolonged impasse is that there is no clear and invariably adapted definition of climate justice available within UNFCCC (Hurlbert, 2011); even in the landmark Paris Agreement “climate justice” has been used in Paragraph 13 of its preamble which reads as follows:

“Noting the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of "climate justice", when taking action to address climate change,”<sup>33</sup>

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<sup>32</sup> <https://unfccc.int/resource/docs/convkp/conveng.pdf>

<sup>33</sup> [https://unfccc.int/sites/default/files/paris\\_agreement\\_english\\_.pdf](https://unfccc.int/sites/default/files/paris_agreement_english_.pdf)

The text of the Paris Agreement only talks about the importance but not the meaning of climate justice which leads to uncertainty and obscurity in the international legal framework in terms of coming to a mutual solution. In present times, no particular section of studies have a syndicate on describing and defining climate justice and therefore different meanings of climate justice comes up. Climate justice is a misty notion that compasses very different meanings, based on different perception (Silveira, 2016). Argumentations around climate justice have acted crucially in designing the UNFCCC and the agreements like in Kyoto and Paris. Climate justice issues, time and again have been observed as the most disputable issues in the international climate change negotiations and have repeated at UNFCCC's COP 21 in Paris. Views and contentions about climate justice are firmly entrenched within the UNFCCC and notably debated by developed and developing nations (Okereke & Coventry, 2016). There are different elements to climate justice within UNFCCC such as rights of indigenous people, gender equality, right to use of land, but these elements are usually less considered as the climate justice discourse remains between the boundary of present and past north-south connections (Okereke, 2006).

### **3.3.2 Role of the UNFCCC as the main forum to address climate justice Issues**

The UNFCCC has acted as the main platform for the crucial climate justice issues to be mooted parallel the international climate policy (Morgan & Waskow, 2014). This section's focal point is to assess the UNFCCC regime's role in context with justice issues. In the international legal climate change framework, climate justice has been always a uniform notion of discussion and endorsement which can be traced from its origin in 1990s (Bodansky, 1994). In order to understand the development, functions and role of UNFCCC regime it is crucial to know the ascendancy of climate justice through equity principle. Existing academic writings on the legal features of the international climate change regime evince that the UNFCCC and its successor the Kyoto Protocol have grappled to successfully answer the questions of climate justice that were posed towards them (Najam, Huq, & Sokona, 2003). Even the Paris agreement is in questions regarding its strength in addressing climate justice issues (Ferreira, 2016). While considered as aspiring and committed for the acknowledgement of climate justice principles, the text of UNFCCC validated in 1992 did not include any particular targets for the reduction of greenhouse gas emissions. The Kyoto Protocol emerged as the first instrument in UNFCCC regime in 1998 by including the emissions reduction commitments.<sup>34</sup> Strong attempts were made by the protocol to establish the principle of differentiation mentioned in UNFCCC by lawfully accounting the developed and industrialized nations to meet emission targets. Application of the Kyoto Protocol were seen as politically

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<sup>34</sup> <https://unfccc.int/resource/docs/convkp/kpeng.pdf>

schismatic and lead to the difference in contentions by developed and developing countries regarding fairness and equity (Okereke, 2010)

The UNFCCC is relatively a minute part of international law that deals with climate justice, in a structure mainly comprising of three international treaties, the UNFCCC 1992, the Kyoto Protocol and the Paris Agreement. In supplement to these standard sources, conventional international law and universal norms of law are applicable to the climate justice regime. A 2007 report of IPCC has recognized that there are ‘no verifiable evaluation of the UNFCCC that assert that the agreements within it have advanced or will advance without substantial changes in finding a proper solution to the climate change problem’ (Palut & Canziani, 2007). The birth of Paris Agreement has come up with few changes that the international climate change framework was looking for and the need for which has been expressed by various scholars. Nevertheless, UNFCCC provides a stage where the nations can negotiate on climate change issues, the countries have realised the need of protecting human rights while taking climate actions during COP 16 in 2010 at Cancun and have also observed the significance and urgency of addressing climate justice through UNFCCC in 2015 at Paris during COP 21. After the Kyoto Protocol, Paris Agreement has emerged as the agreement which explicitly contains climate justice approach in its text which is a sign of development of climate justice regime and is explained in the next section.

### **3.3.3 Development of Climate justice Concept within UNFCCC**

The path to a new inclusive climate change agreement ensuring climate justice was laid down during COP 17 in 2011 at Durban where all the parties consented to put efforts to the enactment of a treat in 2015 at COP 21 through ad-Hoc Working Group on the Durban Platform for Enhanced Action (Rajamani, 2012). The past efforts to move towards an international legal framework for achieving climate justice during COP 15 in 2009 at Copenhagen failed deplorably because of the difference of perspectives between developed and developing nations on the important issue of administering justice in an agreement post Kyoto Protocol (Cao, 2010). During COP 21 at Paris in 2015 the issue to establish the concept of differentiation in the agreement was plausibly one of the controversial matter as the parties tussled to stabilize the approach towards building an ambitious agreement and acknowledging past and present accountability for the climate change, which is not astonishing as many scholars have pointed out that even if equity is not included in the text of Durban Agreement, its dedication to the ethics of UNFCCC entail an assertion of the focus on equity principle through CBDR-RC as the foundation of the international climate legal framework (Klinsky & Winkler, 2014). The emergence of Lima Call for Climate Action during COP 20 in

2014 at Lima<sup>35</sup> had asserted that the Paris treaty in 2015 must be founded on principles of equity and CBDR-RC principle to achieve Climate justice.<sup>36</sup> After the signing of Durban Agreement at COP 17 in 2011 which adhered both developed and developing nations parties for determined efforts to combat climate change, almost all the significant discussions which led to COP 21 were concentrated on establishing an agreement that includes discretionary and nationally governed emission reduction pledges which were basically the result towards an agreement that can establish climate justice globally. Therefore, examination of climate justice within the international legal framework includes the equity inference of the new climate framework (Paris Agreement) and the impact that collaborative efforts have in context of climate justice achievement.

### **3.4 Climate justice and its role in Paris agreement**

It is evident that those who are affected vigorously by climate change are generally the least responsible for its cause and have the minimal or no capacity to mitigate.<sup>37</sup> The notion that the most prone people should be fairly treated was enshrined in the Paris agreement as the preamble marks the significance of “climate justice”. To put climate justice to effect, the Paris agreement highlighted the need of enforcement to highlight CBDR-RC principle. Climate justice is aimed at having a legal agreement that focuses on the human centred approach, safeguard the most prone individuals and equitably distributes the responsibilities towards climate change.<sup>38</sup> Every country has vulnerable groups and environment to be protected from the adverse effects of climate change and want to develop in terms of infrastructure and economy which can be achieved in line with the establishment of climate justice, as one of the important communiqué of climate justice is, that it is feasible to make efforts to mitigate climate change and the same time to pursue development and protect human rights.

Various scholars from the climate changes based areas have acclaimed that Paris agreement has emerged as a prospective game changer. The inception of Paris Agreement has been observed as a historic moment for not only to the present world but for the future generations (Stern, 2015). Climate justice demands for intensified actions under all of the commitments of the Paris Agreement as the harm and destruction due to climate change is likely to be significant. Climate

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<sup>35</sup> [https://unfccc.int/files/meetings/lima\\_dec\\_2014/application/pdf/auv\\_cop20\\_lima\\_call\\_for\\_climate\\_action.pdf](https://unfccc.int/files/meetings/lima_dec_2014/application/pdf/auv_cop20_lima_call_for_climate_action.pdf)

<sup>36</sup> <https://unfccc.int/news/lima-call-for-climate-action-puts-world-on-track-to-paris-2015>

<sup>37</sup> Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate change, Available at: <https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>

<sup>38</sup> On the basis of Mary Robinson Foundation - Climate justice's definition of climate justice: Climate justice links human rights and development to achieve a human-centred approach, safeguarding the rights of the most vulnerable and sharing the burdens and benefits of climate change and its resolution equitably and fairly. Climate justice is informed by science, responds to science and acknowledges the need for equitable stewardship of the world's resources. Available at: <https://www.mrfcj.org/principles-of-climate-justice/>

justice has influenced the structure of Paris Agreement by ensuring the application of CBDR-RC principle which includes the notions of inter & intra-generational equity to unbolt the potential of all nations to curb emissions by 2°C. Climate justice has also marshalled for political will to put people at the centre of the climate actions in context of protection of human rights and sustainable development (Cameron et al., 2013). In order to establish climate justice, the Paris agreement has focused on the application of equity and CBDR-RC to all its elements such as adaptation, burden sharing and mitigation.

## **Chapter 4 - The relationship between climate justice and right to development**

### **4.1 Right to development and its International legal status**

The right to development is one of the pillars of the UN Charter and the present international community. It is also encompassed by human rights. In the context of right to development, it is said that in a situation where a nation is incapable to concede protection of the human rights of its citizens, the international fraternity is under a moral obligation to help that particularly nation to do so. This binary character of right to development, as a right spread over inter and intra states network is one of the major hindrance to its embracement by the international community. Right to development has gained a great attention by the international human rights fraternity and the discourse about right to development has also moved ahead being super political in nature.

The introduction of the notion of development as a human right to the global discourse happened in 1950s and 1960s and was voiced by the developing countries of the global south (Du Pisani, 2006). The right to development was first recommended by Keba M'baye (Former Chief Justice of the Supreme Court of Senegal and Former Vice-President of the International Court of Justice)<sup>39</sup> in 1972 (Pellet, 1984). The first legal identification to right to development was given in the African Charter on Human and Peoples' Rights, 1981<sup>40</sup> and subsequently right to development found its place in the international human rights framework through the adoption of the Declaration on the right to development by UN General Assembly in 1986.<sup>41</sup> According to the declaration, the right to development means:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy

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<sup>39</sup> <http://www.icj-cij.org/files/press-releases/0/000-20070531-PRE-01-00-EN.pdf>

<sup>40</sup> <http://www.achpr.org/instruments/achpr/#preamble>

<sup>41</sup> <http://www.refworld.org/docid/3b00f22544.html>

economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.<sup>42</sup>

Right to development derives its legal base from various legally binding human rights covenants, namely the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights as mentioned in the preamble of Declaration on Right to Development, 1986. Simultaneously, these rights also belong to the category of group rights which differentiates them from the normative human rights like civil, political, economic and social which are prominently considered as individual rights (Rahman, 2010). Under the classification of the “group rights”, the right to peace, right to clean environment and right to development are covered as these rights do not only demand the commitments from a particular nation but also emphasize on the duties of the global community towards the human life (Kirchmeier, 2006). But these group rights also have to face the criticism because of their characteristic of demanding participation from everyone and being different from the traditional and globally accepted individual human rights approach.

The delay in the process of execution has happened because of the different illustrations of the terms “development” and “right to development”. In the past, the notion of development has been acknowledged as a basic economic mechanism which is to be calculated by the enhancement in gross national product and this understanding prevailed long to be fundamental economic model globally. When the profits of the economic growth in the last decades of the twentieth century were not shared equitably among all the countries it lead to a huge criticism and resulted in poverty, inequalities and environmental & climate issues; making the right to development more pertinent (Sengupta, 2013). In the present times when Climate change mitigation is the top preference on the global listing, many development professionals have been unsuccessful to establish a relation between these two in a concrete form. For these professionals, right to development seems to be an uncompleted concept of human rights that cannot be explained in terms of global acceptance and consent (Kirchmeier, 2006). A new point to this discourse have been added by the connection between right to development and climate justice, which is currently getting recognizable in the debate on the real application of right to development in climate change regime.

#### **4.2 Right to development in international climate change regime**

With the growing effects of climate change, development as a right has indivisibly got a place in the climate change regime. The international community should collectively address the issues of

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<sup>42</sup> (Article 1, Declaration on the Right to Development), Available at: <http://www.un.org/documents/ga/res/41/a41r128.htm>

inequity and inequality in order to mitigate climate change with right to development centred to it. Various scholars have proposed that in order to prevent this crisis of climate change the resources should be shared in an equal and equitable form, putting right to development at the centre of these efforts is not only essential but significant to achieve climate justice (Adams & Luchsinger, 2009). The proof shown by the development and climate change emergency is that both of them cause deprivation to the most prone people, particularly those in Least Developed Countries (LDCs) and Small Developing Island States (SIDs). They are the ones who did not exploited the fossil fuels on a great extent and had not taken advantage from the fossil fuel lead development, instead they have suffered and suffering because of the excessive and uncontrolled use of fossil fuels by big economies (Cardona, 2009)

The adoption of Rio Declaration on Environment and Development, 1992 during United Nations Conference on Environment and Development at Rio de Janeiro, Brazil has become a widely accepted establishment of the legality of the right to development in the climate change regime (Hens, 2005). The Rio Declaration is considered to be best aimed at origination and improvement of the rules regulating the human relation with the environment. The declaration is said to be unique as it creates the standard base of how the concept of development was to be interpreted and acknowledged in the post cold war period, surely not as unconstrained but effective and under unavoidable environmental restraints (Viñuales, 2015). Ensuring right to development is intrinsically tethered to the process of addressing the adverse effects of climate change which automatically turn right to development to an absolute right that creates responsibilities on both independent states and international community to take efforts in order to promote equitable development and strong international coalition. In this context right to development is a concern in Climate change discussions which can put all other related rights in danger if in case is not handled effectively. The most important thing to notice is that right to development framework in climate change regime place a clear functionality of the UN's legitimate principles of differentiation which is supposed to secure the vulnerable groups from the effects of climate change (Baer, Athanasiou, Kartha, & Kemp-Benedict, 2008). But the acknowledgement of these principles of UN by developed countries comes as a suggestion for the establishment of an exhaustive development scheme that will persuade developing countries to make a shift from the conventional fossil fuel lead industrialization to green economy and the use of renewable sources of energy. This concept has not been successful and caused issues internationally as the rich nations have not yet substantiate an approach that can help to guide actions needed to transform effectively support development in times of climate change as a result countries like China and India, continue to boost their economies by using fossil fuels at a large extent. (Orellana, 2010)



### **4.3 Correlation of right to development with human rights in climate change context**

As mentioned in previous section of this chapter, the UN General Assembly Declaration on Right to Development, 1986 affirms Right to Development “as a universal and inalienable right and as an integral part of fundamental human rights.”<sup>43</sup> With the advancement of the climate change discourse and inclusion of the development notion in the climate change mitigation, the international community has come up with the establishment of the relation between human rights and climate change keeping right to development as a centre to it. The preamble of resolution of The Human Rights Council on ‘Human rights and climate change’, March 2008 says that:

“Recalling that the Vienna Declaration and Programme of Action reaffirmed the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and as an integral part of fundamental human rights”.<sup>44</sup>

The disastrous effects caused by climate change are concurrent, global and are ascending in nature depending on the pace of climate change to take place; therefore, to pacify these multi-dimensional issues of climate change, a rights based approach is required. International bodies like the Human Rights Council (HRC) and the Office of the High Commissioner for Human Rights (OHCHR) are making attempts to bring a revived recognition to human rights and right to development in the climate change context with the help of various declarations, reports, resolutions, activities and by voicing for the acknowledgement of human rights based approach to address climate change. The landmark Paris agreement also links the right to development and human rights with the climate change action, as in its preamble it is mentioned that:

“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity”

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<sup>43</sup> UN General Assembly Declaration on Right to Development, 1986, Available at: <http://www.un.org/documents/ga/res/41/a41r128.htm>

<sup>44</sup> resolution of The Human Rights Council on “Human rights and climate change “on March 2008, Available at: [http://ap.ohchr.org/documents/e/hrc/resolutions/a\\_hrc\\_res\\_7\\_23.pdf](http://ap.ohchr.org/documents/e/hrc/resolutions/a_hrc_res_7_23.pdf)

Use of the terms and establishing the need to address “human rights” and “right to development” together in the Paris Agreement implies the important connection between human rights and right to development. The collocation of climate change and human rights has faced tough criticism and questioned on the rationality and usefulness of this approach. A large group of professionals from climate change discipline have expressed their concerns of human rights being easily politicized and turned into a controversial debate in the climate change regime (Cameron, 2011). The relationship between human right and right to development in climate change context is usually tricky and most of the times antagonistic as many development experts consider attempts postulate and impose human rights to basic resources as “fanciful and counterproductive”(Seymour & Pincus, 2008). The US in its submissions on August 21, 2008 to OHCHR on “the relationship between climate change and human rights,” have specified that no single climate change agreement, be it UNFCCC or Kyoto Protocol contains any mention for a human rights approach<sup>45</sup>. The application of human rights based approach in context with climate change within UN system has always been a matter of discussion and contentions but the global demand ultimately got human rights and right to development a place in the Climate change framework through Paris Agreement, 2015. Critics of the human rights usage in climate change context usually point questions to the right to development by contending that in the climate regime, even after the enactment of Paris agreement, the right to development lacks legal binding and has no real encouragement from developed countries, and therefore denotes a void and symbolic success for developing countries.

#### **4.4 Right to development as a vital principle of climate Justice**

right to development is an important principle of the notion of climate justice; which is focused upon protecting the rights of the most prone groups and equitable responsibility sharing to combat climate change.<sup>46</sup> Climate justice concedes the intrinsic elemental injustice of the climate change problem globally and also within the countries where climate change impacts devastated the rural people, women, children and indigenous people (Prior & Heinämäki, 2017). Article 3 of the Declaration of Right to Development, 1986 emphasize on cooperation as a commitment to ensure right to development to all. In the international climate change regime, the UNFCCC recognize that the member countries responses towards climate change must be steered by the fundamental

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<sup>45</sup> Observations by the United States of America on the relationship between climate change and human rights, Available at: <https://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/USA.pdf>

<sup>46</sup> Principles of Climate Justice by Mary Robinson Foundation - Climate Justice, Available at: <https://www.mrfcj.org/pdf/Principles-of-Climate-Justice.pdf>

principle of CBDR-RC which is also the main founding stones of the new Paris agreement to direct climate actions after Kyoto protocol (Voigt & Ferreira, 2016).

In the present times, almost after three decades of the enactment of declaration on right to development, the right to development to be correlatively strengthen with the notion of climate justice and must be understood in a manner that a right to pollution can never be considered as a right to pollute but should be centred to increase in support for the developing nations to help them in dissociate their development from fossil fuels (Hongbo, 2017). After so many new inventions and advancements the world has seen in the energy sector, more than 1.2 billion people in the world still have no access to electricity<sup>47</sup> and around 2.3 billion people lacks clean cooking facilities.<sup>48</sup> Provisions that have to ensure right to development as a deliverable of climate justice should focus on inclusive & participatory practices while taking decisions and planning to generate and subsequently use clean energy which can be done by encouraging cooperatives and locally retained clean energy infrastructure. Keeping the focus on the state and international organisations driven solutions which usually prioritize commercial and business requirements over the normal people's needs. Also, it is a duty of the states and intergovernmental bodies to ensure that in the name of clean energy production violation of rights does not happen in any way. In the context of climate change, right to development provides solutions in order to create a robust & revived economic framework with a focus on ethical re-shaping. To achieve climate justice there should be an economic modification by creating a shift from profit-increasing approach towards increased responsibility for strong climate actions which would create an obvious demand of amendments of various rules of trade and investment with an emphasis on strong enforcement of climate and environmental laws but various authors who wrote about climate justice are dubious of market and economics machinery as the suggest best techniques to mitigate climate change (Mueller, & Passadakis, 2009).

The discourse of right to development and climate justice has climate finance as a central aspect attached to it which is necessary for climate change adaptations and technology transfer from developed to developing and least developed nations to help in climate actions within the UNFCCC system (Colenbrander, Dodman & Mitlin, 2018). The birth of Paris agreement confirmed the goal to build up US\$ 100 billion per annum by 2020 for climate action in developing countries and has legally recognized the relationship between climate change and right to development in its preamble. The Paris agreement not only acknowledges the concept of climate justice formally but

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<sup>47</sup> Pg. 91, Global Tracking Framework by World Bank, available at:

<http://documents.worldbank.org/curated/en/603241469672143906/pdf/778890GTF0full0report.pdf>

<sup>48</sup>Pg. 57, Energy Access Outlook 2017 by International Energy Agency, available at:

[https://www.iea.org/publications/freepublications/publication/WEO2017SpecialReport\\_EnergyAccessOutlook.pdf](https://www.iea.org/publications/freepublications/publication/WEO2017SpecialReport_EnergyAccessOutlook.pdf)

also focuses on the incorporation of human rights in climate change context and also the provisions of climate finance in the agreement pave a path for climate justice by ensuring right to development.

## **Chapter 5 - CBDR-RC principle in international legal climate change framework**

### **5.1 The meaning, historical background and evolution of CBDR-RC principle**

The principle of ‘Common but Differentiated Responsibilities & Respective Capabilities’ (CBDR-RC) originated in the international legal climate change framework to minimize the disparity between the developed and developing countries (Voigt & Ferreira, 2016). The origin of the principle of CBDR-RC is a result of two prime phenomena, first one are the past emissions of greenhouse gases by developed nations which is has continuously polluted the environment and second is the lack of proper technologies & tools the developing nations have which do not let them preserve their environment while keeping the pace with economic development. The CBDR-RC principle has been recognized and mentioned in various international legal climate change instruments such as Stockholm Declaration, Rio Declaration, United Nations Framework Convention on Climate change, the Kyoto Protocol and recently in the Paris Agreement. The principle engulfs the “common responsibility” of both developed and developing nations in safeguarding the environment while making economic development at a decent pace and simultaneously dispenses “differentiated responsibility” among the nations on the basis of their past contributions and demands developed countries to provide technological and financial assistance to the developing and least developed countries. The principle aims to reduce the equity lacunas between developed and developing nations so that intergenerational and intra-generational equity can be achieved and at international scale (Cameron, Shine & Bevins, 2013).

The CBDR-RC principle developed from the concept of “common heritage of mankind” and is an evidence of normative principles of equity in the international law (Honkonen, 2009). The Rio Declaration in its principle 7 states:

“In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”

It can also be seen that UN Framework Convention on Climate change (UNFCCC) has used the identical language and states “The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.” An ample amount of literature is available on the development and progress of CBDR-RC principle is available, therefore in this chapter a particular focus will be given to the CBDR-RC legal character and its role in climate change regime. The CBDR-RC principle is not just solitary to the climate change regime but this principle has also evolved within the international law system and has been impacted by numerous components (Honkonen, 2009; pg. 49-67).

In the beginning, this chapter shortly deals with the political perspective of CBDR-RC in relation with economic imbalance during the late 90s as a historical background to the principle and then a short discussion about the Stockholm Declaration subsequently followed by the evolution of CBDR-RC. The two elements of the principle will then be discussed followed by the demonstration of how CBDR-RC influenced the UN framework convention and other legal instruments of climate change regime. The manner in which the CBDR-RC principle the principle is evinced in the climate change legal instruments will be determined and analysed to finally establish the legal position of CBDR-RC in the climate change regime.

“Common but differentiated responsibility” (CBDR) therefore charges developed nations, with more responsibility than developing nations because they have generally had a higher impact on the environment through processes of industrialisation, and because they have greater financial and technological capacity to restore the damaged global environment. In this way Principle 7 of the Rio Declaration builds on Principle 6 of the Declaration, which specifies that developing countries are uniquely situated so as to require ‘special priority’.<sup>49</sup>

CBDR-RC principle has been implemented to developed and developing countries in various contexts, and has an advancing nature. The term CBDR-RC is relatively new but the application of differentiating the responsibility in multilateral legal instruments is not. Distinctive or differential demands can be seen in the “Treat of Versailles, 1919” where the International Labour Organisation has acknowledged “that differences of climates, habitats and customs of economic opportunity and

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<sup>49</sup> United Nations Department of Economic and Social Affairs Division for Sustainable Development : Review of implementation of Agenda 21 and the Rio Principles (December 2011; p. 73.), available at: [http://www.un.org/esa/dsd/dsd\\_sd21st/21\\_pdf/SD21\\_Study1\\_Rio\\_Principles.pdf](http://www.un.org/esa/dsd/dsd_sd21st/21_pdf/SD21_Study1_Rio_Principles.pdf)

industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment”.<sup>50</sup> Concurrent to the dawn of international environmental discussions, the developing countries aimed to institute a ‘new international economic order’. These proposals begin to accelerate in the mid of 1990s as the developing countries voiced the need to have a proper and organized differential treatment within the global economic community (Rajamani, 2006). In the past times, the international economic system was untouched with issues of climate change where the developing nations considered that the environmental problems can and should only be dealt by developed nations. However, the importance of this system in terms of acknowledging the ‘differential treatment’ under the environmental regime should not be underrated as the developing countries demanded the transfer of technologies and finance and reduction of restrictive regulations (Honkonen, 2009). The efforts by developing countries were unsuccessful but their eloquence had pushed and stimulated the progress for the CBDR-RC principle in the international discussions.<sup>51</sup> As a result of this development, the equity principle found its place in the Stockholm Declaration.

The birth of CBDR-RC principle within the environmental regime can be traced from the United Nations Conference on the Human Environment in 1972 at Stockholm (Kågeson, 2011). It is significant to note that the term “Common But Differentiated Responsibilities & Respective Capabilities” were not directly used in the Stockholm Declaration but the path to its establishment was paved. Affirmations on obtaining the developmental capacities of developing nations while creating national strategies were included and also the announcements related to the particular conditions of developing nations that need deliberation when deciding the internal resource development. In addition to this their requirements of technological and financial assistance was declared. In the Stockholm Declaration, the CBDR-RC principle is recognised in a way as the declaration states that:

“the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries”<sup>52</sup>

Further, Principle 24 of the Stockholm Declaration states that:

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<sup>50</sup> Constitution of the International Labour Organisation, June 28, 1919, Art 427, 49 Stat. 2712, 2733-34, 225 Consol T.S. 188, 385.

<sup>51</sup> Declaration of the United Nations Conference on the Human Environment (adopted 16 June 1972) UN Doc A/Conf.48/14/Rev.1 (Stockholm Declaration).

<sup>52</sup> Principle 23 Declaration of the United Nations Conference on the Human Environment, 1972

“International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing.

Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.”<sup>53</sup>

Though these principles of the declaration did not make any weighty obligations of differentiation between the countries, but had sent a strong indication to the developing nations that their particular conditions and capabilities will be taken into account. The most important point of the Stockholm Declaration could be considered as the highlighting of international attention towards environmental pollution and its multiplex transborder nature (Brunnée, 2009). The significance of the Stockholm Declaration is not completely focused on its legal meaning but rather it's focused on the establishment of CBDR-RC principle that has guided the international environmental and climate change laws after it. In 1992, with the establishment of Rio Declaration on Environment and Development during the United Nations Conference on Environment and Development at Rio de Janeiro, Brazil it was clearly set out that special circumstance and requirements of developing, least developed & small environmentally prone states shall be given extra preference and global actions to be taken to address the needs of all countries in the field of environment and development.<sup>54</sup> It is noticeable from these provisions of the Rio Declaration that the basic reasoning for CBDR-RC is to encourage equity between developed and developing nations where CBDR-RC plays the role as a support for the developing countries to comply with their commitments under an international legal environmental instrument (Hepburn & Ahmad, 2005).

The explicit mention of the CBDR-RC principle took place at the Second World Climate Conference in 1990 where participating nations acknowledged the principle of equity and common but differentiated responsibility of nations at different levels of development.<sup>55</sup> The mention of CBDR-RC principle in the Rio Declaration on Environment & Development, 1992 precede the notion of capabilities in context of climate finance and technologies (Winkler & Rajamani, 2014). On the same time UNFCCC, 1992 Article 3.1 states that:

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<sup>53</sup> Principle 24 Declaration of the United Nations Conference on the Human Environment, 1972

<sup>54</sup> Rio Declaration on Environment and Development, Report of the United Nations Conference on Environment and Development, UN Doc. A/CONF.151/6/Rev.1, (1992), 31 I.L.M. 874 (1992), Principle 6.

<sup>55</sup> The Second World Climate Conference (UNFCCC), available at:

<https://unfccc.int/resource/ccsites/senegal/fact/fs221.htm>

“The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.”<sup>56</sup>

Subsequently, the mention of CBDR-RC principle has been repeated in various UNFCCC Conference of Parties (COP) documents; the Bali Action Plan, 2007; the Copenhagen Accord, 2009 and the Cancun Agreements, 2010. Also, in the Kyoto Protocol of 1997, CBDR-RC principle was the rationale behind the burden sharing concept.

The World Trade Organization (WTO) has also taken cognizance of CBDR-RC principle in various matters, differentiated responsibility was recognised in one of the WTO disputes: the US Shrimp case.<sup>57</sup> This case is concerned with the import ban applied by the United States on Shrimps not being plucked with ‘US-approved Turtle Excluder Devices’ to preserve the particular species of sea turtles. The ban was in question as it was claimed by other parties that the ban could be a protectionist measure by US to help the US shrimp industry. The appellate body in its statement implicitly acknowledges CBDR-RC and focuses on differential treatment as it states:

“We believe that discrimination results not only when countries in which the same conditions prevail are differently treated, but also when the application of the measure at issue does not allow for any inquiry into the appropriateness of the regulatory program for the conditions prevailing in those exporting countries.”<sup>58</sup>

However, CBDR principle was explicitly stated by the WTO Panel:

“The Panel urges Malaysia and the United States to cooperate fully in order to conclude as soon as possible an agreement which will permit the protection and conservation of sea turtles to the satisfaction of all interests involved and taking

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<sup>56</sup> Article 3.1 of UNFCCC, 1992; available at: <https://unfccc.int/resource/docs/convkp/conveng.pdf>

<sup>57</sup> United States — Import Prohibition of Certain Shrimp and Shrimp Products, 12 October 1998, WTO Document WT/DS58/AB/R (WTO Appellate Body Report).

<sup>58</sup> Paragraph 165 of WTO Document WT/DS58/AB/R (WTO Appellate Body Report). United States — Import Prohibition of Certain Shrimp and Shrimp Products, 12 October 1998



into account the principle that States have common but differentiated responsibilities to conserve and protect the environment.”<sup>59</sup>

The CBDR-RC principle since its inception has supported the international efforts to tackle climate change (Rajamani, 2013). The principle can be said as the outlining aspect of the international climate change regime as it identifies the nations based on their amount of responsibility for climate change and their capabilities to tackle it. The principle has been globally accepted as a foundation for differentiating countries in climate change framework.<sup>60</sup>

## **5.2 Common, Differentiated and Historical Responsibilities in the Climate change Context**

The CBDR-RC principle rests upon three notions of responsibilities which makes controversial issue in international climate change regime fundamentally outstanding to the ‘differential responsibility’ set out for the developed countries with ‘common responsibility’ for all the countries. The biggest issue is that the absence of exactness to this principle has caused to create a big gap of the North-South division leading to disparate understanding of the principle by the developed and developing nations. The different approach of the nations towards the notion of ‘historical responsibility’ in climate change context leads to extensive vagueness about CBDR-RC. Mainly, the CBDR-RC encompasses two elements. The obligation to tackle climate change is ‘common’ for all nations but ‘different’ from each other (Hepburn & Ahmad, 2005). CBDR-RC describes that the responsibilities of stakeholders are shared which implies that all are capacitated and are required to take climate actions. In the section below, a brief overview of the various responsibilities under CBDR-RC is given.

**Common Responsibility** - The ‘common’ characteristic of the responsibilities under CBDR-RC is understood to emerge from the certainty that all nations are facing and the remaining will face the adverse effects of climate change (Stone, 2004). The common responsibility in the climate change regime is connected to a ‘common concern of mankind’ (Ramakrishna, 1990). The mention of common concern can also be seen UNFCCC’s preamble which states:

‘change in the Earth’s climate and its adverse effects are a common concern of humankind’,<sup>61</sup>

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<sup>59</sup> Paragraph 7.2 of WTO Document WT/DS58/RW (WTO Panel Report).United States — Import Prohibition of Certain Shrimp and Shrimp Products, 15 June 2001

<sup>60</sup> ‘Differentiation in a 2015 Climate Agreement’ [Center for Climate & Energy Solutions], available at: <https://www.c2es.org/publications/differentiation-2015-climate-agreement>

<sup>61</sup> UNFCCC, 1992; available at: <https://unfccc.int/resource/docs/convkp/conveng.pdf>

Under CBDR-RC, the common responsibility can be understood in a way that the issue of climate change is a result of collective actions which calls for collaborative efforts from mankind to mitigate with the hazardous effects (Honkonen, 2009). In order to preserve the global environment countries have come together to reach a mutual agreement on having an equitable and constructive rationale to distribute responsibility for reversing the climate change (Weiss 1995). Common responsibility is therefore entrenched in the notion of collaboration which proposes that nations are required to cooperate in controlling and reducing transborder contamination of environment (Schwabach, 2009).

Differentiated Responsibility (with respective capabilities) - The principle of CBDR-RC also includes the notion of differentiated responsibilities among the nations. The nations are differently responsible for the anthropogenic disturbances to the climate and they have different capabilities to address climate change (Pachauri et al., 2014). Before the Rio Declaration in 1992, the differential treatment was established on the different capabilities approach and international climate change agreements that need the involvement of developing countries integrated to the specific needs of developing countries like in the case of technological transfer and financial assistance (Raiczuk, 1991). In order to combat climate change, the notion of differentiated responsibility is extensively adopted in various treaties and other climate action practices at international level (Voigt & Ferreira, 2016). The notion of differentiated responsibility is dependent on different elements which include the specific needs and situations of nations, economic growth of nations and the past contributions causing climate change. Differentiated Responsibility is aimed to encourage equity between the developed & the developing nations in the climate change regime and the rationale behind this is to assure that developing nations can comply with the international climate change laws within a period of time (Zaccai & Lugen, 2014). During the Earth Summit at Rio in 1992, parties to the declaration recognized the contributions of industrially developed nations to the problem of climate change (Rajamani, 2006). Various Scholars have also concluded that the legal rationale for the relocation of technological & financial assistance from developed to developing nations under the differentiated responsibility notion is a pure prerogative than necessities.

Historical Responsibility - Noticeable modifications can be seen in the notion of 'historical responsibility' after the provisions in Rio Declaration & UNFCCC which recognises that the 'largest amount of past and current greenhouse gas emissions emerged in the industrially developed economies and also the per-capita emissions in developing countries are comparatively low' (Müller, Höhne & Ellermann, 2009). It is significant to note that UNFCCC put forward a stable perspective by focusing on nations' responsibilities and their existing capabilities (Yamin &

Depledge, 2004; pg. 70). It is considered by authors that not examining the historical liability would allow the past polluters from developed countries to cause problems for the vulnerable countries (Neumayer, 2000). Developing countries like China, India and Brazil in 2009 presented the proposition for considering historical responsibility in climate change regime.<sup>62</sup>

The main purpose of CBDR-RC principle was to create a balanced differentiation of accountabilities among the nations (Pauw et al., 2014). With the growing discussion on historical responsibility, the developed nations are not ready to accept the impact of their past level of emissions on environment and to respect the notion to reduce the greenhouse gas emissions as the developed countries are interested in utilising the remaining carbon space and to hold current biggest polluters like India and China liable for their growing emissions (Ari & Sari, 2017). On the other hand, the developing nations demands for clear differentiation on the basis of historical emissions and full compliance of CBDR-RC principle by developed nations (Voigt & Ferreira, 2016).

### **5.3 CBDR-RC principle in Paris agreement**

It is widely said that the Paris agreement has come up as the first international legal climate change instrument that has worked out a balanced framework between the urgent need for progressive & strong climate actions and the equitable burden distribution among parties based on CBDR-RC principle (Voigt & Ferreira, 2016). The Paris agreement embrace a more enlarged pattern of differentiation among parties and the basis of that is the reflection of common but differentiated responsibilities and respective capabilities (CBDR-RC) principle. The objective behind the ratification of the Paris Agreement was to come up with a legal instrument within UNFCCC that can be applied to all the nations (Bodansky, 2016). Parties to UNFCCC were antagonistic to the differentiation basis that the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) has come up from the decision 1/CP.17<sup>63</sup>, the words ‘applicable to all parties’ in the decision were ambiguous as it does not clearly rely on equity or CBDR-RC principle and does not recognise any clear focus on developed or developing countries separately but the use of ‘under the Convention’ in the decision established that the forthcoming (Paris) agreement had to be different from the conventional structure of UNFCCC and has to rely on CBDR-RC principle (Bodansky, 2016).

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<sup>62</sup> Pg. 76 of Review of implementation of Agenda 21 and the Rio Principles (December 2011); available at: [http://www.un.org/esa/dsd/dsd\\_sd21st/21\\_pdf/SD21\\_Study1\\_Rio\\_Principles.pdf](http://www.un.org/esa/dsd/dsd_sd21st/21_pdf/SD21_Study1_Rio_Principles.pdf)

<sup>63</sup> The Durban Platform for Enhanced Action, Decision on 1/CP.17; available at: <https://unfccc.int/resource/docs/2011/cop17/eng/09a01.pdf>

The Paris Agreement acknowledges that:

“The Parties to this agreement in pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”

It can be said that in the Paris agreement the stringent difference between the developing and developed were diluted and equity was not explicitly mentioned in the agreement (Cullet, 2016).

In the Paris agreement, the use of CBDR-RC principle looks like articulation instead of a legally binding notion which can also have dangerous impacts on the developing countries as it is required for them to grow economically for the betterment of their citizens with the technological and financial assistance of the developed nations to simultaneously combat climate change (Bodansky, 2016). The Paris agreement is said to be entirely different from its predecessors such as the Kyoto Protocol as it shifts the binary pattern of differentiation to CBDR-RC principle in its various segments. The use of CBDR-RC principle not only demands the commitments from developed nations but also put responsibilities on ‘advanced developing nations’ such as the member of BRICS<sup>64</sup> that have been causing a lot of carbon emissions to mitigate climate change.

#### **5.4 Legal position of CBDR-RC principle in climate change regime**

Within the climate regime, the legal position of CBDR-RC is controversial (Rajamani, 2000). Whilst the use of the word ‘principle’ with CBDR-RC implies a legal character and power attached to it, they are of different types, not purely of legally binding characteristic. The CBDR-RC principle might be ascended towards a certain course but there is no surety that it will result in a fixed action and therefore it is flexible (Bodansky, 1993). The discourse encompassing the interpretation of Article 3 of UNFCCC is very important to understand the legal position of CBDR-RC. The group of industrially developed countries were against the incorporation of Article 3 in the UNFCCC, 1992 as it was seen as a text that could probably originate irregularity within the UNFCCC commitments (Rajamani, 2012). During the UNFCCC negotiations in 1992, the US delegation expressed its concern that inclusion of Article 3 could give rise to commitments beyond those decided in Article 4 (commitments) of the UNFCCC and the delegation also introduced few amendments to confine the prospective of Article 3 (Sands, 1995). It is believed by authors that these amendments were aimed to obviate discussions that the principles contained in Article 3 are part of customary international law and legally binding on nations (Bodansky, 1993). Instead, the

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<sup>64</sup> What is BRICS, available at: <https://brics2017.org/English/AboutBRICS/BRICS/>

principles clearly apply only to the parties and only in relation to the UNFCCC, not as general law (Cullet, 1999).

However the CBDR-RC principle is not legally binding on the nations, it still has an important footing & influence within the climate change legal framework (Sand, 1992). The UNFCCC as a guiding framework for climate change enforces commitments that are mainly desirable in character and work as the foundation for the advancement of the climate change regime. CBDR-RC is a theory that after seeing a hot debate on its legal standing still remains the guiding force for the future development of climate regime (Rajamani, 2000). This is evident as the principle has got mention in two operative paragraphs in the UNFCCC 1992, which is a binding treaty and also in the preamble of Kyoto Protocol and the Paris Agreement. Though the CBDR-RC principle is not of legally binding nature but with its use in the legal instruments it extracts abundant legal weightage to form the legal foundation for the elucidation of existing commitments and for the upcoming international legal climate change obligations within the legal instruments like Paris agreement

## **Chapter 6 - Relevance of CBDR-RC principle international climate change framework for the realization of Climate Justice**

### **6.1 Relation between Climate Justice and CBDR-RC in the preamble of Paris agreement**

Since its inception, the concept of climate justice stipulated for a powerful and equitable international legal climate change instrument with a focus on people and their rights, which can also safeguard the most prone and equitably distributes the responsibility towards climate change (Cameron et al., 2013). This idea of climate justice is in line with the preference of many nations ranging from small island states to the developed countries in context of combating climate change. It is known that every country has vulnerable population to climate change and is doing efforts to grow and flourish both economically and socially. During the COP 21 in Paris, it was for the first time in the climate change regime that climate justice and CBDR-RC are used at the same time in a legal instrument. In Paris agreement, the mention of climate justice acknowledges that it is feasible to combat climate change while achieving economic growth and development with a focus on safeguarding the people (Byrnes & Lawrence, 2015). The use of CBDR-RC principle in the preamble of Paris agreement has contributed to the efforts of international community to achieve climate justice in the era of disruption and also to unbolt the actions by all the nations to achieve the goal of keeping global warming below 2°C. CBDR-RC principle also stimulates the political and bureaucratic will for climate justice principles aimed to place people at the center of climate action (Huntjens & Zhang, 2016). As mentioned above that the implementation of CBDR-RC principle is

core to the structure of Paris agreement, it also recognise the scope to which it helps in the achievement of climate justice by considering nations and individuals fairly.

Amartya Sen (2009) in his book “Idea of Justice” has said that:

“a theory of justice must have something to say about the choices that are actually on offer, and not just keep us engrossed in an imagined and implausible world of unbeatable magnificence. Speculating on what a ‘perfectly just’ society looks like is interesting but does not always advance the cause of justice.

In a similar way, Paris agreement also covers the equity principle in a pragmatic way which leads to collaborative efforts that are required to protect the climate and deliver climate justice to the people around the globe. There are few elements of CBDR-RC principle that establish climate justice in Paris agreement which are as follows:

Acting upon the needs of the most vulnerable people to climate change - To put it in a more easy way, Paris agreement is not only protecting the most vulnerable people but also strives to save those who has the least contributions and are suffering the most from the adverse effects of climate change (Duyck, 2015). The CBDR-RC principle in Paris agreement also ensures that every individual should have an ‘equitable’ access to the green energy and sustainable development.

Need of transparent system in decision making and liability for decisions - In order to achieve climate justice, the Paris agreement has adopted certain commitments for all the nations which has to be checked by the mechanism of Nationally Determined Contributions (NDCs) (Hood & Soo, 2017). Explicit and regular updates on climate actions with the help of international framework are the bedrock of the Paris agreement which empowers the citizens to question their governments on the efforts to mitigate climate change (Burger et al., 2017).

Human rights approach - Raworth (2008) states that:

“Human rights help to base international policymaking in the most widely shared set of international laws and values. They focus attention on the people who are most vulnerable to climate impacts, yet whose voices are often heard least in debates. They also help to identify the source of threats, and hence who is responsible for taking action. And human rights make clear the deep injustice of climate change, acting as a moral spur to action.”

Human rights based approach to climate action is a result of globally agreed normative values which enable Paris agreement to include the most vulnerable people in the discourse of climate change and to let the international community listen to their actual problems before taking strong actions (Duyck, 2015).

The element of intergenerational and intragenerational equity - Before the enactment of Paris agreement, there was no significant emphasis on intergenerational and intragenerational equity in any of the climate change legal instruments (Kverndokk, Nævdal & Nøstbakken, 2014). As the elements of CBDR-RC principle, these two concepts prioritise the need to acknowledge and solve the current climate justice issues and to insure that climate justice should be established.

Different capabilities and collective responsibilities of countries - The big difference in the availability of resources among various countries has a direct impact on climate change mitigation action and techniques that lead to inequalities in the context of combating climate change (Cameron et al., 2013). Paris agreement focuses on the 'different capabilities and collective responsibilities' notion so that nations can have a comprehensive and equitable access to climate justice. The agreement in a way recognizes that those who have utilised the fossil fuels for the carbon driven economic development should provide technological and financial assistance to the poor nations in their sustainable development, growth and to combat climate change (Young, 2016).

With the help of CBDR-RC principle, the Paris agreement is able has set a process that can evaluate the performance of the nations in terms of their commitments and the magnitude to which the countries have contributed to the combined acclimate actions (Streck, Keenlyside & Unger, 2016). The commitments by the nations in line of Paris agreement should not be limited to the reduction of greenhouse gas emissions but also focus upon the measures undertaken by the governments to protect the vulnerable groups and in the case of developed countries, the steps on providing financial and technological assistance to poor nations in order to take climate actions. Paris agreement through CBDR-RC principle creates a framework that advocates for these commitments to achieve climate justice. The principles of equity and CBDR-RC have played a fundamental role in the designing of Paris agreement and are essential for the achievement of climate justice (Voigt, 2016). UNFCCC has a vast knowledge of the CBDR-RC principle in context of climate change mitigation but it still has to utilize the exact potential of the principle to support climate justice through Paris agreement (Lyster, 2017).

## **6.2 Role of climate justice and CBDR-RC in the future of climate change legal framework**

As established earlier, climate change is an issue of injustice and this injustice problem can provide enthusiasm to the international community to come forward for more collaborative and aggressive actions towards climate change. Countries should take a step towards accepting the principle of CBDR-RC principle in relation to their past contributions to carbon emissions for the better good of the mankind instead of shifting responsibilities on the others. In fact, CBDR-RC principle can motivate nations to maximise the climate change mitigation action. As the climate change continuously affecting the world with adverse effects the concept of climate justice is still serve a hope for the protection of a large number of individuals and ensuring their right to development through CBDR-RC principle and therefore in the future the climate change framework can witness strong legally-binding instruments. The importance of climate justice in future can bring together all different countries on a mutual decision to have such a legally binding agreement that have stringent rules to comply with the essence of CBDR-RC principle.

With the development of climate change legal framework in the last two decades, an expeditious and vital buildout of some legally-binding international agreements to address climate change has been seen (Brunnée, Doelle, & Rajamani, 2011) which is a result of numerous multilateral discussions at different forums leading to the consumption of various economic & human resources but the ironical part is being legally-binding in nature these agreements have most of the times failed to extensively achieve the actual enforcement & compliance (Barrett & Stavins, 2003).

## **Conclusion:**

Mary Robinson Foundation - Climate Justice states that:

“The principles of equity and CBDR-RC are not about sharing failure – they are about sharing responsibility and sharing the benefits of the transition to low carbon, climate resilient development. These principles ensure that the Convention addresses the needs of all Parties, regardless of their state of development.”<sup>65</sup>

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<sup>65</sup> Submission to the ADP by the Mary Robinson Foundation – Climate Justice, available at: <https://unfccc.int/resource/docs/2013/smsn/un/306.pdf>



This statement proves the importance of CBDR-RC in the international climate regime and implies a notion that for the achievement of climate justice it is very much essential for the nations to accept the principle of CBDR-RC through global collaborations. From the above text of the thesis it can be concluded that the main reason behind the 'non-acceptance' of CBDR-RC principle is the prioritisation of economic and industrial growth instead of a human rights based approach while combating climate change which ultimately hinders the establishment of climate justice. It is to be seen that Climate Justice is a wider concept that works on national and international collaboration which includes CBDR-RC and intergenerational equity. Although CBDR-RC and climate justice are utilised in Paris agreement they still lack more legal authority attached to them. Both developed and developing nations have to accept that in order to achieve climate justice they have to sacrifice with some of their ambitions regarding the economic development.

As it is originally understood, the developed countries should also consider CBDR-RC principle as an equitable and fair burden-sharing concept (Bodansky, 1993). There is also a need to revise the differentiation of 'developing' countries in the climate change regime with respect to the change and advancement of their economies since 1992 so that it does not conflict with the current international economic model. The classification of countries should always be evolving and adaptable to assimilate the rapid transformation of the economies. In the present times, developing countries like China and India are one of the largest polluters in the world and have increasing needs for economic development to meet the requirements of their huge populations. Therefore, for the greater good of the planet, both developed and developing nations should utilise platforms like UNFCCC to negotiate for climate actions. Fossil fuels still being the cheapest source of energy attract the developing countries to meet their energy needs and leads to continuous degradation of the environment and create questions for the achievement of climate justice. Though the enactment of Paris agreement demands for lowering down the use of fossil fuels through the 'NDCs' and the '2°C target', it shift the great burden of discovering clean energy resources for huge demands and also requires the developed countries to facilitate the technologies and finance to the developing nations. The establishment of climate justice in the present time demands that the CBDR-RC principle should be utilised in such a manner that (i) the developing countries can utilise the remaining carbon space to meet the great demands of economic development with a simultaneous approach to shift towards clean energy; (ii) the industrially developed nations should partner with advanced developing nations to minimize the current and future carbon emissions and (iii) to protect most prone - Least Developed Countries and Small Islands Developing States with an approach towards the social and economic growth of all.

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