

“Impact of Climate Change on Right to Health”

**Vidhyanshi Bhanwar
National Law Institute University*

**Siddarth Jain
National Law Institute University*

ABSTRACT

One of the fundamental, indivisible rights that all people have is the right to health. All other human rights are conditional on the realisation of this right.¹ As climate change worsens, people’s fundamental as well as human right to health and life are being trampled. The necessity for aggressive international efforts in this area has grown even more urgent in light of the fact that some countries have recently had to bear the terrible results of global climate change. It may not be irrelevant to cite the “Stockholm Declaration”² in this context which declares that while “man has the fundamental right to freedom, equality, and adequate conditions of life in an environment of quality that permits a life of dignity and well-being, he also bears a solemn responsibility to protect and improve the environment for the present and future generations”.

Keywords: *Climate change, Right to health, Climate Justice, Climate refugees, Climate legislations.*

INTRODUCTION

Individual and collective legal obligations exist for states and other responsibility bearers to preserve human rights. Climate change, according to mounting evidence, is causing a global health disaster, disproportionately affecting those who already in deep abjection, face discrimination, and other structural disadvantages, and increasing long-standing socioeconomic and gender inequities.³ The climate emergency also violates this right by increasing the prevalence of “respiratory and cardiovascular disease, as well as malnutrition, stunting, wasting, allergies, injuries, and mental illness.” Dengue fever, for example, is the fastest-growing “vector-borne disease, with a thirtyfold increase in global” occurrence partly due to climate change.

According to the “Lancet Commission on Health and Climate Change, the climate crisis is the biggest global health threat of the twenty-first century and could reverse five decades of progress

¹“Office of the High Commissioner for the Human Rights, ‘CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)’ (Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, 11 August 2000) <<https://www.refworld.org/pdfid/4538838d0.pdf>> accessed 1 February 2022”

²“Louis B. Sohn, *The Stockholm Declaration of Human Rights* (Volume 14, number 3, The Harvard International Law Journal 1973)”

³“K. Van Daalen et al., ‘Climate change and gender-based health disparities’, *The Lancet* 4/2, comment (2020)”

in global health, particularly as it endangers the right to food.”⁴ Furthermore, “the Food and Agriculture Organization of the United Nations in its 2018 State of Food Security and Nutrition in the World says, Climate variability and extremes are among the key drivers behind the recent uptick in global hunger and one of the leading causes of severe food crises. The cumulative effect of changes in climate is undermining all dimensions of food security food availability, access, utilization and stability.”⁵ As a prerequisite for a variety of human rights, including the right to health and the right to life itself, environmental preservation is an essential part of current human rights thought.

“This is highlighted in the Petition to the Inter American Commission on human Rights seeking relief from violations resulting from global warming caused by acts and omissions of the United States.”⁶ The petition is largely recognised for igniting international political interest in a rights-based solution to climate change, with the right to health as a central theme. It also emphasises the interconnectedness of the right to health, other positive rights, and environmental conservation that “because Inuit culture is inseparable from the condition of their physical surroundings”.

Some significant examples of vulnerability of this right are Malawi and Bangladesh. “In 2015, floods affected 15 out of 28 districts in Malawi. About 1.1 million people were affected, 230,000 were displaced, 176 were killed and 172 were reported missing.” The overall loss and damage experienced by “the Malawian government during the catastrophic floods was estimated to be US\$ 335 million”, with recovery and rehabilitation costs totaling US\$ 494 million. Similarly, “extreme heat, irregular rainfall, floods, droughts, tropical cyclones, rising sea levels, tidal surges, salinity intrusion, and ocean acidification” are wreaking havoc on the lives and livelihoods of millions of Bangladeshis, which consequently is jeopardizing future economic growth.

It is pertinent to note that there are several conventions and covenants in international law which guarantees right to health and try to reduce the ill-effects of above-mentioned catastrophes. The right to health was first enshrined in the WHO Constitution (1946) which is as “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being”. The preamble of the same defines health as “a state of complete physical, mental and social well-

⁴“CESCR, ‘General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)’ E/C.12/2000/4. (2000)”

⁵“International Federation of Medical Students’ Associations (IFMSA), ‘IFMSA Contribution to the UN OHCHR study on the Climate Change and human rights to health, in the road to COP21’ (International Federation of Medical Students’ Associations) <InternationalFederationMedicalStudents.pdf> accessed 1 February 2022”

⁶“Petition, I., ‘Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting From Global Warming Caused by Acts and Omissions of the United States’ (2005) <https://earthjustice.org/sites/default/files/library/legal_docs/summary-of-inuit-petition-to-inter-american-council-on-human-rights.pdf > accesses 1 February 2022”

being and not merely the absence of disease or infirmity”.⁷“Health was addressed in the 1948 Universal Declaration of Human Rights as part of the right to an adequate standard of life (article 25).”⁸“In 1966, the International Covenant on Economic, Social, and Cultural Rights, Article 12, reaffirmed it as a human right.”⁹“The Committee on Economic, Social, and Cultural Rights,” an independent organisation charged with overseeing the Covenant’s implementation, gave a broad reading of article 12 of the Covenant¹⁰ as “the right to health is an inclusive right, extending not only to timely and appropriate health care, but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.”¹¹A special rapporteur is also designated for groups who are particularly vulnerable to human rights violations. Women, children, migrants, individuals with disabilities, and LGBT people are among those who face discrimination.

On the same lines the Indian Constitution also strives for right to health. It has not been specifically mentioned in the constitution but through liberal construction now it comes under article 21. The “Supreme Court observed in *Vincent v UOI*¹² maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the constitution makers envisaged and hence the right to clean and healthy environment is within the ambit of Article 21.” The principle of sustainable development has to be applied in town and urban planning throughout the country.¹³ Any disruption of the essential elements of the environment, namely air, water, and soil, which are required for life, would be a threat to life under Article 21.¹⁴ As a result, a petition for pollution prevention might be started by an affected individual or persons, or even a group of social workers or journalists.¹⁵

CLIMATE CHANGE AND RISE OF CLIMATE REFUGEES

The traditional understanding of human displacement is anthropocentric, with hounding occurring as a result of various political circumstances such as wars, internal rebellions, persecution of a specific race or religion, and so on, posing a direct threat to life. In truth, with

⁷“Constitution of the World Health Organization 1946 Preamble, Basic Documents, Forty-fifth edition”

⁸“Universal Declaration of Human Rights, art 25 G.A. Res. 217A (III), U.N. GAOR, 3rd Sess., UN Doc A/RES/3/217 A (Dec. 10, 1948)”

⁹“International Covenant on Civil and Political Rights, art. 12, Dec. 16 1966, 99 UNTS 171”

¹⁰“Office of the United Nations High Commissioner for Human Rights, ‘The Right to Health’ (*World Health Organization*, Fact Sheet No. 31) < <https://www.ohchr.org/documents/publications/factsheet31.pdf>> accessed 21 January 2022”

¹¹ “United Nations Human Rights Office of the High Commissioner, ‘List of Human Rights Issues’<<https://www.ohchr.org/EN/Issues/Pages/ListofIssues.aspx>> accessed 16 January 2022.”

¹²*Vincent v UOI*AIR 1987 SC 990

¹³*Swami Achyutanand Tirth v UOI* (2014) 13 SCC 314

¹⁴“*MC Mehta v Kamal Nath* (1997) 1 SCC 388”

¹⁵“*Balwant Singh v Commissioner of Police* (2015) 4 SCC 801”

the exception of a few international agreements that include natural disasters as a reason, the term “refugee” is only applied to such persons. Recent research, on the other hand, has focused on other aspects of climate change that have resulted in human migration. Hence, the frequent climate change has led to the coining of a term “climate refugees”, who have well-founded fear of persecution¹⁶ and violation of their human rights which push them to migrate from their original place to another.

As a result of climate change-related calamities, millions of people have already been displaced. It is disturbing to learn that environmental disasters are now displacing more people than war, according to Red Cross study. Environmental catastrophes are expected to displace 50 million people worldwide by 2010, according to the United Nations University.¹⁷ There is also the chance that a whole island nation, such as the Maldives, the Caribbean Islands, or the Marshall Islands, would vanish or cease to exist in the future, and many others will lose territory. Land loss due to global warming will result in future forced displacements. Five lakh people from Bangladesh’s Bhola Islands are the world's first climate change refugees.

The term “Environment refugee” was first coined by the United Nations Environment Program in 1985. “The International Organization for Migration proposes the following definition for environmental migrants as environmental migrants are persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad.”¹⁸

According to current IPCC estimates, global sea level would increase “between 28 and 43 centimetres by the end of the century as a result of thermal expansion” and glacier and ice cap melting.¹⁹ According to a 2006 assessment by the European Environment Agency, floods could affect over thirteen million people in five European nations “as a result of a one-meter rise in sea level,” particularly susceptible coastal districts in the Netherlands, Belgium, Germany, Romania, Poland, and Denmark. Furthermore, in high-population-density areas like South Asia, the hazard

¹⁶The “1951 Convention Relating to the Status of Refugees”, art. 1(A)(2), 189 UNTS 137 [hereinafter *the 1951 Refugee Convention*]

¹⁷“Vicente Silva Didier, ‘The Climate Emergency is a Human Rights Issue’ (2021) Health and Human Rights Journal <<https://www.hhrjournal.org/2021/12/the-climate-emergency-is-a-human-rights-issue/>> accesses 26 January 2022”

¹⁸“Ninety Fourth Session, ‘Discussion Note: Migration and the Environment’ (MC/INF/288, 1 November 2007) <http://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/en/council/94/MC_INF_288.pdf> accessed 21 January 2022”

¹⁹“David Keane, ‘The Environmental Causes and Consequences of Migration: A Search for the Meaning of Environmental Refugees’ (2004) 209 Georgetown International Environmental Law Review 211”

is even greater.²⁰ Climate change has ramifications that are not limited to coastal areas. The rise in natural disasters such as glacial lake flooding, cloud bursts, and landslides, especially in the Himalayan region, has resulted in numerous deaths, in downstream locations, there is property damage as well as the loss of forests, farms, and mountain infrastructure. When alpine glaciers continue to melt at an alarming rate, involuntary evacuation becomes the only viable alternative.

Other than violation of various human rights, especially right to life, the most saddening plight of climate refugees is that they cannot seek refugee status and protection under the current refugee convention of 1951. This convention defines refugees as “someone with a well-founded fear of persecution, on the basis of one of five grounds: race, religion, nationality, membership in a particular social group, and political opinion.”²¹ Hence, the 1951 Refugee Convention does not apply to people who moved across borders due to climate change and other environmental concerns. However, it is claimed that the convention can be used in instances where the impact of climate change is a contributing element to conflict, violence, or public disorder. Finland and Sweden are now the only nations in the world that have enacted legislation allowing people to seek for asylum based on environmental concerns, although the procedures in both countries have yet to be thoroughly tested. Therefore, at present there is no authoritative and definite legislation at international or at national level across the globe to identify and protect the rights of people who taking the brunt of climate change.

CLIMATE JUSTICE

“According to Mary Robinson, the former President of Ireland and the current Chair of the Elders, Climate justice insists on a shift from a discourse on greenhouse gases and melting ice caps into a civil rights movement with the people and communities most vulnerable to climate impacts at its heart.”²² “The Rio Declaration on Environment and Development, The UN Declaration on the Right to Development” must be implemented in order to address the developmental and environmental requirements of current and future generations equally. However, climate change jeopardises this commitment, especially for future generations.

According to the IPCC, Undernutrition caused by climate change mostly affects communities that are already food insecure. Existing social imbalances, cultural standards, and underlying psychological features all contribute to this, “the Lancet Commission on Health and Climate Change has said that certain population groups are particularly vulnerable to the health effects of

²⁰“Penelope JS Stein & Michael Ashley Stein, ‘Climate Change and the Right to health of People with Disabilities’ (2021)The Lancet Global Health, Volume 10, Issue 1 < [https://www.thelancet.com/journals/langlo/article/PIIS2214-109X\(21\)00542-8/fulltext](https://www.thelancet.com/journals/langlo/article/PIIS2214-109X(21)00542-8/fulltext)> accessed January 21 2022.”

²¹“The 1951 Convention Relating to the Status of Refugees, art. 1(A)(2),” 189 UNTS 137

²²“Sustainable Development Goals, ‘Climate Justice’
<<https://www.un.org/sustainabledevelopment/blog/2019/05/climate-justice/>> accessed 11 January 2022”

climate change.”²³ The World Bank has also stated that climate-related shocks disproportionately harm the poor, with climate change potentially resulting in an additional 100 million people living in severe poverty by 2030.²⁴ All of this highlights how climate change disproportionately impacts those who have made the smallest contributions to its causes, such as children, the poor, and future generations.

Failure to address climate change’s disproportionate impacts on vulnerable populations such as children, migrants, minorities, indigenous peoples, and poor communities’ risks perpetuating poverty and marginalization. Countries with robust social welfare systems that implement appropriate adaptation strategies in collaboration with those who may be impacted are better positioned to reduce these risks. Parties must take prompt action to address climate change’s health consequences and work worldwide in accordance with their common but differentiated commitments to protect everyone’s health and human rights, including the most vulnerable, without discrimination.

POLICIES/LEGISLATIONS TO TACKLE “CLIMATE CHANGE VIS-À-VIS RIGHT TO HEALTH”

As emphasized by the “United Nations Human Rights Council in its Resolution 26/27, climate change is an urgent global problem requiring a global solution.”²⁵ The Council called for international cooperation to implement “the United Nations Framework Convention on Climate Change (UNFCCC) in order to support national efforts for the realization of human rights affected by climate change related impact.”²⁶ The world leaders have well before forecasted the impact of climate change of right to health and other sacred human rights. International bodies like the United Nations and the World Health Organization have been collaborating with the governments of different nations to create an environment and creating awareness among the masses for sustainable development.

International Commitments, Policy and Frameworks

The right to the best possible health is a human right recognised by international human rights legislation. As has been previously mentioned, it has been enshrined in many international conventions, in addition, the treaty bodies. The Alma-Ata Declaration of 1978 emphasises the crucial relevance of “primary health care, which addresses the community’s fundamental health

²³ “Lancet Commission, ‘Health and climate change’ <<https://www.thelancet.com/countdown-health-climate>> accessed 28 January 2022”

²⁴“S. Hallegatte and others, ‘Shock Waves: Managing the Impacts of Climate Change on Poverty, Climate Change and Development Series’ (Washington, D.C., World Bank, 2016)”

²⁵‘Human Rights and Climate Change’ GE.“FCCC/CP/2010/7/Add.1, dec.1/CP.16. 4-08351 (E)<<https://www.right-docs.org/doc/a-hrc-res-26>>” accessed 12 January 2022

²⁶“United Nations Sustainable Development, ‘United Nations Conference on Environment and Development Agenda 21’ <<https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>> accessed 18 January 2022”

needs by providing appropriate preventive, curative, and rehabilitative treatments.”²⁷ Several regional documents also respect the right to health, such as “the African Charter on Human and Peoples’ Rights (1981), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador (1988), and the European Social Charter (1961, revised in 1996), The American Convention on Human Rights (1969).”

States bear a significant amount of responsibility for safeguarding and promoting human rights. Human rights commitments are also defined and guaranteed by international customary law. States parties must ratify human rights accords in order to give effect to these rights inside their jurisdictions. “Article 2 (1) of the International Covenant on Economic, Social, and Cultural Rights,” in particular, emphasises that States must endeavour over time to fully implement the Covenant’s rights. Other treaties, such as “the United Nations Charter, the Universal Declaration of Human Rights, and the Convention on the Rights of the Child”, demonstrate the importance of international support and cooperation.²⁸

Under international law, states have three types of obligations in protection of right to health namely, the obligations to respect, protect and fulfil.

The obligation to respect: States are obliged to respect the right to health of its citizens by not interfering illegally over it. States should not, for example, prohibit or limit access to health-care services, sell harmful drugs, enforce discriminatory policies based on women’s health status and needs, limit access to contraceptives, etc.

The obligation to protect: Similarly, states have the responsibility to protect its citizens from encroachment of right to health by any third party. States should pass legislation or take other measures to guarantee that private actors providing health care or other services comply with human rights norms.

The obligation to fulfil: Under the responsibility to fulfil, states must adopt the “appropriate legislative, administrative, financial, judicial, promotional, and other measures to fully realise the right to health.”

National Level

Our Parliament is ever changing, it always keeps in mind the changing nature of society and laws needed to tackle those changing needs. In addition to the aims set forth in our Constitution, it also establishes a number of essential rights. As one of the most crucial fundamental rights,

²⁷ Alma-Ata Declaration 1978, Art 7

²⁸“Charter of the United Nations, arts 1 (3), 55 and 56; Universal Declaration of Human Rights, arts 22 and 28; and Convention on the Rights of the Child, arts 4 and 24”

health requires further protection through legislation. As discussed above the, the most celebrated article of the constitution i.e., 21 protects right to health. Furthermore, DPSP also guarantees right to health by inserting article 48 A, even the apex court in “*Paschim Banga Khet Mazdoor Samity*”²⁹ held that it is the Constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done.” Similarly, offences harming “public health, safety, convenience, decency, and morality” are expressly addressed in Chapter XIV of the Indian Penal Code. There are numerous innovative legislations like “The Consumer Protection Act, 1986, The Environment (Protection) Act, 1986, The Epidemic Diseases Act, 1897,” etc. which directly or indirectly protects the right to health of the citizens.

However, it has lately come to the notice that these numerous legislations are not strictly followed and even many of them are implemented only in bits and pieces. The Supreme Court too ironically laments that “If the mere enactment of laws relating to the protection of environment was to ensure a clean and pollution- free environment, then India would, perhaps, be the least polluted country in the world. But this is not so. There are said to be over 200 Central and State statutes. The plethora of such enactments has, however not resulted in preventing environmental degradation on the contrary; this has increased over the years.”

CONCLUSION

The international as well as the national framework has the potential to successfully implement the climate change regulations and guidelines are in place to help offset the effects of the changing climate and promote the right to health. However, in reality their practical implementation on ground level has been an issue. Since we are running out of time to adhere the laws and regulations, unless immediate actions are taken at the international and national level, the health issue and climate degradation will intensify and will affect a large number of populations, especially of underdeveloped and developing nations.

Suggestions

Some of the suggestions from the researcher are given below:

- Structures for raising adequate finances and distributing financial risks among the populace.
- Health service delivery which includes illness prevention, health promotion, treatment, rehabilitation, and palliative care at both the individual and population level.
- Without measures to provide cheap access to vital medications, vaccinations, and health technology, universal access to health care will be impossible

²⁹“*Paschim Banga Khet Mazdoor Samityv State of West Bengal &Anor.*(1996) AIR SC 2426”