

### **3-5 RMLNLUJ (2011-2013) 1**

#### **Climate Justice: Global Efforts and Indian Response**

by  
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##### **I. CLIMATE JUSTICE: GLOBAL LEGAL CLIMATE CHANGE REGIME**

On December 6, 1988, the U.N. General Assembly emphatically proclaimed that climate change is common concern of mankind, since climate is an essential condition which sustains life on earth<sup>1</sup>. The same voice was loudly echoed by the U.N. Framework Convention on Climate Change adopted at U.N. Conference on Environment and Development at Rio in 1992.

##### **A. U.N. Framework Convention on Climate Change, 1992**

The Framework Convention on Climate Change establishes an infrastructure of institutions and legal mechanisms intended to achieve climate justice. India signed the Convention on 10 June 1992 and ratified it on 1 November 1993. The Convention is built upon various important international environmental law principles such as the principles of sovereignty of the States over natural resources, climate change as common concern of mankind, common but differentiated responsibility, precautionary principle, principles of equity, inter-generational equity and intra-generational equity<sup>2</sup>.

##### **(a) Principle of Common but Differentiated Responsibilities and Respective Capabilities**

In the climate change regime, one manifestation of the principle of equity has been the principle of common but differentiated responsibilities and respective capabilities. The application of this principle implies



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solidarity and differential treatment. Solidarity reflects the interdependence of States and their responsibility to ensure that their economic, environmental or other policies do not harm others along with a prohibition to interfere with the interests of other States. Yet another manifestation of solidarity is through differentiation. Differential treatment seeks to foster a form of substantive equality by deviating from the principle of sovereign equality in view of the factors such as divergence in the levels of economic development or unequal capacities to tackle the problem of climate change.

The principle of common but differentiated responsibilities and respective capabilities finds enunciation in Principle 7 of the Rio Declaration which states that in view of the different contribution to global environmental degradation, States have common but differentiated responsibilities.

The developing countries attribute as main reason for environmental degradation to unsustainable pattern of consumption and production in the industrialized countries. Therefore, the developing countries call upon the developed countries to assume the legal responsibility to shoulder the burden of environmental protection in the wake of their unsustainable production and consumption patterns in the past. On the other hand, U.S. issued an interpretative statement of Principle 7 wherein it asserted:

*The principle highlights the special leadership role of the developed countries based upon their industrial development, experience with environmental protection, policies and actions, wealth, technical expertise and capabilities. The principle does*

*not imply recognition of any international obligations or any diminution in the responsibility of developing countries<sup>3</sup>.*

The principle of common but differentiated responsibilities and respective capabilities introduces a new dimension to the polluter pays principle by emphasizing both past contributions as well as present and future capacity to control climate change. The principle mandates that States bear responsibilities to the global environment in proportion to both their differing contributions to the global environmental crisis and their respective capabilities to control it. Accordingly, the developed States should take the lead in combating climate change and its adverse effects.



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### **(b) Precautionary Principle**

The Convention endorses the precautionary principle and posits that the Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects<sup>4</sup>. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with the climate change should be cost effective so as to ensure the global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. The Convention recommends that efforts to address climate change may be carried out cooperatively by interested parties.

The Convention spells out the principles of equity and precaution in general terms. Instead of imposing environmental standards or policies, the Convention merely triggered the process of negotiations for evolving the standards on the basis of equity and precaution.

The Convention differentiates three categories of States and formulates different responsibilities for each of them. Developed States including Socialist States with transitioning economies (OECD States) are listed in Annex 1 of the Convention. Annex 1 lists the countries who were members of OECD in 1992, eleven countries undergoing the process of transition to a market economy and the European Union. Additional Countries have joined OECD after the Convention was opened for signature. Annex II comprises of developed States excluding socialist States with transitioning economies. Non-Annex 1 States are developing States which are neither listed in Annex 1 nor in Annex II.

#### *(i) Targets and Timetables under the Convention*

The Convention does not impose specific obligation on States to reduce the emissions of greenhouse gases. It merely sets forth the general aim of returning emissions of greenhouse gases by the Annex I States to 1990 levels by the year 2000<sup>5</sup>. Annex I Parties voluntarily committed to bring their emission levels down to 1990 levels by the year 2000.



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*(ii) Financial Resources and Technology Transfer*

Article 4(3) of the Convention imposes obligation on the developed States and other developed Parties included in Annex II new and additional financial resources and transfer climate friendly technology to the developing States to enable them to meet their commitments under Article 4(1) especially relating to making of inventories, formulation of climate change mitigation and adaptation strategies<sup>6</sup>. Article 4(6) differentiates Annex II States from Annex I States by allowing certain degree of flexibility in meeting their obligations to Socialist States undergoing process of transition to a market economy. The provision of relaxation in favour of States with transitioning market economies in meeting their obligations under the Convention does not apply to obligations of all States under Article 4(1) of the Convention. The States with transitioning market economies enjoy flexibility only to meet their obligations other than those which fall under Article 4(1) of the Convention.

It is pertinent to note that Article 4(1) obligations for developing countries are contingent upon funding from the developed Parties. Article 4(3) states that the developed country Parties shall provide financial resources including transfer of technology needed by the developing countries.

**B. Kyoto Protocol, 1997**

Kyoto Protocol entered into force on 16 February, 2005<sup>7</sup>. India ratified it on 26 August, 2002. United States has signed but not ratified the Protocol. All other Annex I States have ratified the Protocol. Currently, there are 192 States Parties to the Protocol. Kyoto Protocol has two Annexes, namely, Annex A and Annex B. Annex A contains a list of six greenhouse gases, i.e. carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride. It also gives a list of the categories sectors/sources of greenhouse emissions. Annex B contains a list of States which are included in Annex I of the Convention and also those States which became members of the OECD after the adoption of the Convention as well as their respective emission reduction commitment.

**(a) Emission Reduction Targets**

Kyoto Protocol aims for a cumulative reduction by Annex I States (Developed States including the transitioning socialist economics) of their emissions by 5.2% below 1990 levels of six greenhouse gases, namely,

carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride during the five years commitment period from 1 January 2008 to 31 December 2012. Under the Kyoto Protocol, only Annex I States about forty of the world's industrialized States-that ratify the Protocol have emission reduction obligations during the first commitment period for five years beginning from 2008 to the end of 2012. During the first commitment period, developing States are not obligated to reduce the emission of greenhouse gases.

The Protocol establishes a cumulative target that applies to a multiyear commitment period. Each Annex I State must ensure that its aggregate emissions during the commitment period do not exceed its assigned amount with a view to reducing overall emissions of greenhouse gases by at least 5.2 percent of their 1990 levels in the commitment period from beginning of 2008 to end of 2012. This multiyear formulation is devised to give Parties greater flexibility in meeting their emission reduction commitments and to take into account annual fluctuations, for



example, from business cycles<sup>8</sup>.

A five year commitment period was chosen rather than single target year, in order to smooth out annual fluctuations emissions due to uncontrollable factors, such as the weather or economic cycles. The total emissions that an Annex I Party may emit over the commitment period and still meet its emissions target is known as its assigned amount. Prior to the start of the commitment period, each Annex I Party must submit a report providing emissions data for its baseline in order to formally establish its assigned amount.

In addition to its emissions targets for Annex I Parties, the Kyoto Protocol also contains a set of general commitments (mirroring those in the Convention) that reinforce the fundamental obligation of all States — both industrialized and developing — to tackle climate change. These commitments include preparing national climate change mitigation and adaptation programmes, taking steps to improve the quality of emissions data, promoting environmentally friendly technology transfer, co-operating in scientific research and international climate observation networks, and supporting climate change education, training, public awareness and capacity building initiatives.

Annex II Parties are committed to providing the financial resources, through the Global Environment Facility (GEF) as the Convention and



Protocol's financial mechanism, to help non Annex I Parties meet their general commitments under the Protocol.

The three mechanisms operate on the basis of accounting units, which are tracked and recorded through national registries to be established and maintained by Annex I Parties. Joint implementation projects result in Emission Reductions Units (ERUs), CDM projects generate Certified Emission Reductions (CERs) and, under Emission Trading, Annex I Parties may exchange Assigned Amount Units (AAUs), i.e., some of the emissions included in their assigned amounts. They may also exchange CERs and ERUs, as well as Removal Units (RMUs) generated through sink activities in the land use, land use change and forestry (LULUCF) sector. These units are all equal to one metric ton of carbon dioxide equivalent.


*(i) Joint Implementation*

In addition to Article 4, Article 6 of the Protocol also spells out the system of joint implementation where under Annex B States may agree on another form of joint implementation. It is a project based market mechanism through which Annex B Parties or their authorized agents can obtain marketable emission reduction units (ERU) by participating in cooperative greenhouse gas abatement activities in another Annex B State Party. Even companies or other entities in Annex B States with emission targets can transfer and/or acquire emission reduction units (ERU) by investing in projects that reduce greenhouse emissions or capture/sequester carbon in other Annex B States with binding commitments. Joint implementation takes place only between Annex I Parties and is based on projects set up by one Annex I Party within the territory of another Annex I Party to reduce greenhouse emissions from baseline scenario. The emission reduction units generated from such projects may be used against investing Annex I Party's emission reduction commitments. In addition to carbon sequestration/capture projects, joint implementation projects may be in the energy, transportation or other industrial sector and may even involve replacing a coal-fired power plant with a natural gas-power plant.

*(ii) Emission Trading*

International emission trading is fundamental feature of the Kyoto Protocol. Article 17 of the Protocol allows Annex I Parties to acquire units from other Annex I Parties and use them towards meeting their emissions targets under the Protocol. This enables Parties to make use of lower cost opportunities existing in other Annex I Parties to reduce emissions. Only Annex I Parties may participate in such trade. Annex I Parties may transfer additional units which they do not require to comply with their own

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emission target. Emission trading allows an Annex I State with an excess of emission units to sell its credits to another Annex I State unable to meet its commitments. The Annex B States or their private entities will have the option of buying or selling the emission reduction units.

### *(iii) Clean Development Mechanism*


The only Kyoto mechanism that involves developing countries is the Clean Development Mechanism (CDM). It is a market based mechanism for the Annex I countries to meet their emission reduction commitments while at the same time promoting sustainable development and climate change mitigation in developing countries. It has a dual purpose: firstly, it provides industrialized countries a mechanism to comply with their emission limits; secondly, it assists developing States to achieve sustainable development. The mechanism operates on the confirmation of the host State (developing State) that the project assists it in achieving sustainable development. The dual purpose of CDM is realized through the establishment of greenhouse gas reducing projects by Annex I Parties (industrialized Countries) in non Annex I Parties (developing countries) that generate emission credits which in turn can be used by the industrialized countries to offset their own domestic emissions. These projects may be in the energy, transport, industrial or construction sectors and also include carbon sequestration/capture/removal projects (commonly known as sinks) like afforestation and other forestry activities.

The interesting question relating to CDM which needs to be probed is whether CDM results in toxic imperialism as it enables developed countries to offset their emission obligations by funding CDM projects in developing countries and thus in fact emit more.

## **C. Post Kyoto Milestones on Road to Climate Justice**

(i) Bali Road Map was adopted during the Thirteenth Conference of Parties (COP 13) of the U.N. Framework Convention on Climate Change at Bali, Indonesia in 2007. Bali Road Map is ambitious and sets the tone for future Climate Change negotiations to achieve Climate justice. It captures the spirit of the existing Climate Change Regime and at the same time marks out the areas around which Climate Change Negotiations will take place. The Bali Road Map deals with the long term cooperative action and setting of Green House Gas mitigation commitments during the post 2012 Climate Change Regime when the Kyoto Protocols First Commitment period expires.

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### **(a) Copenhagen Accord**

The 15<sup>th</sup> meeting of the Conference of the Parties (COP 15) was held at Copenhagen, Denmark in 2009 wherein Copenhagen Accord was arrived at which states that enhanced action and national cooperation on adaptation is urgently required. On mitigation, it was agreed that developed countries (Annex I Parties) would commit the economy and wide emissions targets for 2020 to be submitted by 31<sup>st</sup> January 2010. It was also agreed that developed State Parties to the Kyoto Protocol would strengthen their existing targets. The Accord also provided that the delivery of reductions and finance by developed countries will be measured, reported and verified (MRV) in accordance with COP Guidelines. The Accord established Green Climate Fund to support projects, programmes, policies and other activities in developing countries related to mitigation. The developed countries were required to raise funds of \$30 billion from 2010-2012 of New and additional resources. The Accord mentioned the Goal to raise \$100 billion per year by 2020 from a wide variety of sources to help developing countries to cut carbon emissions (mitigation).

**(b) Cancun Agreement**

The 16<sup>th</sup> Meeting of Conference of Parties (COP 16) was held at Cancun, Mexico in 2010 resulting in adoption of Cancun Agreement which recognized that deep cuts in green house gas emission are required. The Agreement stated that a paradigm shift was required towards building a Low-Carbon Society. The agreement established Green Climate Fund of the amount of \$100 billion a year. However, there was no agreement on how to extend the Kyoto Protocol. Furthermore, there was no Agreement on how the \$100 billion arrear for the Green Climate Fund would be raised.

**(c) Durban Platform for enhanced Action**

BASIC Countries (Brazil, South Africa, India and China) adopted a coordinated approach to Climate Change at the 17<sup>th</sup> Meeting of Conference of Parties (COP 17) at Durban, South Africa in 2011. BASIC Countries held their First Meeting after Durban in Delhi in February 2012 where they reiterated their coordinated stand on Durban decisions.

Durban Platform established a second commitment period (2013-2020) for developed country Parties under the Kyoto Protocol. Durban Platform launched a process to develop a Protocol, another legal instrument or an agreed outcome with legal force under the Convention by 2015 and implemented from 2020. The decisions arrived at Durban are significant as they restore faith in multilateral process.



On 29<sup>th</sup> March 2012, India hosted the BRICS (Brazil, Russia, India, China and South Africa) Summit in New Delhi wherein it was agreed that BRICS countries would cooperate on the common issue of Climate Change. The Summit had significant impact on Climate Change negotiations.

**(d) Doha Amendment**

The 18<sup>th</sup> Conference of Parties (COP 18) held in Doha, Qatar adopted Doha Amendment Rule to the Kyoto Protocol on 08 December 2012. The amendment includes:

- New commitments for Annex I Parties who agree to take on commitments in its second commitment period from 1 January 2013 to 31 December 2020.
- A revised list of green house gases to be reported on by Parties in the second commitment period.
- Amendments to several articles of the Kyoto Protocol which specifically referred



to issues pertaining to the first commitment period and which needed to be updated for the second commitment period.

During the second commitment period, Parties committed to reduce green house gases emissions by at least 18% below 1990 levels in the 8 year period from 2013 to 2020.

European Union has confirmed its participation in the Kyoto Protocol second commitment period. The European Commission also confirmed that for the second Kyoto Protocol commitment period, the EU has established an Emission reduction commitment in line with its domestic target of cutting emissions by 20% of 1990 levels by 2020.

The Doha Amendments continued the pledge of financial support from developed to developing countries, including a pledge to compensate developing countries for "loss and damage" caused by Climate Change. Doha Amendments seek to provide that by 2020, all Nations accept more ambitious global green house gas emission reduction commitments to close the gap between current pledges under the Kyoto Protocol and the regimes needed to hold global warming below 2°C.



### **(e) Warsaw Outcomes**

The 19<sup>th</sup> Session of the Conference of Parties (COP 19) held at Warsaw, Poland laid the foundation for 2015 Climate Agreement by keeping governments on track. Warsaw has set a pathway for governments to work on a draft text of a new Universal Climate Agreement which may be placed on table at the next session of Climate Change Conference (COP 20) at Lima, Peru. The death and destruction brought by the Philippines Storm helped to highlight the question of climate justice. The "loss and damage mechanism" under the treaty witnessed difference of opinion between developing States and developed States. The United States and European Union opposed the mechanism proposed by developing countries, fearing new financial claims. Peace was restored when the Parties papered their differences, agreeing that the United States to nest the new instrument under an existing part of the treaty dealing with adapting to climate change, but saying they would review its status in 2016. It appears that in principle loss and damage mechanism has been accepted. Loss and damage mechanism is a baby of developing countries to be given time to grow. "Loss and damage" issue took new prominence at Warsaw in view of the fact that Typhoon struck the Philippines just days before the Conference.

The issue of mobilization of a total of \$100 billion a year by 2020 was taken up at Warsaw to spell out the modalities for the purpose.

COP 20 will be held during December 1-14 in Lima, Peru and COP 21 will be held during November 30 to December 11, 2015 in Paris where the climate change treaty is scheduled to be adopted. As a part of a global effort to mobilize action and ambition on climate change, United Nations Secretary General Ban-ki-Moon invited Heads of States along with business, finance, civil society and local leaders to a Climate Summit in September 2014 at New York. The Summit is aimed at catalyzing action by governments, business, finance, industry and civil society in areas of new commitments and substantial, scalable and replicable contributions to the Summit. That will help the world shift towards a low carbon economy. The Summit will come one year before countries aimed to conclude a Global Climate Agreement in 2015 at Paris. Although, 2014 Climate Summit is not part of the negotiating process, countries

have recognized the value of the Summit.

The future of climate change negotiations hangs in balance and depends on the response of nations to the questions emerging from the negotiations which capture the attention of the negotiators. The Challenging questions are: Will developing countries accept commitments to reduce GHG emissions within their national territories and if yes, to what extent? What will

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be the modalities of the legally binding instrument adopted in 2015 at Paris during COP 21 to mobilize the funds of newly created Green Climate Fund?

## **II. INDIAN RESPONSE**

### **A. India's Global Response**

India has been infamous during global climate change negotiations for chanting the mantra of "Common but Differentiated Responsibilities" for reductions of GHG emissions and linking the transfer of funds and technology with the adoption of mitigation and adaptation strategies by developing countries. India was instrumental in the formulation of non-negotiables along with other partners from BASIC Group for being placed on the table of Copenhagen Sessions, 2009 (COP 15). The non-negotiables included the non acceptance of GHG emission reduction by developing countries, adherence to "Common but differentiated Responsibilities" principle, transfer of funds by developed countries for formulation of mitigation and adaptation strategies by developing countries, and international monitoring of only supported mitigation and adaptation strategies of the developing countries. Unsupported measures shall not be measurable, reportable or verifiable.

India's hardline approach came under attack since Copenhagen Summit not only by United States, European Union Member States but also by some developing States, Island States and social movements by environmental groups within India. The global scanner resulted in dilution and shift in India's climate policy at the global level. At Copenhagen, India offered decrease of GHG emissions by voluntary measures by making commitment for decreasing emissions intensity (rate or pace of emissions) i.e. emissions per unit of Gross Domestic Product (GDP) by 20-25% below 2005 levels by the year 2020<sup>2</sup>. The Copenhagen and Cancun Sessions depict the changing stance and position of India from being a country having no legal obligation for decreasing to that of a country on the verge of accepting a legally binding emission cut commitment at the international level. Other emerging economies (China, Brazil, Indonesia and South Africa) also committed to reduce GHG emissions intensity to avoid the stigma of being deal breaker. At Cancun Summit, India's Minister of Environment, Jairam Ramesh stood for a more proactive Indian climate position and stated that every country should adopt binding emission reduction commitments in an appropriate legal form and that there should be international consultation and analysis of developing country actions in a non-intrusive and non-punitive manner. The statement brought India closer to the demand of developed countries for a legally binding commitment by emerging economies subject to

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international verification. Jairam Ramesh was appreciated and complemented by other members for his bridge-building role. Jayanthi Natarajan, successor of Jairam Ramesh,



environmentally more conservative, guided India back to being a deal breaker insisting at the 2011 Durban Summit on the enduring importance of Kyoto Protocol<sup>10</sup>, thereby rejecting legally binding agreements for developing countries<sup>11</sup>. Amidst India's Shifting Climate Stances and position, billion dollar question is what role India will play at forthcoming Peru Session and Paris Session in crafting legally binding obligations for the developing economies.

## **B. India's Domestic Response**

The global forward and backward postures of India are accompanied by proactive domestic postures. India is conscious that the greatest problem facing India is global warming. With global warming, sea levels rise, submerging habitations, small and big fertile areas will become deserts. Rivers and underground water will dry up. Rainfall patterns will change and glaciers will melt, at first causing floods, later causing rivers to die. The rising heat and lack of water will cause an agricultural catastrophe. War, internal subversion and global economic melt down are all very serious threats but they can be stopped and contained. Global warming, on the other hand, seems unstoppable and uncontainable. The fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) released on 31 March 2014 has predicted severe impact of global warming on food-grain production, fresh water resources and human settlements with India facing the brunt of it. People will be displaced in search of safety, cooler climates, water, better soil, food and security. Social amenities will deteriorate, disease will spread, frictions will bubble to the surface and political order could collapse altogether. Since the problem of global warming will be as acute if not worse in Bangladesh and Pakistan, India's crisis will be much greater and severe. Desperate people will cross the border into India in search of sanctuary resulting in flood of Climate refugees in India. India has been loudly beating futile drum at the global level since 1972 that the solution is with the west and realized that the solution lies first at the domestic level. The west inhabits cool, temperate zones with a good supply of water and therefore least affected by the global warming. Moreover, the West is richer and technologically more advanced and will adapt to climate change best.



### **(a) Indian Legislative Measures**

India is amongst few countries in the world which has incorporated provisions in the Constitution of India for the protection and improvement of the environment<sup>12</sup>. In addition, the legislative and regulatory framework having implications on climate change consists of: Environment (Protection) Act, 1986; Air (Prevention and Control of Pollution) Act, 1981; Indian Forest Act, 1927; Forest (Conservation) Act, 1980; Biodiversity Act, 2002; Energy Conservation Act, 2001 and National Green Tribunal Act, 2010. Nevertheless, India does not have any dedicated legal instrument to deal with reduction of GHG and mitigating climate change.

Environment (Protection) Act, 1986 gives powers to the Central Government to issue notifications or rules to address any specific issues pertaining to environmental pollution. Although there are rules to regulate ambient air quality standards and industrial air pollution, there is no rule or notification to specially address climate change.

Energy Conservation Act, 2001 provides regulatory impetus to energy efficient

activities by establishing Bureau of Energy Efficiency. The Act spells out energy consumption norms for industries and prescribes energy efficient building codes. It also provides for energy labeling and standards for electrical appliances. Energy efficiency institutional practices and programmes in India are guided through various voluntary and mandatory provisions of the Energy Conservation Act. Energy Conservation Act, 2001 was amended in 2010 and 2010 Amendment of the Act introduced various climate friendly energy conservation measures. The Act empowers Central Government to issue the energy savings certificates to the designated consumer whose energy consumption is less than the prescribed norms and standards in accordance with the procedure as may be prescribed. The designated consumer whose energy consumption is more than the prescribed norms and standards shall be entitled to purchase the energy savings certificates to comply with the prescribed norms and standards. The Central Government may, in consultation with the Bureau, prescribe the value of per metric ton of oil equivalent of energy consumed. An analysis of the 2010 Amendment evidences that the Amendment prescribes the procedure which is parallel to emission trading of the Kyoto Protocol which is in substance national version of Kyoto emission trading.

National Green Tribunal Act, 2010 operationalizes the right to healthy environment and loudly proclaims that the principle of sustainable development, polluter pays principle and precautionary principle shall be applied by the Tribunal in dealing with cases of compensation for environmental



damage. In addition to original jurisdiction in compensatory cases, the Tribunal has appellate jurisdiction to hear appeals arising from Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986, Forest (Conservation) Act, 1980 and Biodiversity Act, 2002.

There is no specific and separate climate change legislation to come to grips with the menace of climate change. There is no legislation to implement Kyoto Protocol despite the fact that India is not only a party to the Protocol but a staunch supporter of Protocol. Unlike Ozone depletion rules made by the Central Government, India has not taken any step to make rules for climate change mitigation and adaptation under Environment (Protection) Act, 1986-The baffling questions to ponder for Indian environmental law scholars are: Should India enact climate change legislation? Should India make climate change rules under Environment (Protection) Act, 1986 like Ozone depletion rules made by the Central Government?

### **(b) Climate Change Policy**

On 6<sup>th</sup> June 2008, Prime Minister Council on Climate Change was constituted chaired by Prime Minister and consisting of ministers, experts and representatives from the Industry and Media. At national level, the integration of climate change into national development is guided by the Prime Minister's Council on Climate Change. On 30 June 2008, Prime Minister of India unveiled the National Action Plan on Climate Change which seeks to gradually move towards a less carbon intensive grove pattern, increased reliance of renewable resources of energy and higher levels of energy efficiency. The National Climate Change Action Plan<sup>13</sup> refers to eight national missions which are as follows:—

1. National Solar Mission
2. National Mission for Enhanced Energy Efficiency<sup>14</sup>
3. National Mission on Sustainable Habitat

4. National Water Mission
5. National Mission for Sustaining the Himalayan Ecosystem
6. The National Mission for Green India
7. National Mission for Sustainable Agriculture



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#### 8. National Mission for Strategy Knowledge for Climate Change.

National Climate Change Action Policy has flaws and shortcomings. The plan does not provide for target for emission reduction. No time lines for action are mentioned in the plan. To make the things worst, the Plan does not create institutional framework for implementation and monitoring of eight missions. However, Prime Minister's Council is responsible for periodically reviewing and reporting on each mission's progress. National Mission on Enhanced Efficiency (NMEEE) approved by Prime Minister's Council on 24<sup>th</sup> August 2009 includes several new features-the most important being the Perform, Achieve and Trade (PAT) Mechanism which covers facilities that account for more than 50% of the Fossil Fuel use in India and helped to reduce carbon dioxide emissions by 20 million tones per year by 2014-15<sup>15</sup>.

### **III. NEW STRATEGIES AND INITIATIVES IN INDIA**

#### **A. Green House Gas Emission (GHG) Inventory**

On 10<sup>th</sup> May 2010, the Government of India released its Green House Gas Emissions Inventory for 2007 with the aim of enable informed decision making and to ensure transparency. With this inventory, India has become the first "Non-Annex I" country to publish such updated numbers. Results show that the emissions intensity of India's GDP declined by more than 30% during the period 1994-2007 due to the efforts of policies that India has proactively put in place. India has announced its intent to reduce emissions intensity by 20-25% below 2005 level by year 2020 even as it accelerates infrastructure developments and the growth of its manufacturing sector.

#### **B. Expert Group of low carbon strategy for inclusive government**

The Government of India has set up an expert group on low carbon strategy for inclusive growth which is multi-stake holder group that represent from industry, leading think tank, research institution, civil society and government. The group has been given the mandate to develop a road map for India for low carbon development and to recommend prioritized actions in sectors such as electricity, transport, industry, oil & gas, buildings and forestry. The group's recommendations become central part of India's 12<sup>th</sup> five year plan which commenced in 2012.



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#### **C. Carbon taxes on Coal to Fund Clean Energy**

India has announced a levy-a clean energy cess-on coal at the rate of Rs. 15.00 (\$1) per ton which will apply to both domestically produce and imported coal. This money will go to National Clean Energy Fund that will be used for funding research, innovative projects in clean energy technologies and environmental remedial programmes.



#### **D. National Mission on Enhanced Energy Efficiency**

The Mission includes Perform, Achieve and Trade (PAT) Mechanism which covers facilities that account for more than 50% of the Fossil Fuel used in India and helps to reduce Carbon dioxide emission by 20 million tones per year by 2014-15.

#### **E. Energy Saving Certificates**

Energy Saving Certificates are generated under Energy Conservation Act for the savings that are in excess of their mandated target. Energy Efficiency ratings are made mandatory for four key appliances-Refrigerators, Air Conditioners, Tube Lights and Transformers.

#### **F. Green India Mission (GIM)**

The target of GIM is to develop the area to be taken for Aforestation/Eco-restoration in India in the next ten years, taking the total area to be afforested or eco restored to 20 million hectares resulting in increased carbon sequestration of 43 million ton Carbon dioxide annually.

#### **G. Regional and International Corporation**

South Area Association for Regional Corporation (SAARC) which comprises eight South Asian Countries adopted the Thimpu Statement on climate change on 29<sup>th</sup> April 2010. The statement caused for an international governmental expert group on climate change to develop climate policy direction for Regional Corporation on climate change. India has announced the grant of \$1 million each to SAARC forestry Centre Thimpu, Bhutan and SAARC Coastal Management Centre, Male, Maldives.

#### **H. Sub-National State Level Actions**

State Governments are preparing State Specific Action Plans on climate change that draw upon India's National Action Plan and operationalize State level measures in mitigation and adaptation. Delhi and Orrisa become first



two States to complete and launch their action plans. Himachal Pradesh is on track to become the first Indian State to negotiate and large (\$ 450 million) loan on sustainable environmental grove and climate change with the World Bank.

#### **I. Climate Change Science**

The Indian Network for Climate Change Assessment (INCCA) has undertaken a major assessment of the impacts of climate change on four sectors-Water Resources, Agriculture, Forest and Human Health in four critical regions in India, the Himalayan Region, North East, Western Ghats and Coastal India.

In 2013, India launched an **Indian Satellite to monitor GHG emissions** which constitutes landmark initiative of the Government of India.

#### **IV. CONCLUSION**

Climate change possesses serious threat to the survival of life form on the Planet Earth and triggers a race between life and death. If uncontrolled, death will prevail over life. Mankind has no option but to evolve an effective global legal regime to apply brakes to climatic changes. India has to pay proactive growth as leader of developing countries in the international negotiations to ensure the adoption of an effective legal instrument which will succeed Kyoto Protocol by year 2015. We must hear the alarm bells of the nature and act to reverse the havoc being played by climate change which is assuming threatening proportions. India can no more afford to be a petitioner in the global climate change negotiations, but has to play the role of a facilitator and partner in the negotiations. The call of the nature is adoption of comprehensive law on climate

change at global level laying down obligations for reduction of GHG emissions for all countries-developed, socialist and developing economies. Modalities have to be evolved during COP 20 meeting at Peru to mobilize the resources of Climate Change Fund to the tune of 100 billion \$ annually by the year 2020. The legal climate change instrument adopted in 2015 must provide for the rights of the victims of climate change and compensatory mechanism in case of climate change damages. To ensure compliance with global regulatory mechanism, India must enact specific climate change legislation for mitigation and adaptation of climate change. In the interim, the Central Government should make the rules under Environment Protection Act, 1986 to comply with its global obligations and to curb menace of climate change. Low carbon intensive economy in India is the need of the day. India faces threats of climate change induced migrations from neighboring States, Bangladesh and Maldives. Climate change refugees in search for sanctuary

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threaten to flood India and also pose threat to the food security. Large number of climate change refugees in India will have severe impact on climate sensitive sectors like agriculture sector, forests and water resources of India. In view of large number of climate change refugees in India from neighboring countries, India is left with no option but to enact comprehensive law to provide for the protection of climate change refugees. India's role as facilitator in climate change negotiations will display India's leadership on an important international issue. India's ambition to gain a seat of permanent member of the Security Council of United Nations will receive a boost if India plays its diplomatic card well and assumes critical role for the adoption of durable and effective multilateral climate regime. Moreover, India's leadership in the global climate regulations will enormously sharpen the edges of global climate justice system.

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<sup>1</sup> U.N. General Assembly Resolution 43/53, 6 December, 1988.

<sup>2</sup> U.N. Convention on Climate Change, 1992, Article 3.

<sup>3</sup> Report of the U.N. Conference on Environmental and Development, UN Doc. A/CONF. 151/5/Rev. 1, Vol. II (1992) p. 17.

<sup>4</sup> U.N. Convention on Climate Change, Article 3(3).

<sup>5</sup> *Ibid.*, Article 4(2).

<sup>6</sup> Neil W. Adger, *Scales of Governance and Environmental Justice for Adaptation and Mitigation of Climate Change*, 13 *Journal of International Development* 921 (2001).

<sup>7</sup> Miranda A. Schreurs, *From the Bottom Up: Local and Subnational Climate Change Politics*, 17 (No. 4) *The Journal of Environment and Development* 343 (2008).

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<sup>9</sup> Gautam Dutt, *Reaching a Climate Agreement: Beyond the Copenhagen Accord*, 17 *Economic and Political Weekly* 32 (2010).

<sup>10</sup> *The Hindu*, 6 December 2011.

<sup>11</sup> Joachim Betz, *India's Turn in Climate Policy: Assessing the Interplay of Domestic and International Policy Change*, GIGA (German Institute of Global Area Studies) Working Papers No. 190, March 2012.

<sup>12</sup> Constitution of India, Articles 48-A and 51-A(g).

<sup>13</sup> National Action Plan on Climate Change, 2008, Available at [http://pmindia.nic.in/Pg\\_01-52.pdf](http://pmindia.nic.in/Pg_01-52.pdf).

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<sup>15</sup> Bharat H. Desai, Green House Gas Mitigation, 43/45 *Environmental Policy and Law*, 242 (2013).

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