

SUPREME COURT'S LINKAGE OF CLIMATE CHANGE AND FUNDAMENTAL RIGHTS: A STEP IN THE RIGHT DIRECTION

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ABSTRACT

Dr. B.R. Ambedkar was inevitably accurate and unerring in saying that, "Constitution is not mere a lawyer's document, it is a vehicle of life and its Spirit is always the spirit of the age."¹ This invariably, lucidly, and unambiguously means that a constitution cannot be caged in the webbing or plexus of time and interpretations, thinking and ideologies, past and present or future, stillness or motion, correctness or fallaciousness, sorrow or happiness, originalism or living constitutionalism, textualism or contextualism, intentions or understandings, public meanings, or opinions of the framers; and lifelessness or submissiveness. This postulates that Constitution and the dynamics that are associated with it, should keep changing with the time, according to the needs of the society and legal morality as well. Recently, the Supreme Court of India has been giving out judgments and ratios that are in line with a progressive society, seeped deep into the constitutional morality that we seek to uphold. A lot of rights of the people have been recognised since a long time and today as well. So, when on April 7, 2024, the Indian national dailies, and a number of international news articles² published that the Apex Court has recognised the rights of the persons (not just citizens), against the adverse impacts of climate change under articles 14, 21, 48A, 51A (g)- the Constitution of India once again became alive in sentience and rejoiced in happiness as well as zest.

KEYWORDS: Constitution; Fundamental rights; Citizens; Climate change; Supreme Court

1. INTRODUCTION

A Bench headed by the present Chief Justice of India, Honourable Justice (Dr.) D.Y. Chandrachud and co-chaired by Honourable Justice J.B. Pardiwala and Justice Manoj Misra, on March 21, 2024 delivered a judgement in the case of *K. Ranjitsinh & Ors. V Union of India & Ors.*³, whereby the moot point was the preservation issue of the Great Indian Bustards in India. In this judgment the Court decided to accord the right against the adverse impacts of climate change as a fundamental right. The question was regarding the Great Indian Bustards, also known scientifically as *Ardeotis Nigriceps*⁴, generally claimed as beautifully and majestically created bird species, with height ranging from 100 cms. to 1

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¹ PRESS INFORMATION BUREAU, (May, 9, 2024, 11:51 AM), <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1643281>.

² *Right against climate change, part of right to life and equality: Read the Supreme Court's exact arguments, DOWN TO EARTH*, (May, 9, 2024, 11:52 AM), <https://www.downtoearth.org.in/news/climate-change/right-against-climate-change-part-of-right-to-life-equality-read-the-supreme-court-s-exact-arguments-95458>.

³ *Ranjitsinh v Union of India*, (WP Civil No. 838/2019) (India).

⁴ *Great Indian Bustard*, WORLD WILDLIFE FUND, (May, 9, 2024, 11:52 AM), https://www.wwfindia.org/about_wwf/priority_species/threatened_species/great_indian_bustard/.

meter⁵. These birds are native to southern and western India, typically occupying grasslands or arid regions. The Supreme Court while deciding the present case under the original civil jurisdiction, opined with much concern that the Great Indian Bustard has now been designated as a 'critically endangered' species of birds, a continuously deteriorating status from 'endangered' status. It is now going towards acquiring the disturbing status of becoming 'extinct in wild' and further becoming totally 'extinct.' The present status being accorded by the International Union for Conservation of Nature (IUCN)⁶, was justified reasonably because the species has now attained a very small population that has consecutively and over the years. Undergone a very steady and rapid decline owing to a number of threats such as, habitat loss and degradation along with hunting and direct habitat interreference as well as disturbances and turbulences. According to the Forest Department of the Rajasthan Government, there were only 125 Great Indian Bustards in the State in 2013, while the IUCN has prematurely placed the number between 50 and 249⁷. However, the present case dealt with the laying of overhead cable as well as electricity transmission wires, and the preventive measures that the State has taken or can take. The risks are magnified and multiplied when the grazing animals like cows and other domesticated mammals trample upon the laid eggs of these bird species, killing the partly born individual and shutting out all doors on the growth of the progeny. Humans expanding their habitats and accompanying economic activities, have also put these majestic birds in peril. They are endangered both because of natural and anthropogenic factors. The expansion of infrastructure activities has also increased their dangers. In the year 2021 observation in the same case that is being talked about, the Supreme court did pass a lot of directions for observation by the respondents⁸. It is in that very case, that the Court has now given a final judgement and recognise the aforementioned right being talked about. The present research paper, thus delves into the issue of the recognition of the present penumbral fundamental right (fundamental right to protection against the adverse impact of climate change) and the history as well as future scope that is related to it.

⁵ John P. Rafferty, Great Indian Bustard, BRITANNICA, (May,9, 2024, 11:52 AM), <https://www.britannica.com/animal/great-Indian-bustard>.

⁶ INTERNATIONAL UNION FOR CONSERVATION OF NATURE, (May9, 2024, 11:52 AM), <https://www.iucn.org/>.

⁷ Project Great Indian Bustard, FOREST DEPARTMENT OF GOVERNMENT OF RAJASTHAN, (May,9, 2024, 11:52 AM), <https://forest.rajasthan.gov.in/content/raj/forest/en/footer/nav/departement-wings/project-great-indian-bustard.html#:~:text=Among%20faunal%20components%2C%20Great%20Indian,northern%20part%20of%20the%20sanctuary.>

⁸ Ranjitsinh v Union of India, (WP Civil No. 838/2019) (India).

1.1. OBJECTIVE OF STUDY

Major research area centred around the studying of climate change and its adverse impacts on the society, humans, and the environmental milieu in toto. The judgment of the Supreme Court of India states the fact and establishes a new fundamental right that recognises the adverse effects of climate change. The very recognition of these adverse impacts is a step towards climate awareness, protection of climate refugees and extensive discussions are about to follow. According to the definition that is given by the United Nations⁹, climate Change is defined as, “long-term shifts in temperatures and weather patterns. Such shifts can be natural, due to changes in the sun’s activity or large volcanic eruptions. But since the 1800s, human activities have been the main driver of climate change, primarily due to the burning of fossil fuels like coal, oil, and gas. Burning fossil fuels generates greenhouse gas emissions that act like a blanket wrapped around the Earth, trapping the sun’s heat, and raising temperatures. The main greenhouse gases¹⁰ that are causing climate change include carbon dioxide and methane. These come from using gasoline for driving a car or coal for heating a building, for example. Clearing land and cutting down forests can also release carbon dioxide. Agriculture, oil, and gas operations are major sources of methane emissions. Energy, industry, transport, buildings, agriculture, and land use are among the main sectors causing greenhouse gases.”¹¹ According to the National Aeronautics and Space Administration (NASA), “changes observed in Earth’s climate since the mid-20th century are driven by human activities¹², particularly fossil fuel burning, which increases heat-trapping greenhouse gas levels in Earth’s atmosphere, raising Earth’s average surface temperature. Natural processes, which have been overwhelmed

⁹ UNITED NATIONS-DEPARTMENT OF THE PUBLIC INFORMATION, (May, 9, 2024, 12:00 PM), <https://www.un.org/youthenvoy/2013/09/dpi-department-of-public-information/>; Charter of United Nations and The International Court of Justice (2015); Universal Declaration of Human Rights (1948); United Nations Framework on Climate Change (2023).

¹⁰ *What are Greenhouse Gases*, NATIONAL GRID, (May, 9, 2024, 11:59 AM), [https://www.nationalgrid.com/stories/energy-explained/what-are-greenhouse-gases#:~:text=Greenhouse%20gases%20\(also%20known%20as,greenhouse%20gases%20in%20the%20a tmosphere](https://www.nationalgrid.com/stories/energy-explained/what-are-greenhouse-gases#:~:text=Greenhouse%20gases%20(also%20known%20as,greenhouse%20gases%20in%20the%20a tmosphere;); RACHEL CARSON, *THE SILENT SPRING* (1962); ROBBIN WALL KIMMERER, *BRAIDING SWEETGRASS* (2013); EDWARD ABBEY, *THE DESERT SOLITAIRE* (1968); DAVID WALLACE WELLS, *THE UNTHINKABLE EARTH* (2019).

¹¹ *What is Climate Change*, UNITED NATIONS, (May,9, 2024, 12:01 PM) [https://www.un.org/en/climatechange/what-is-climate-change#:~:text=Such%20shifts%20 can%20be%20natural,like%20coal%2C%20oil%20and%20gas](https://www.un.org/en/climatechange/what-is-climate-change#:~:text=Such%20shifts%20 can%20be%20natural,like%20coal%2C%20oil%20and%20gas;); DAVID WALLACE WELLS, *THE UNTHINKABLE EARTH* (2019); NAOMI KLEIN, *THIS CHANGES EVERYTHING: CAPITALISM V. CLIMATE CHANGE* (2014); BILL GATES, *HOW TO AVOID A CLIMATE DISASTER: THE SOLUTIONS WE HAVE AND THE BREAKTHROUGH WE NEED* (2021).

¹² *Causes of Climate Change*, EUROPEAN COMMISSION, (May, 9, 2024, 12:10 PM), https://climate.ec.europa.eu/climate-change/causes-climate-change_en#:~:text=Burning%20 fossil%20fuels%2C%20cutting%20down,greenhouse%20effect%20and%20global%20war ming.

by human activities, can also contribute to climate change, including internal variability (e.g., cyclical ocean patterns like El Niño, La Niña¹³, and the Pacific Decadal Oscillation) and external forcings (e.g., volcanic activity, changes in the Sun's energy output, variations in Earth's orbit)."¹⁴

The present research strives to study Article 21¹⁵ of the Constitution of India in detail in context of environment laws and fundamental rights related to environment. It states that no person shall be deprived of his personal life and liberty except according to the procedure established by law. This effectively means that this article is a safeguard against all aggressions and transgressions of the legislature, executive or any other attached department or ministry of the government, in any way. The first major expansion of the scope of the article took place in the case of *Maneka Gandhi v Union of India*¹⁶ whereby Articles 14, 19 and 21 were juxtaposed and conjoined under the banner of 'holy triangle' or 'holy trinity' or the 'golden triangle' of the Constitution of India, and subsequent cases were judged on the parameter of this understanding. This landmark case marked the departure of the Indian judiciary's narrower interpretation of constitutional rights, which was initiated right after the independence in the case of *A.K. Gopalan v State of Madras*¹⁷. It is in this light that the interpretation of Article 21 has been expanded and has been a wide interpretation, while following a dynamic approach to look at it, in context of environment-related rights.

2. RESEARCH METHODOLOGY

This research paper is based upon the doctrinal methodology of research. Hence heavy reliance has been placed on the existing literature and law journals. Reliance has also been placed on the commentaries, case comments, newspaper articles, viewpoints of various legal theorists and case laws that have been pronounced by the Supreme Court of India. Keeping in mind the area and type of research, a solution-oriented research paper has been sought to be written with the extended aid of internet sources and e-book sources, as well.

3. CONTENT ANALYSIS

The textualist or the 'lettered' interpretation of the fundamental rights gave place and space to rigid comprehension of a beautiful document. Living

¹³ *What are El Nino and La Nina*, NATIONAL OCEAN SERVICE- NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, (May, 9, 2024, 12:10 PM), <https://oceanservice.noaa.gov/facts/ninonina.html>; Daisy Dobrejevic, *what are El Nino and La Nina and how do they effect the weather of the Earth*, SPACE (Jul. 13, 2013, 12:15 PM).

¹⁴ NASA SCIENCE, (May, 9, 2024, 12:15 PM), <https://science.nasa.gov/climate-change/what-is-climate-change/>.

¹⁵ INDIA CONST. art 21.

¹⁶ *Maneka Gandhi v Union of India*, AIR (1978) SC 597 (India).

¹⁷ *A.K. Gopalan v State of Madras*, AIR (1950) SC 27 (India).

constitutionalism, on the other hand is derived from the Living Tree Doctrine. It is this liberal yet constitutional approach to interpret the grundnorm of the nation that has been used since ages to widen the scope of rights of the persons in the country. This doctrine has been sourced and partly taken from the precedents that have been set up by the Canadian Supreme Court whereby it has been widely stated that, “the “living tree” doctrine refers to a method of constitutional interpretation that allows for Canada’s Constitution to change and evolve over time while still acknowledging its original intentions. The doctrine achieves a balance between two seemingly contradictory goals: predictability and flexibility. To be effective, the Constitution must consist of a predictable set of rules. That way, Canadians know how their activities are governed, and Canada and the provinces can be governed in a consistent manner. On the other hand, flexible interpretation accommodates the realities of changing modern life. If the Constitution could not be interpreted this way, it would be frozen in time and become more obsolete than useful.”¹⁸ However, even though the text and the written words are the basis or the anchor of a proper interpretation, they must not be allowed to confine the meanings of the words. After *Maneka Gandhi’s case*¹⁹, article 21 also included ‘due process of law’ into its fold of ‘procedure established by law’. This Japanese concept of due process of law, with the added interpretation of United State of America’s jurisprudential discourse, enriched the Indian legal landscape. This enrichment further led to the development of a very wide scope of Article 21, which now includes both written and unwritten rights, becoming almost the *mother of all human rights and fundamental rights* in India. It is this article under which the present

¹⁸ JUSTICE (RETD.) AK SIKRI, CONSTITUTIONALISM AND THE RULE OF LAW: IN THE THEATRE OF DEMOCRACY (2023); FALI S. NARIMAN, YOU MUST KNOW YOUR CONSTITUTION (2023); H.R. KHANNA, THE MAKING OF INDIA’S CONSTITUTION (2022); K.G. KANNABIRAN, A SPEAKING CONSTITUTION (2022); ROHIT DE, THE PEOPLE’S CONSTITUTION (2018); GRANVILLE AUSTIN, WORKING A DEMOCRATIC CONSTITUTION (2003); ARGHYA SENGUPTA, THE COLONIAL CONSTITUTION (2023); LOKENDRA MALIK, THE POWER OF THE RAISINA HILL-THE CONSTITUTIONAL POSITION, FUNCTIONS AND POWERS OF THE PRESIDENT OF INDIA (2023); DAVID A. STRAUSS, THE LIVING CONSTITUTION; GILLES A TARABOUT, COMFLICT, POWER AND LANDSCAPE OF CONSTITUTIONALISM; DEITER GRIMM, CONSTITUTIONALISM: PAST, PRESENT AND FUTIRE; CENTRE FOR CONSTITUTIONAL STUDIES, (May, 9, 2024, 12:20 PM), <https://www.constitutionalstudies.ca/2019/07/living-tree-doctrine/>; Alan C. Hutchinson, *Living Tree*, (May, 9,2024,12:25PM), https://www.canlii.org/en/commentary/doc/1992Can_LIIDocs403#!fragment//BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBplfTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA; Lawrence B Solum, ‘*What is Originalism? The Evolution of Contemporary Originalist Theory*’,(May,9, 2024, 12:30 PM), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2362&context=facpub>; Bradley W. Miller, Grand Huscroft, *The Challenge of Originalism: Theories of Constitutional Interpretation* (Cambridge University Press 2011).

¹⁹ *Maneka Gandhi, supra note 16.*

penumbral right that has been recognised, is placed. The same must be juxtaposed with Article 14 to have a clear analysis.

Article 14 deals with the principle of equality and equity both. It recognizes the right to equality before law for all and the equal protection of laws for all persons, and not just citizens. Article 14 is a partly British and partly American concept that has the doctrine of intelligible differentia and reasonable classification as the basis of itself. Articles 14 and 21, both are the balancing wheels of the theories of originalism and living constitutionalism. They cannot function without each other and they are invariably incomplete without one another. It was in the case of *E.P Royappa v State of Tamil Nadu (1974 AIR 555)*²⁰, that the Apex Court firmly declared via the Honourable Bench of Justice A.N. Ray, Justice D.G. Palekar, Justice Y.V. Chandrachud, Justice P.N. Bhagwati, and Justice V.R Krishna Iyer- that Article 14 is based on the principle of equality and inhibition to discrimination. The Honourable judges (Constitution Bench) opined that equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. However, the contemplative reading of both the articles i.e. article 14 and 21 as well the finding of the principle of non-arbitrariness was done in the case of *S.G. Jaisinghani v Union of India & Ors (1967 AIR 1427)*²¹. The judgement quoted some of the finest definitions and growth of law and jurisprudence with respect to the fundamental rights and human rights jurisprudence in the following words while quoting Justice Douglas of the United States of America (USA) Supreme Court- '*Law has reached its finest moments,*' (stated Douglas, J. United States v. Wunderlich²²) 'when it has freed man from the unlimited discretion of some ruler, where discretion; absolute, man has always suffered.' It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes²³, 'means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague, and fanciful.' Article 21 of the Constitution of India has a number of penumbral rights such as right to privacy, right against fettering in chains, right to reproductive choices et al. Penumbral or anchored rights are those rights, which are not expressly written in the constitution but are meant to be impliedly included via recognition by the Supreme Court of India. The

²⁰ *E.P Royappa v State of Tamil Nadu*, AIR (1974) 555 (India).

²¹ *S.G. Jaisinghani v Union of India & Ors.* (1967) AIR 1427 (India).

²² *United States v Wunderlich*, 342 U.S. 98 (1951).

²³ *R. v John Wilkes*, 98 E.R. 327.

present right that has been recognised is an anchored right and a concept that not per se included in Article 21, but is so important and indispensable to the Indian jurisprudential discourse, to be loosely left out.

4. ARGUMENTS AND DISCUSSION

“If all mankind were to disappear, the world would regenerate back to the rich state of equilibrium that existed ten thousand years ago. If insects were to vanish, the environment would collapse into chaos. Both are important for the protection of environment and for each other’s preservation.” – E.O. Wilson²⁴

The Supreme Court in the most recent judgement²⁵ has stated and propounded that the right against the adverse impacts of climate change comes under articles 21, 48A, 51A (g) and 14. Article 48A²⁶ of the Constitution provides that the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. Clause (g) of Article 51A states that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wild life, and to have compassion for living creatures. The Supreme Court has further said that, although these are not justiciable provisions of the Constitution, they are indications that the Constitution recognises the importance of the natural world. The importance of the environment, as indicated by these provisions, becomes a right in other parts of the Constitution. Article 21²⁷ recognises the right to life and personal liberty while Article 14²⁸ indicates that all persons shall have equality before law and the equal protection of laws. These articles are important sources of the right to a clean environment and the right against the adverse effects of climate change. It was in the case of *M.C. Mehta v Kamla Nath (AIR 1996 SC 711)*²⁹, that the Apex Court recognised for the first time the right to clean and purified environment, as the government or the State held the environment and all the natural resources as trustees for the people in general, and in turn, the citizens or the persons deserved to have a protected and preserved environmental milieu and atmosphere. This is known as the ‘public trust doctrine.’ The judgement states that the ancient Roman Empire developed a legal theory known as the ‘Doctrine or the Public Trust,’ which was founded on the ideas that certain common properties such as rivers, sea- shore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. “Our contemporary understanding about ‘the environment’ bear a very close conceptual relationship to this legal doctrine. Under the Roman

²⁴ GOODREADS, (may, 9, 2024, 12:30 PM), https://www.goodreads.com/author/quotes/31624.Edward_O_Wilson.

²⁵ *Ranjitsinh v Union of India, supra note 8.*

²⁶ INDIA CONST. art 21, 48A, 51A(g), 14, 48 A.

²⁷ INDIA CONST. art. 21.

²⁸ INDIA CONST. art. 14.

²⁹ *M.C. Mehta, supra note 16.*

Law these resources were either owned by no one (*res Nullious*) or by everyone in common (*Res Communiouis*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan proponent of the Modern Public Trust Doctrine - in an erudite article "Public Trust Doctrine in natural resource law: effective judicial intervention", has given the historical background of the Public Trust Doctrine as under: 'The source of modern public trust law is found in a concept that received much attention in Roman and English law - the nature of property rights in rivers, the sea, and the seashore.'³⁰

In another judgement of *Virendra Gaur v State of Haryana (Writ Petition-Civil 2019³¹)*, the Honourable Apex Court recognised the importance of preserving ecological balance and environmental milieu. It opined that the State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water, pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment.³² Similar was the observation in *Karnataka Industrial Areas Development Board v C. Kenchappa (2006 (6) SCC 311)*³³ and *Bombay Dyeing and Manufacturing*

³⁰ *Id.*

³¹ *Virendra Gaur v State of Haryana, (WP Civil 2019) (India).*

³² *Id.*

³³ *Karnataka Industrial Areas Development Board v C. Kenchappa (2006 (6) SCC 311) (India).*

*Corporation Limited v Bombay Environment Action Group (2006 (3) SCC 434).*³⁴

The recognition of the present right with respect to rising levels of temperature and earth warming seasons as well as the endangered rights of the indigenous communities of India, is applaudable beyond measures, in the present scenario and status quo. According to the IPCC (Intergovernmental Panel on Climate Change), climate change is one of the biggest imperatives of present time and, as the IPCC Special Report on Global Warming of 1.5°C published in 2018 (the “IPCC Special Report”)³⁵ states it will “require rapid and far-reaching transitions of energy, land, urban and infrastructure (including transport and buildings) and industrial systems” to avoid the worst effects of climate change. The required rapid and far-reaching transition to energy, land, urban and infrastructure and industrial systems arising out of a global response to climate change will necessarily give rise to new investment and contracts, and accordingly contractual and other legal disputes.³⁶ In *Urgenda Foundation v The Netherlands (ECLI:NL:HR: 2019:2006*³⁷) and the *Milieudefensie etal. V Royal Dutch Shell plc. (ECLI:NL: RBDHA: 2021:5337*³⁸), the European Court on Human Rights has decided in favour of the environmental activists and broadened the scope of climate change policies. Duty of care on behalf of the State was recognised in both the cases. From this, it must be understood that the European nations have already grown in the sphere of recognizing these rights of the citizens and upholding the duties of the national governments to take care of the environment and related issues. The Court also said that without a clean environment which is stable and unimpacted by the vagaries of climate change, the right to life is not fully realised. The right to health (which is a part of the right to life under Article 21) is impacted due to factors such as air pollution, shifts in vector-borne diseases, rising temperatures, droughts, shortages in food supplies due to crop failure, storms, and flooding. The inability of underserved communities to adapt to climate change or cope with its effects violates the right to life as well as the right to equality. This is better understood with the help of an example. If climate change and environmental degradation lead to acute food and water shortages in a particular area, poorer communities will suffer more than richer ones. The right to equality would undoubtedly be impacted in each of these instances.

³⁴ *Bombay Dyeing and Manufacturing Corporation Limited v Bombay Environment Action Group (2006 (3) SCC 434) (India).*

³⁵ Intergovernmental Panel on Climate Change Report (2018).

³⁶ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, (May, 9, 2024, 12:43 PM), <https://www.ipcc.ch/report/ar6/wg2/>.

³⁷ *Urgenda Foundation v The Netherlands (ECLI:NL:HR: 2019:2006).*

³⁸ *Milieudefensie etal. V Royal Dutch Shell plc. (ECLI:NL: RBDHA: 2021:5337).*

5. RESULT AND FINDINGS

After going through the objectives of the study and the arguments and discussions, one is aptly clear of the results and findings that have been reached. The State in India is duty bound to protect the environment as well the people from the adverse effects of climate change. This must be done in order to not have any loss of human species or the associated milieu along with the current infrastructure development that is going on. The Apex Court emphasised the State's duty under the Chapter of Fundamental Rights and the Directive Principles of State Policy in the Constitution of India. In the judgment, the Apex Court has taken cue from various other jurisdictions and some of these observations are listed below for perusal to understand the resultant findings of the Court.

In *Sacchi, et al. v. Argentina, et al*³⁹ sixteen children from different countries sent a communication to the Committee on the Rights of the Child alleging violations of their rights under the UN Convention on the Rights of the Child by Argentina, Brazil, France, Germany, and Turkey. The communication asserted that these nations had not reduced their greenhouse gas emissions to an adequate level and that they had failed to curb carbon pollution. Although the CRC found that the communication was inadmissible for failure to exhaust domestic remedies, it affirmed that States exercise effective control over carbon emissions and bear responsibility for transboundary harm arising from such emissions. Notably, it observed that while climate change necessitates a global response, individual states retain accountability for their actions or inactions concerning climate change and their contribution to its effects.⁴⁰ In *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*,⁴¹ the appellant travelled to New Zealand from Kiribati, a small island country in the Pacific Ocean, and remained there after his permit expired. He later applied for refugee status and / or protected person status on the ground that sea levels in Kiribati were rising due to climate change. He anticipated being forced to leave Kiribati in the future due to this. The relevant authorities rejected his application and the concerned tribunal dismissed the appeal. The appellant sought leave to appeal the decision of the tribunal, which was rejected by two appellate courts. Finally, the Supreme Court of New Zealand dismissed his application for leave to appeal. It held that the appellant would not face serious harm if he returned to Kiribati and that there was "no evidence that the Government of Kiribati [was] failing to take steps to protect its citizens from the effects of environmental degradation." Significantly, it also held that its decision in this case would not rule out the possibility of a similar application succeeding in an appropriate case

³⁹ *Sacchi et al. v. Argentina (dec.)*, 22 September 2021, CRC/C/88/D/104/2019.

⁴⁰ *Ranjitsinh*, *supra note 8*.

⁴¹ *Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment*, [2015] NZSC 107.

in the future.⁴² It must be acknowledged that climate change may and will, in all possibility lead to the degeneration of natural resources which may force people to leave their original inhabitation.

Therefore, the recognition of the fundamental right against the adverse impacts of climate change, as recognised by the Supreme Court is a step in the right direction. It will not only protect the environmental milieu, but will also help in preserving the health of the community as a whole, thereby holistically conserving the whole biome of existence. The rights of the climate-induced internally displaced population and the future dispersal rates; both can be prevented and stopped via the constitutional recognition of this fundamental penumbral right. In brief, the international jurisdictions having recognised the same right and the Indian scriptural knowledge, when juxtaposed with the recent judgment of the Supreme Court, as well as the jurisprudential growth of the concept, has led to an emphatic win of the co-extensive existence of species in the world, especially India.

6. CONCLUSION AND SUGGESTIONS

Look deep into nature, and then you will understand everything better. — Albert Einstein

It is said in the ancient spiritual texts of the Indian subcontinent that the whole world is a family. Originally from the Mundaka Upanishad, the ancient Sanskrit shloka that signifies the Indian outlook towards species and includes one and all in her embrace is-

*ayanṃ nijah̄ paro veti gaṇanā laghucetasām |
udāracaritānām tu vasudhaiva kuṭumbakam ||⁴³*

It is stated that, of late, the intersection between climate change and human rights has been put in sharp focus, underscoring the imperative for states to address climate impacts through the lens of rights. For instance, the contribution

⁴² Ranjitsinh, *supra* note 8.

⁴³ MUNDACA UPANISHAD; RAM SHARAN SHARMA, INDIA'S ANCIENT PAST , (2004); UPINDER SINGH, A HISTORY OF ANCIENT AND EARLY MEDIEVAL INDIA (FROM THE STONE AGE TO THE 12TH CENTURY), 2008; ARTHUR LLEWELLYM BASHAM, THE WONDER THAT WAS INDIA , 1954; R.C. MAJUMDAR, ANCIENT INDIA, 1972; JOHN KEAY, INDIA- A HISTORY, 2000; ROMILA THAPAR, EARLY INDIA: FROM ORIGINS TO THE 1300s, 2002; TONY JOSEPH, EARLY INDIANS- THE STORY OF OUR ANCESTORS AND WHERE WE CAME FROM, 2021; SANJEEV SANYAL, THE OCEAN OF CHURN, 2017; POONAM DAHIYA, ANCIENT AND MEDIEVAL INDIA, 2020; RAMA SHANKAR TRIPATHI, HISTORY OF ANCIENT INDIA, 2014; NAMIT ARORA, INDIA- A BRIEF HISTORY OF CIVILISATION, 2021; KRISHNA DWAIPANA VYAAS, THE BHAGAVAD GITA; THE UPANISHADS; THE RIG VEDA; VALMIKI, THE RAMAYANA; RE-SANSKRIT, (May, 9, 2024, 1:05 PM), <https://resanskrit.com/blogs/blog-post/vasudhaiva-kutumbakam> (visited March 23, 2024).

of the UN High Commissioner for Human Rights to the 2015 Climate Conference in Paris emphasized that climate change directly and indirectly affects a broad spectrum of internationally guaranteed human rights. States owe a duty of care to citizens to prevent harm and to ensure overall well-being. The right to a healthy and clean environment is undoubtedly a part of this duty of care. States are compelled to take effective measures to mitigate climate change and ensure that all individuals have the necessary capacity to adapt to the climate crisis. India has a number of laws that deal in the context of climate change. These are Water (Prevention and Control of Pollution) Act 1974; The Water (Prevention and Control of Pollution) Rules 1975; The Environment (Protection) Act 1986; The Forest Conservation Act 1980; The Wildlife Protection Act 1972; The National Environment Tribunal Act 1995; The Environment Appellate Authority Act 1997. Whereas international conventions dealing with such adverse impacts of climate change are Ramsar Convention (1970); Convention on International Trade in Endangered Species of Wild Flora and Fauna (1973); Bonn Convention (1979); Montreal Protocol (1987); Vienna Convention (1988); Basel Convention (1989); Convention on Biological Diversity (1992); United Nations Framework Convention on Climate Change (1992); Rio Summit (1992); United Nations Convention to Combat Desertification (1994); Kyoto Protocol (1997); Rotterdam Convention (1998); Cartagena Protocol on Biosafety (2000); Stockholm Convention 92001); UN-REDD (2008); Nagoya Protocol (2010); Minamata Convention 92013); Paris Agreement (2015); Kigali Amendment (2016). All these conventions and national Acts are inevitably important in preserving the whole biome of humans and related species.

It is pertinent to note that States hold the environment and the associated natural assets that are imbued in it as a trust (being a trustee) for the public, and accordingly these assets must be protected and preserved, beyond all measures. Here, the public trust doctrine is highly applicable. The Court has in a number of cases observed that, “we are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open land in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasing complex society, find it necessary to encroach to some extent open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership or for commercial use. The esthetic use and the pristine glory of the natural resources, the environment and the eco-systems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it

necessary, in good faith, for the public goods and in public interest to encroach upon the said resources.”⁴⁴ Regarding the source of the doctrine of public trust, the Court stated that, “it is no doubt correct that the public trust doctrine under the English Common Law extended only to certain traditional uses such as navigation, commerce, and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case clearly show the judicial concern in protecting all ecologically important lands for example fresh water, wetlands, or riparian forests. The observation of the Court in Mono Lake case to the effect that the protection of ecological values is among the purpose of public trust, may give rise to an argument that the ecology and the environment-protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. *In Phillips Petroleum co. vs. Mississippi* 108 S.Ct. 791 (1988)⁴⁵, the United States Supreme Court upheld Mississippi’s extension of public trust doctrine to lands underlying no navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. Phillips Petroleum case assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all eco-systems operating in our natural resources. Our legal system - based on English Common Law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea- shore, running waters, airs, forests, and ecologically fragile lands. These resources meant for public use cannot be converted into private ownership.⁴⁶ India, having taken cue from all the other jurisdictions, in handling the environmental issues, as well as honouring the timeless legacy of her own scriptures, has rightly come to a befitting conclusion in the present case. State as a trustee is under a legal duty to protect the natural resources. Conclusively, the recognition of this right is telling of the Supreme Court’s observations walking on the right path and paving a way for more understanding and concerned viewpoint with respect to the growing demands of reversing the effects of climate change. This will not only help and aid the policy makers but will also help in enlightening the general masses regarding the burning issues of times, furthering social cohesiveness and future collaborative development.

It is not just clean air, clean food, clean paths, and clean milieu that one needs;

⁴⁴ M.C. Mehta, *supra* note 16.

⁴⁵ *Phillips Petroleum Co. v Mississippi* 108 S.Ct. 791 (1988).

⁴⁶ M.C. Mehta, *supra* note 16; *Phillips Petroleum co*, *supra* note 45.

*It is also a legal assurance and a protection to all that- that one often heeds;
Because it is not just climate change policies that one requires,
It is the Apex Court's attention and concern that one does sire-
Because it is not just about the interpretation and stagnation,
It is also about the rights of the people, persons, and citizens of the nation*

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