

**ONLINE  
CONSULTATIVE  
WORKSHOP  
ON  
LEGISLATING  
CLIMATE CHANGE  
LAW IN INDIA**



*Organised by*

**Centre for Environmental Law, Education, Research  
and Advocacy, National Law School of India  
University, Bengaluru**

*Under*

**CEERA's Initiative Towards Drafting a Climate  
Change Protection Bill**

*Date: June 18<sup>th</sup>, 2021*



## ABOUT NLSIU

The National Law School of India University, the nation's premier law university, came into existence through a Notification under the National Law School of India University Act (Karnataka Act 22 of 1986). It signified the culmination of efforts by the Judiciary, the Bar Council of India, the Karnataka Bar Council, the Bangalore University and the Government of Karnataka to reform legal education and to establish a centre of excellence for legal education and research in India. The Law School has undertaken many research projects funded by the UGC, the Government of India, the Government of Karnataka, the Department of Women and Child Development, UN agencies, the World Bank, HIVOS, Department of Justice etc.



The projects have served to strengthen research and teaching at the Law School. The National Law School of India University since its inception has taken proactive steps in organizing conferences, seminars, workshops, refresher courses and certificate courses to update academicians, law teachers, students, industry personnel in different subject areas.

## ABOUT CEERA



Centre for Environmental Law Education, Research and Advocacy (CEERA), established in 1997 is a benefactor of the Ministry of Environment and Forest (MoEF&CC), Government of Karnataka, the Bar and the Bench in India and abroad. Building an environmental law database, effectively networking among all stakeholders, building up an environmental law community and policy research in the area of environment are CEERA's main objectives.

To achieve the aforesaid, CEERA has incessantly and successfully been able to build functional and professional linkages with government agencies and non-governmental organisations in India, the South Asian Region and at International levels. CEERA, has been partnering with the Central Pollution Control



Board in organising Training Programmes for the officers of various State Pollution Control Boards and other industry professionals for over eight (8) years. One of the first in India, to be successfully granted a World Bank project and thereafter being a steady choice for the Ministry of Environment Forest and Climate Change, CEERA has been entrusted with



research projects and workshops to impart training to Forest Officers, Revenue Officers, Officers of the Central Pollution Control Board and also of the Government of Karnataka. CEERA is proud to have completed a two-year Research Project granted by the United Nations Development Programme (UNDP) under the Global Environment Facility (GEF), and as one of the deliverables, organised, convened and conducted over twenty workshops at Institutions of national repute creating awareness on the Biodiversity Law and Access and Benefit Sharing (ABS) in less than 2 years. Two research publications on the scanty research area of biodiversity laws were also the outcome of this project. CEERA is currently implementing a Three-Year Project granted by the Ministry of Environment, Forest and Climate Change titled “Collaborative Engagement for Research, Training and Development in Handling of Chemical and Hazardous Waste”. The broad objectives of this project *inter alia* include, providing advisory to the Ministry on matters connected to the Conference of Parties under various Multilateral Environmental Agreements, to which India is a party.

CEERA has several publications in the area of environmental law, the law and public policy along with Newsletters, CEERA March of the Environmental Law, NLSIU’s first e-Journal – Journal on Environmental Law, Policy and Development and manages three websites viz., [www.nlsenlaw.org](http://www.nlsenlaw.org), wherein the law and policy on environment is regularly updated, and [www.nlsabs.com](http://www.nlsabs.com), a dedicated portal wherein the law and policy on Biodiversity Access and Benefit Sharing is updated periodically. All our publications are duly updated on our online portal [www.nlspub.ac.in](http://www.nlspub.ac.in), which is open for subscription to all readers.





## **ABOUT THE WORKSHOP**

In the attempt to join the global effort to address climate change and its allied issues, Centre for Environmental Law, Education, Research and Advocacy, NLSIU has undertaken the initiative to draft a Bill that seeks to provide a clear and comprehensive framework for climate protection in India. To this end, CEERA is organizing a One-day Consultative Workshop on Legislating Climate Change Law in India on 18<sup>th</sup> June, 2021.

The Workshop is aimed at creating a platform to stimulate intellectual discourse on critical issues associated with climate change and to identify viable solutions to address these issues. With the expected participation of experts in the relevant area of study and other stakeholders, the workshop is designed to draw from different perspectives and disciplines apart from the legal perspective of climate change. Given the absence of an explicit law in India addressing climate change, the workshop specifically aims to advance the dialogue on devising a comprehensive legislative framework that addresses climate change in India. Furthermore, the workshop is unique in its range and breadth as the discussions will focus on the need to provide protection against climate change and the legal means to achieve the same.

With the objective of identifying the varied dimensions of enforcing a law on climate change protection, the workshop will present the draft framework of the CEERA NLISU Bill on Climate Protection and deliberate on some of the core principles and ideas envisaged under it which are as follows:

- A decentralized approach for climate risk mitigation and adaptation.
- The institutional structure for climate change governance.
- Identification of vulnerable communities with a view to advance protection and rehabilitation measures
- Efforts towards rehabilitation of vulnerable communities
- Climate Sustainability Plan for institutions and projects likely to gravely impact climate change
- 'Climate Risk Insurance' to meet the needs of vulnerable communities.
- Climate Education and Climate Awareness to encourage dissemination of knowledge and create awareness on the effects of Climate Change.



## THE NEED FOR THE WORKSHOP

Climate Change is a global issue and almost every country is reeling under the pressure to address this problem through legislative measures. India is one among the most vulnerable countries to climate change. About half of India's population is dependent upon agriculture or other climate sensitive sectors. Recent studies have revealed that about 12% of India is flood prone while 16% is prone to draught. As per the World Risk Index 2020, India ranked 89th among 189 countries. It lagged behind Sri Lanka, Bhutan and Maldives in terms of abilities to cope with extreme disasters, its adaptive capacities and the preparedness to deal with extreme events. The average surface air temperature in the country is expected to rise by 4.4° C by the end of the century if little is done to curb global carbon dioxide emissions.<sup>1</sup> Thus, there is a need to identify critical areas for legislative intervention in this area.

In the recent years, there has been a vibrant debate with regard to India's policy and legal response to climate change. At present, India does not have an integrated climate change legislation. The law and policy with respect to climate change is fragmented with a plethora of laws invariably touching upon varied issues associated with climate change. The National Action Plan on Climate Change – which was perhaps the first dedicated effort of the Central Government towards Climate Change - has not been effective in its implementation due to its slow start and non-alignment of its sectoral missions with other governmental schemes to tackle climate change. Further, the monitoring system under the NAPCC are either absent or ineffective.<sup>2</sup>

Though attempts have been made to legislate on climate change in the form of private member bills,<sup>3</sup> they have not resulted in full-fledged legislation. It is the need of the hour that India enacts a law on the subject. In this context, this workshop seeks to identify the contours of enacting a climate change related law in India. It is a platform for experts in the field to come together to discuss and deliberate upon preparing a legislative framework in the area of climate change.

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<sup>1</sup> Kabir Agarwal, *What the New Govt Report Says About 'India's Climate Change' This Century*, THE WIRE (June 17, 2020), <https://science.thewire.in/environment/ministry-of-earth-sciences-climate-change-report-monsoons-cyclones-sea-level-rise/>.

<sup>2</sup> Vijay Rattani et al, *India's National Action Plan on Climate Change Needs Desperate Repair*, DOWNTOEARTH (Oct. 31, 2018), <https://www.downtoearth.org.in/news/climate-change/india-s-national-action-plan-on-climate-change-needs-desperate-repair-61884>.

<sup>3</sup> The Climate Change Bill, 2015, Bill No. 23 of 2015 (introduced by Shri Kalikesh Narayan Singh Deo, MP).



## INDIA'S OBLIGATION UNDER THE INTERNATIONAL FRAMEWORK

At the international level, India is committed to engaging actively in multilateral negotiations under the United Nations Framework Convention on Climate Change (UNFCCC) in a positive, integrated and forward-looking manner. The UNFCCC is an international environmental treaty that was adopted on 9 May, 1992. The objective of the Convention is to “stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”. The Convention, under Article 4 casts a number of obligations on the parties including: adoption of national policies on the mitigation of climate change, regular periodic communications about national inventories of greenhouse gas sources, development of national and regional programmes etc. As a developing country, India's contribution must take into account its commitment to mitigating and adapting to the impacts of climate change with a view of meeting other imperatives such as conserving the environment, meeting the competing demand for scarce resources and affording protection to vulnerable groups.

Besides committing to the objectives set out under the UNFCCC, India has made significant commitments in its Intended Nationally Determined Contribution (NDC) submitted under the Paris Agreement. The Paris Agreement is a landmark international treaty adopted in 2015 to address climate change and its negative impacts. The Paris Agreement entered into force on November 4, 2016 and as of January 2021, 190 parties have ratified the Paris Agreement. The aims of the agreement are: *first*, to enhance the implementation of the UNFCCC and *second* to strengthen the global response to the threat of climate change. The Agreement seeks to pursue both these aims in the context of sustainable development and eradication of poverty. To achieve the objectives set out thereunder, the Agreement seeks to substantially reduce global greenhouse gas emissions in an effort to limit the global temperature increase in this century to 2 degrees Celsius above preindustrial levels, while pursuing the means to limit the increase to 1.5 degrees. It also seeks to increase the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production. Further, it intends to make finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

The UNFCCC and the Paris Agreement are both linked. Whereas the UNFCCC provides a foundation for the global climate effort, the Paris Agreement defines how countries will implement their UNFCCC commitments after 2020. However, there is a subtle difference between the two. The Paris Agreement approached differentiation of countries'



responsibilities to address climate change by departing from the rigid distinction between industrialised and developing countries through the inclusion of ‘subtle differentiation’ of specific subsets of countries (e.g. Least Developed Countries) for certain substantive issues (e.g. climate finance) and/or for specific procedures (e.g. timelines and reporting).<sup>4</sup>To this effect, the Paris Agreement calls upon Parties, which includes India, to acknowledge when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity. Furthermore, under the obligations set out under Articles 2, 7 and 8 of the Paris Agreement, India must strive to increase its ability to adapt to the adverse impacts of climate change and foster climate resilience. In this regard, the workshop aims to deliberate on a way forward for India in devising an appropriate law that comprehensively meets India’s obligations under the international framework.

### **ABOUT THE CLIMATE PROTECTION BILL**

The Bill, the broad outline of which the workshop seeks to deliberate upon, focusses on a framework that will afford climate protection in India. At its core, the Bill seeks to identify areas deemed vulnerable due to climate change and communities inhabiting them, who are most susceptible to risks induced by climate change and climate related disasters and grant them protection through an elaborate scheme of relief measures. For the purposes of the Bill, the relief that may be afforded to such vulnerable communities are broadly identified and assessed under the heads of climate adaptation, compensation and rehabilitation. Furthermore, in addition to the relief that may be provided to vulnerable communities, the Bill contemplates a structure for a climate risk insurance scheme with a view of enhancing climate change preparedness in the country. In light of the cross-cutting nature of the impacts of climate change and the need to address the dynamic nature of such impacts the Bill also incorporates provisions that will boost climate resilience in the country. To this effect, the Bill looks to advance strategies in critical sectors by encouraging climate sustainability plans, appropriate sectoral intervention and adoption of best business practices. This section is envisaged to encourage and mainstream mitigation efforts as a complement to the climate adaptation measures. Lastly, the Bill also seeks to create and put in place a climate change specific institutional structure through the creation of Climate

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<sup>4</sup> Pieter Pauw et al, *Subtle Differentiation of Countries’ Responsibilities under the Paris Agreement*, 5 PALGRAVE COMMUN 86 (2019).



Change Commission for India. The Bill outlines the nature, composition, roles, responsibilities and functions of the Commission vis-à-vis the implementation of the Bill. Through this broad framework, the Bill aims to serve as a guiding document for enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development in India.

## **TENTATIVE OUTLINE OF THE BILL**

- SHORT TITLE – THE CLIMATE CHANGE PROTECTION BILL
- LONG TITLE

*“An Act to provide for a framework for the protection of areas deemed vulnerable due to the effects of climate change, with a view to provide relief for persons inhabiting them in the form of compensation, climate change adaptation, rehabilitation and climate risk insurance, identifying businesses having material adverse effect on the climate and the measures to regulate their impact, and for matters connected therewith or incidental thereto.”*

- STATEMENT OF OBJECTS AND REASONS

*“WHEREAS India due to its topography and geography is susceptible to impacts of climate change such as glacier melt, sea-level rise, floods, excessive rainfall and droughts, extreme weather events.*

*WHEREAS India being a signatory to the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement, it is considered necessary to implement international obligations in so far as they relate to minimizing and combating the adverse effects of climate change.*

*AND WHEREAS it is considered necessary to take steps to introduce a regulatory framework for enhanced response to climate change and protection from drastic climate events and for purposes connected therewith.*

*BE it enacted by Parliament in the \* \* \* Year of the Republic of India”*

1. SHORT TITLE, EXTENT AND COMMENCEMENT
2. DEFINITIONS
  - Areas deemed vulnerable due to climate change
  - Climate Change Commission
  - Climate Protection
  - Climate Refugee





- Climate Risk Insurance
- Climate Sustainability Plan
- Drastic Climate Event
- Material Adverse Impact
- Vulnerable Community

## **PART I**

### **3. CLIMATE CHANGE COMMISSION**

- Constitution of the Commission
- Structure of the Commission
- Role of the Commission
- Functions of the Commission
  - Identifying and recognising vulnerable communities
  - Compensation, Adaptation and Rehabilitation
  - Research
  - Awareness Programs and Training
  - Integrated Environmental Assessment, Review and Reporting
  - Prepare National Action Plans to tackle Climate Change
  - Public Consultations
  - Encouraging collaboration on climate change in the national and international level
  - Other Functions

## **PART II**

### **4. IDENTIFICATION OF AREAS DEEMED VULNERABLE DUE TO CLIMATE CHANGE**

- *Suo moto* & on request made by community inhabiting an area deemed vulnerable due to climate change
- Procedure for identifying and declaring vulnerable communities
- Parameters to declare community as vulnerable

### **5. RELIEF MEASURES FOR THE VULNERABLE COMMUNITIES**

### **6. CLIMATE PROTECTION COMPENSATION**

- Persons eligible for claiming compensation
- Grounds on which climate protection compensation may be claimed

### **7. CLIMATE ADAPTATION RELIEF**

- Grant of relief for climate adaptation - *suo moto* & on request made by vulnerable community.
- Nature of work to be carried out -
  - Adaptation Plan –assessment of damage and components involved)
  - Parameters for assessment
  - Measures to be taken



- Authorities and departments involved in planning and implementation

#### 8. CLIMATE REHABILITATION RELIEF

- Nature of work to be carried out -
  - Rehabilitation Plan – assessment of damage and components involved
  - Parameters for assessment
  - Measures to be taken
  - Authorities and departments involved in planning and implementation

### PART III

#### 9. CLIMATE RISK INSURANCE

- Risk Insurance to mitigate losses and provide financial support to vulnerable communities/regions.
- Identification of vulnerable communities / regions
- Financing the risk insurance
- Insuring the identified vulnerable communities against the risks of climate change;

### PART IV

#### SUSTAINABILITY AND GOVERNANCE FRAMEWORK

#### 10. Businesses having “material adverse effect” on Climate

- Power of Central/State Government to identify
- Issue of directions to State Governments/CPCB

#### 11. Sustainability and Governance Reporting Framework

- EIA
- EC
- Environment Audit

#### 12. Climate Sustainability Impact Regulations and Other Standards

### PART V

#### 13. OFFENCES AND PENALTIES

- Punishment for obstruction of work
- Punishment for false claims
- Offences by Departments of Government
- Failure of Officers in-charge of carrying out work/non-adherence of timelines
- Offences by companies
- Cognizance of offences



## PART VI

### 14. MISCELLANEOUS

- Rulemaking power of Government
- Overriding effect or Act etc/ Interpretation of Clauses of Act.
- Climate Education and Awareness
- Duties of Citizens
- Other provisions