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Master's Thesis

Climate Justice Necessary for Sustainable development of all Nations?

Ar teisingumas klimato srityje būtinas darniam visų tautų vystymuisi?

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ABSTRACT & KEY WORDS

As the world undergoes record-breaking heat waves, coastal submergence, floods, etc., stakeholder obligation to mitigate these anthropogenic impacts are being questioned, shifting focus on the evolution of climate justice and its relation with human rights and sustainable development, emphasising on inter-generational equity through distribution of resources and sharing responsibility for climate change. Harmonising Paris Agreement with national legislation, through litigation is becoming a common practice at the ECtHR and national courts. This thesis investigates how human rights-based climate justice cases are developing. Further examining how state judicial systems apply climate justice, in realising sustainable visions through court decisions and policies, and its importance for all nations.

Key words: climate justice, sustainable development, future generations, human rights, ECtHR, national courts

CONTENTS

INTRODUCTION

Relevance and problems at hand: What is justice if not for the wholesome development of human life? Having human rights at the heart of my understanding of the international justice system has prompted me to focus on environmental equality. Exploring this topic, as an environmentalist at heart, provides me with a unique opportunity to untangle the complexities of environmental legal jurisprudence and its multidisciplinary dimensions. The intense efforts of nations all over the world towards ambitious measures of mitigating climate change challenges, with its interconnected features of health, socioeconomic disparities, and, most importantly, human dignity to life, is an important study point to comprehend and examine more. Thus, it is necessary to assess what constitutes justice in light of the anthropogenic implications and byproducts of development on the environment. In light of the Paris Agreement's role in climate change action, it is necessary to assess the emerging case law at the national and international levels, which raises a different level of environmental issues and their connection to the protection of human rights, as well as to determine why these cases were initiated only now.

While the world grapples with alarming effects of climate change, the paradox of economic prosperity and environmental devastation is not only seen, but also felt. As a result, considering diverse mechanisms of mitigation and adaptation, such as treaties, alliances, and the effects of key court judgements, as a yardstick for climate justice and sustainability is critical and urgent.

Aim of the work - This paper aims to illustrate and assess the significance of climate justice, as implemented through national and international court decisions, government policies, and civil society alliances, in attaining sustainable development on a global scale, with particular emphasis on the European Union, and national jurisprudence of Netherlands, France, Germany and India.

The objectives –

1. Defining the relationship between climate justice and sustainable development in the evolution of these two concepts.

2. Highlighting the role of ECtHR case law in application of human rights principles to environment cases and the effectiveness of recent judgments.

3. Evaluating what distinguishes the approach of the national courts in their environmental jurisprudence modelling on the Netherlands, France, Germany and India, and to what extent do these decisions contribute to global climate action

4. Highlighting the effectiveness of international relations and strategies such as Green Deal, stakeholder alliances and civil society in contributing towards climate justice and sustainability through active participation.

Research methods: Various methods of scientific analysis are used in the work

1. Descriptive method - manifested in the description of the composition of sustainable development as set out in international Conventions, agreements, State and European Union legislation.
2. The comparative method is used to compare the concept of climate justice with the concept of human rights law, and the different levels of development of environmental jurisprudence on national and international level.
3. Historical method - manifested in the study of the historical development of sustainable development and its aspects.
4. Linguistic - manifested in the work analyzing the concepts of the elements of climate justice, sustainable development, and human rights. The method of analysis was manifested to reveal the content analysis of each component of human rights as fundamental rights, provided for in the analyzed international, European Union and Republic of India legal acts.
5. Synthesis method – this manifested in an attempt to present the content of the concept of Human rights, linking it to the concept of climate justice.

Main Sources – the work is inspired by the Guide to the case-law of the Convention Environment, highlighting the most important and recent decisions of European Court of Human Rights, as an official compilation of the most important judgments of the ECHR. Paper also incorporates the research of Bodansky, Brunnée, Rajamani in their work International Climate Change Law, explaining climate change and treaty based international action. The work also incorporates analysis of the European Convention for Human Rights and many ECtHR judgments from HUDOC, as judgment summaries and

case details and UNDOC for International Treaties and Agreements. Many international reports like the Stocktake Reports, Emissions Gap and the CAN Europe Report are referred to for factual details pertaining to emissions and climate action targets of all nations. For research on National jurisprudence the paper dwells into provisions of The Constitution of India, 1950, National Green Tribunal Act 2010 and the Dutch Civil Code 1992, and its court decisions on climate justice and the German Federal Climate Change Act (CCA) to further study the national environmental jurisprudence of these nations.

I THE RELATION BETWEEN CLIMATE JUSTICE AND SUSTAINABILITY

1.1 Historical Background and Evolution of Sustainable development

Human existence is the assimilation of all the elements of nature and therefore innately man and nature in all civilizations have had a homogenous relationship. Ancient texts, cave paintings and traditional religious practices across the globe reflect the co-dependence of human beings with plants, trees, animals and even rocks. Totems of animals used in tribal societies as identification marks and elements of nature for example Agni (Ugni), Indra (Indre) manifest the deep-rooted connection of man and natural resources.

Of course, this relationship has evolved alongside human evolution from forest dwellers to skyscraper dwelling modern man the co-dependence seemingly blurred has not been severed at all. Industries majorly run on fossil remains while tapping wind water and solar energy is seeing a robust increase. Beyond economic efficiencies the environmental factor is considered when measuring the quality of life, especially when the post-industrial era highlighted the repercussions environmental pollution can cause to human health. The clouds of the World wars brought forth the silver lining of human rights advocacy. What is the innate right of a human being if not to live with dignity, safety and in an environment that provides wholesome growth.

The United Nations efforts through treaty-based action is seen as the starting point of highlighting climate related issues in an all-inclusive manner. The concept of shared responsibility introduced through shared political will while protecting state sovereignty. In the early 1970s, the environment for the first time achieved a prominent place on the international political agenda. (Glasberge, Corvers 1995, p. 21)

The starting point would be the United Nations Conference on Human Development, which was held in Stockholm in 1972. The Stockholm Conference became a key symbol for political acknowledgement of the growing worldwide awareness of the environment. The conference through its declaration provided for 26 principles placing environmental issues at the forefront of international concerns and marked the start of a dialogue between industrialized and developing countries on the link between economic growth, the pollution of the air, water, and oceans and the well-being of people around the world. Principles 1 and 2 on intergenerational obligations. Principles 3, 5 and 6 on sustainable development concepts. Principle 11, which states that the environmental policies of states should enhance and not adversely affect the present or future development potential of developing

countries. Principle 12 introduces the concept of "additionality" in development assistance, whereby donors earmark additional funds in their development assistance budgets for environmental protection measures. And lastly, Principle 21 says that states have the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure activities within their jurisdiction do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction. (Chasek, 2020) Although the conference lacked implementation powers as the countries of the world were also divided based on the level of advancement to determine the contribution to global pollution leaving out developing nations outside the mitigation efforts, nevertheless, it started the discussion on sustainable development and collaborative action towards environmental protection. It also led to the establishment of numerous national environmental protection agencies and the United Nations Environment Programme (UNEP).

The link between biodiversity protection as essential step for sustainable development was also realised through steps like The International Union for Conservation of Nature that in 1980 published the "World Conservation Strategy;" the section "Towards Sustainable Development" identifying the main agents of habitat destruction as poverty, population pressure, social inequity, and trading regimes, the strategy calls for a new international development strategy to redress inequities (World Sustainable Development Timeline, 2012). Witnessing the increasing environmental problems like pollution and the United Nations Assembly through its World Commission for Environment and Development (WCED) issued the Brundtland Report also called "Our common future" that introduced the concept of sustainable development. The concept was described as "development is a process of change in which the exploitation of resources, the directions of investments, the orientation of technological development, and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspiration" (WCED, 1987, p.43 and p.46). The report primarily emphasised the correlation between economic activity and growth in respect to environmental challenges. The Montreal Protocol on Substances that Deplete the Ozone Layer, established in 1987, was a significant environmental agreement that served as a precedent for subsequent diplomatic efforts, despite its original purpose not being focused on addressing climate change. The agreement was ultimately adopted by all nations across the globe, mandating their cessation of the production of ozone-depleting compounds, including chlorofluorocarbons (CFCs). The approach has effectively achieved a reduction of around 99 percent in the presence of

ozone-depleting chemicals. The Antarctic ozone hole is expected to close by the 2060s, while other regions will return to pre-1980s values even earlier. (UNEP, 2021) On the sidelines the Single European Act of 1987 introduced a new 'Environment Title', which provided the first legal basis for a common environment policy with the aims of preserving the quality of the environment, protecting human health, and ensuring rational use of natural resources. **(**Kurrer, Lipcaneanu, 2023, p.1)

In furthering the idea of sustainable development and realising the concerns about the environment, poverty and social and economic inequality led to the calling of the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992, also famously known as the Rio Declaration in which 27 principles are listed for the sustainable development of the world community. The first principle proclaims that human beings are at the centre of concerns for sustainable development, and they are entitled to a healthy and productive life in harmony with nature. Other principles elaborated on the previously established principles of Stockholm conference. The 27 principles established the principles of sustainable development such as the Precautionary Principle, that states that when there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason to postpone measures to prevent environmental degradation. The Common but Differentiated Responsibilities, says that states have a common responsibility to promote sustainable development, but the responsibilities differ based on their economic status and contributions to environmental degradation. Right to Development states that the right to development should be fulfilled in a way that meets present needs without compromising the ability of future generations to meet their own needs. Environmental Impact Assessment establishes that states have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond national jurisdiction**.** Public Participation, provides that environmental issues should be addressed with the participation of all concerned citizens at the relevant level. Polluter Pays Principle established that the polluter should bear the cost of pollution to prevent environmental damage. Conservation of Ecosystems, requires States to cooperate in a spirit of global partnership to conserve, protect, and restore the health and integrity of the Earth's ecosystems. Integration of Environmental and Developmental Policies**,** development should be carried out in an integrated manner that promotes sustainable development. Access to Environmental Information**,** says that state should facilitate and encourage public awareness and participation by making information on the environment accessible. Environmental

Education emphasizes that people have a right to environmental information and the right to participate in environmental decision-making processes. (Rio Declaration on Environment and Development, 1992). The Agenda 21 was also established having a plan of action with around 100 programs for sustainable development. It promotes an integrated approach to sustainable development, recognizing the interdependence of social, economic, and environmental dimensions. Climate action is embedded within this broader framework, emphasizing that efforts to address climate change should not occur in isolation but rather be integrated into overall development strategies. (Glasberge, Corvers 1995, p. 24) In 1993 The United Nations Commission on Sustainable Development is established to ensure follow-up to the United Nations Conference on Environment and Development, enhance international cooperation, and rationalize intergovernmental decision-making capacity. (World Sustainable Development Timeline, 2012)

Meanwhile, the European Union presented a more unique situation as the principle of subsidiarity was applied to member states in Environment action plans and programs seen through implementation of the fifth Environment Action Programme. Its adoption took place almost one year after signature of The Treaty on European Union also known as the Treaty of Maastricht in 1993, introducing the implications of sustainable development as a strategy for environmental policy.[1] (Halmagi, 2016). Additionally, as part of the horizontal strategy, the EU introduced its first sustainable development strategy (SDS) in 2001, thus bringing an environmental dimension to its Lisbon strategy, the European Council in Göteborg, Sweden, discussed "A Sustainable Europe for a better world: A European Strategy for Sustainable Development", proposed by the European Commission. It adopted the first EU SD Strategy which is aimed at initiating development that will enable the EU to achieve economic growth, greater social cohesion and a better environment. The main focus is on climate change, public health, poverty and social exclusion, the ageing population, mobility and transport as well as management of natural resources. The Strategy was complemented with an external and more global dimension in February 2002 by the European Council in Barcelona in view of the World Summit on Sustainable Development in Johannesburg. (Boissière, 2009, p.24)

[1] Consideration of sustainable development as "development that allows meeting the needs of current generations without jeopardizing the ability of future generations to satisfy their own needs" Halmaghi, Elisabeta-Emilia. (2016). Environmental Action Programmes of the European Union – Programmes Supporting the Sustainable Development Strategy of the European Union. Scientific Bulletin. 21. 10.1515/bsaft-2016-0040.

The Johannesburg Declaration on Sustainable Development and the Plan of Implementation, adopted at the World Summit on Sustainable Development in South Africa in 2002, reaffirmed the global community's commitments to poverty eradication and the environment, and built on Agenda 21 and the Millennium Declaration of 2000, by including more emphasis on multilateral partnerships. The United Nations Millennium Summit had agreed to a set of time-bound and measurable goals for combating poverty, hunger, disease, illiteracy, environmental degradation, and discrimination against women to be achieved by 2015, going beyond environmental aspects and including socially vulnerable in the spectrum of sustainable development. (The 17 Goals/ Sustainable Development). In 2005 the Kyoto Protocol was adopted as a specific legal instrument under the UNFCCC, is an example of a legally binding protocol negotiated within the framework of the Convention, legally binding developed country parties to goals for greenhouse gas emission reductions and establishing the Clean Development Mechanism for developing countries. It required developed countries to reduce emissions by an average of 5 percent below 1990 levels, and established a system to monitor countries' progress. (Keong, 2021, p.31)

The United Nations Conference on Sustainable Development (Rio+20) in Rio de Janeiro, Brazil, in June 2012, Member States adopted the outcome document "The Future We Want" in which they decided, inter alia, to launch a process to develop a set of SDGs to build upon the MDGs and to establish the UN High-level Political Forum on Sustainable Development. The Rio +20 outcome also contained other measures for implementing sustainable development, including mandates for future programmes of work in development financing, small island developing states and more. (The 17 Goals/ Sustainable Development)

In 2013, the General Assembly set up a 30-member Open Working Group to develop a proposal on the SDGs. In January 2015, the General Assembly began the negotiation process on the post-2015 development agenda. The process culminated in the subsequent adoption of the 2030 Agenda for Sustainable Development, with 17 SDGs at its core, at the UN Sustainable Development Summit in September 2015. The key areas of action call for heads of states to recommit to sustained and transformative action both nationally and internationally, through integrated policies to reduce inequalities, focusing on empowering women and others most vulnerable. This would require governments to strengthen national and subnational capacity, accountability and public institutions to deliver accelerated progress towards achieving the Sustainable Development Goals. There is also the need to

recommit to mobilize resources and investment to developing countries to achieve sustainable development goals. (SDG Report, 2023, p.5) In response to the 2030 Agenda for Sustainable Development adopted at the September 2015 United Nations General Assembly, the Commission published a communication in 2016 entitled 'Next steps for a sustainable European future – European action for sustainability', outlining how to integrate the Sustainable Development Goals (SDGs) into EU policy priorities. **(**Kurrer, Lipcaneanu, 2023, p.3)

Early environmental treaties often focused primarily on environmental protection without explicit consideration of social and economic dimensions. However, the evolution of treaties, particularly since the 1992 Earth Summit in Rio de Janeiro, marked a shift towards the integration of sustainable development principles with the parallel concepts such as development and environmental protection. The treaties explicitly recognized the need to balance environmental, social, and economic goals for the sustainable development of all member nations.

1.2 Evolution of the concept of Climate Justice

Justice is not determined by outcome but fairness in the procedure and equality of opportunity to seek redressal for violation of rights. When talking about climate justice we must first try to understand what rights are in place. Essentially 'Justice' also has a specific legal meaning, and the phrase climate justice can also be used to mean actual legal action on climate change issues, that draws from and aims to achieve these values. (Boom, *et al*., 2016, p. 7) Climate justice recognises that those who are least responsible for climate change suffer the gravest consequences.

The concerns regarding climate change arose as one of the biggest issues globally being recognized as one of the greatest injustices to humankind, reflected through disproportionate impacts of loss of life, food and livelihoods and displacement of the most vulnerable to the natural calamities caused by anthropogenic reasons. It is pertinent to accept that the concepts of 'historical responsibility' and 'right to development' are regularly used in the debates surrounding climate change, but their sedimentation is limited. These assertions can be particularly problematic due to the assigning of these concepts to specific states, neglecting the host of non-state actors that operate both within and across state boundaries – all of which share a degree of this responsibility. (Nunez, Atkins, 2016, p.2) Climate justice highlights the importance of responsibility sharing between the nations for the impacts of climate change. While sharing the burden of most emissions the

developed global North and South share the maximum carbon load in the world. The highest emitters being China, United States followed by European Union, and India as per the 2018 report[2] reflect the contribution of both the developed and developing economies alike. Between April 2020 and October 2022, economic recovery packages enacted by governments worldwide included USD 1215 billion in clean energy investment support, as detailed in the IEA's Government Energy Spending Tracker[3]

Climate justice is fundamentally about paying attention to how climate change impacts people differently, unevenly, and disproportionately, as well as redressing the resultant injustices in fair and equitable ways' (Sultana, 2021, p118)

The worldwide community introduced the climate justice movement, which addresses environmental and social justice issues by integrating ethical, legal, and political concerns related to climate change. Notions of climate justice have been central to the UNFCCC from the start. Article 3 recognizes different starting-points and acknowledges the need for adjustments. It enshrines the principle of common but differentiated responsibilities in the main forum for international climate negotiations, and adds the concept of "respective capabilities:" Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. The UNFCCC is based on cosmopolitan principles of justice, and the goal has been to establish a fair division of responsibilities to avoid harm (Newell et al., 2021). It established an annual forum, known as the Conference of the Parties, or COP, for international discussions aimed at stabilizing the concentration of greenhouse gases in the atmosphere. The different aspects of socio-economic aspects of climate justice were seen through the activist movements against discrimination against the Black, indigenous people and people of colour (BIPOC), and other vulnerable communities that are more susceptible to impacts of climate change. Another such categorization was based on the geographical location of small island developing states of the world (SIDS) as well as the distinction made on economic disparity for the least developed nations (LDCs) of the global community.

The Kyoto Protocol solidified the distributive justice- principle by adopting the concept of common but differentiated responsibilities and acknowledging developed countries historical responsibility (Kyoto Protocol, 1997). Although various efforts were made in

[2]Council on Foreign Relations, Top Greenhouse Gas Emitters in 2018, Climate Watch https://www.cfr.org/backgrounder/paris-global-climate-change-agreements
[3] Id

COPs, it has been seen that the climate justice discourse is affected by the desirability of the state actors especially based on the power it holds in global decision-making process. The UNFCCC does not have mechanisms to address these challenges because climate change is framed as an environmental problem although emissions are driven by the global economy and energy system (Andresen 2014).

Preceding other contributions leading to the entry of climate justice into the Paris Agreement— including the Bali Principles of Climate Justice and other contributions of the Durban Group for Climate Justice and allies, for instance the creation of the 'Climate Justice Now!' network the First Climate Justice Summit, which ran parallel to COP 6 at the Hague, the Netherlands, in 2000, illustrated the sociological dimensions of equity, freedom and grassroot struggles for use of land and resources. (Frederika Whitehead, 'The First Climate Justice Summit: A Pie in the Face for the Global North' The Guardian (International, 16 April 2014)

COP21 in Paris established a new multilateral environmental agreement. It marked a shift in the climate justice discourse. It was now framed as how the weight of historical responsibility still rests on developed countries (ENB, 2015 b, p.1) by most of the developing world. Many advocated a legally-binding agreement based on equity and differentiation – a strong cosmopolitan focus, but the Paris Agreement was to be based on Nationally Determined Contributions (NDCs). (ENB, 2015a). This mechanism not only shifted the focus on emission reduction but also provided nations with a more sovereign mechanism for target setting.

In addition to defining and promoting concepts of sustainable development the Paris Agreement is also the first international agreement to explicitly incorporate the concept 'climate justice'. The preamble notes: 'the importance for some of the concept of "climate justice", when taking action to address climate change'.[4] However, the concept does not find place in the operative part of the document. Climate justice recognises issues of equality, human rights, collective rights and responsibility for climate change. However, the lack of any international regime or specific Global Climate law for attribution and compensation remains a vague aspiration for vulnerable communities while considering transboundary effects of environmental effects. The limitations can be highlighted in the interpretation and application of compensation in the Paris agreement. Despite paragraph

[4] Noting the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of "climate justice", when taking action to address climate change.

51 ‘ruling out’ compensation, Articles 8.3 and 8.4 of the Paris Agreement clearly specify that the international community will provide support for loss and damage. ‘Support’ is a term of art used in the international climate change negotiations and generally refers to finance, technology transfer and capacity building. (Boom, *et al.,* p.1)

On the global forefront of climate discussions, the unequal causes and impacts of climate change on different nations affect the world economies differently. Climate justice calls for the wealthier, industrialized countries, along with multinational corporations that have become wealthy through polluting industries, to pay their “climate debt” to the rest of the world. On the other hand, the climate justice perspective also brings attention to inequalities within countries. Within high- and low-income countries, wealthier people are more likely to enjoy energy-intensive homes, private cars, leisure travel, and other comforts that both exacerbate climate change and buffer them from impacts like extreme heat.

When looking at the economic aspects of development cost-benefit analysis simply seeks to maximize aggregate economic value and does not address the ethical issues raised by climate change. The ethical perspective, in contrast, focuses on issues of distributive and corrective justice, including: how do we equitably distribute the burdens of mitigating and adapting to climate change, and who, if anyone, is ethically responsible for the damages caused by climate change? Some accounts focus on historical responsibility, others on duties to future generations, others on a fair division of burdens based on current capabilities, and yet others on the egalitarian principle that people have an equal right to the ‘atmospheric space’. (Bodansky, Brunnee, et al., 2017, p.5) These different aspects still affect the global dialogue and discussions where there remains absence of a specific mechanism for attribution and formulation of climate regime that controls and governs justice to the most vulnerable to the effects of climate change.

In the wake of increasing natural disasters and hazardous impacts of pollution, the focus of furthering the discussion for justice and equity the torch shifts to stakeholders, civil societies and individuals who are affected. The efforts within a climate justice framework prioritize the protection of vulnerable communities that are disproportionately affected by climate change. This includes low-lying island nations, indigenous populations, and those in economically disadvantaged regions. Climate justice calls for policies and initiatives that consider the social and economic impacts of climate change and strive to minimize harm to vulnerable groups.

One of the more recent concepts of justice is environmental justice, which is defined by the US Environmental Protection Agency (EPA)[5]. Environmental justice has shifted legal theory, legislation formation, and litigation worldwide to address environmental mismanagement's harm to vulnerable communities. Climate justice emphasizes the ethical and moral responsibility to address climate change in a fair and equitable manner. In the context of legal actions related to climate change, the increasing awareness of sustainability and the demand for good governance have indeed played a role in creating a space for citizens to hold their governments accountable for environmental policies. However, climate cases are unique and present several distinctive characteristics such as following:

- Global Scope:

Unlike many other environmental issues, the impacts of climate change are global and transcend national boundaries. Greenhouse gas emissions in one country can contribute to climate-related problems in another. This global nature of the issue adds complexity to legal actions, as it requires international cooperation and coordination.

- Intergenerational Equity:

Climate change has profound intergenerational implications. The actions and decisions made today will have long-lasting effects on future generations. Legal cases related to climate change often involve arguments about the ethical responsibility of current generations to safeguard the planet for those who will come after them.

- Complex Causation:

Establishing a direct causal link between specific government actions and climate impacts can be challenging. Climate change is the result of cumulative emissions over time, making it difficult to attribute responsibility to a single entity or event. This complexity can complicate legal proceedings and the determination of liability.

- Scientific Uncertainty:

While the scientific consensus on climate change is strong, there may still be uncertainties regarding the exact impacts in specific regions or the timing of certain events. Legal cases

[5] 'The fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work' https://www3.epa.gov/environmentaljustice/

may involve debates over the interpretation of scientific evidence and the level of certainty required to establish a legal claim.

- Adaptation vs. Mitigation:

Climate cases often involve a discussion of both and mitigation. Balancing these two aspects can be a legal and policy challenge, as adaptation measures may be seen as a response to past emissions, while mitigation aims to prevent future harm.

- Human Rights Perspective:

Climate justice cases often incorporate human rights considerations. Impacts such as displacement, food and water scarcity, and extreme weather events can infringe upon basic human rights. Legal actions may involve claims that governments have a duty to protect the human rights of their citizens in the face of climate change. As a result, legal approaches to climate justice require innovative and comprehensive strategies that go beyond traditional environmental litigation.

Through its own initiative opinion in 2017 the European Union defined the concept of Climate Justice that frames global climate change as a political and ethical issue and not just a strictly environmental one. It recognizes that the most vulnerable and poorest in society often have to suffer the greatest impact of the effects of climate change. (Climate justice (own-initiative opinion), 2017) It also proposes to start a debate on an EU Bill of Climate Rights that would encapsulate the rights of EU citizens and nature in the context of the challenges of the global climate change crisis. While acknowledging the EU's leadership in advocating for a robust and fair international climate regime, the EESC encourages the EU institutions and National Governments to examine the application of the principles of Climate Justice at all levels, global, European, national and community.

The political, economic and human rights aspects of equity in climate action requires action from Governments, International Bodies in the form of mitigation, adaptation and redressal. Established at COP 19 in 2013, the Executive Committee of the Warsaw Mechanism, which operates under the guidance of the COP, became a permanent institution in charge of loss and damage and serves as a task force looking into climate displacement. However, the committee had mainly focused on information collection and dissemination and lacked adequate resources. Therefore, vulnerable parties and stakeholders needed to look for other ways to address loss and damage, whether linked to the UNFCCC or outside it. (Onifade, 2021, p.9)

Climate litigation over the years has been seen as an essential tool by individuals, groups and the civil society to hold responsible not only state actors but corporates and individuals for affecting the economic, social and ecological rights of people especially of the most vulnerable sections of the society. Based on the legal norms of loss and damage climate justice through litigation is focussed on the state responsibility both positive and negative as well as the corporate responsibility emerging in the form of CSR and ESG to neutralize the climate degradation due to economic growth. A study shows that as of May 2021 there are 1,8411 ongoing or concluded cases of climate change litigation from around the world, of these, 1,387 were filed before courts in the United States, while the remaining 454 were filed before courts in 39 other countries and 13 international or regional courts and tribunals including the courts of the European Union. (Setzer, Higham, 2021)

Climate justice therefore, highlights equity as central theme in the distribution of resources among nations, in the procedural aspects to get the dues in the implementation of policies and redressal. Climate justice goes beyond traditional understanding of equating economic development with climate harm. The intergenerational equity being an important aspect of climate justice for protecting the rights of the future generation and hold accountable those who are responsible for requisite action or inaction on their part.

1.3 The symbiotic relationship between Sustainable development and Climate Justice

The older narrative of the colonial reflection in disproportionate sharing of resources as well as burden of carbon emissions between the more developed and the smaller, least contributing nations of the world is still the essence of climate justice debate. The principles laid down as early on in 1992 by Stockholm, gave way to today's Sustainable development goals, which are explicitly focused on bridging the socio-economic disparities meanwhile transitioning all nations to a sustainable, zero carbon path of development. Climate justice is incorporated in more than one such principles and goals covering aspects of basic human rights to food, good health, clean water and sanitation, affordable clean energy, that are all being affected due to climate change. Additionally realising that majority of world population lives in cities the transition to sustainable urban development will aim at reducing intragenerational gaps as well. Although, climate justice has not been incorporated as an exclusive legal right with specific provisions in the international agreements, yet it finds itself as an umbrella term for questioning the responsibility of stakeholders, and their attribution for redressal. Paris Agreement as discussed earlier provided for the need to incorporate climate justice in climate actions in its preamble and also provides in its provisions the need for the responsible parties to extend support to affected nations in terms

of technology transfers and fundings. The agreement apart from officially recognising concept of climate justice also highlights the importance of equitable sharing of resources and responsibility among nations, the practical application of distributive equity through NDCs.

When we talk about the subsequent formulation of the Millenium Goals into the specific and comprehensive, Sustainable Development Goals in 2015, we can see traces and mention of ideals of equity in the targets set for 2030 and 2050. Exclusively, the concept of climate justice is reflected in goal 16 of the SDG agenda 2030, that focuses on promoting a peaceful and inclusive society with access to justice and reliable institutions. Target 16.7 emphasizes ensuring responsive, inclusive, participatory, and representative decision-making at all levels. SDG 13 is explicitly dedicated to climate action. It includes targets such as strengthening resilience and adaptive capacity to climate-related disasters (Target 13.1) and integrating climate change measures into national policies, strategies. Other aspects of differential capabilities and responsibilities of nations for ensuring equitable developmental opportunities and mitigation of climate change impacts is reflected in the SDG 17 that affirms capacity building and sustainable technology transfer between the developed nations and the least developed countries. The targets also focus of removing trade barriers and increasing imports from developing countries and most importantly coming together by formulating global alliances and stakeholder partnership for sustainable development. (Sustainable Development Goals: 17 Goals to Transform our World, United Nations). These goals reflect the interconnectedness of justice issues and socio-economic factors that are essential for equitable growth differently placed nations of the world.

To exemplify the parallel implementation of climate justice ideals and sustainability, we can look at the European Green Deal launched by the European Commission in 2019, which should help to focus EU policies on making Europe the first climate-neutral continent in the world. Supported by investments in green technologies, sustainable solutions and new businesses, the Green Deal also aims to act as a new EU growth strategy to transform the EU into a sustainable and competitive economy. The involvement and commitment of the public and of all stakeholders is crucial to its success. Among the key actions proposed under the European Green Deal is the European Climate Law to ensure a climate-neutral EU by 2050. It makes provision for increasing the 2030 target to cut GHG emissions to at least 55%, in line with the 2030 Agenda for Sustainable Development and with the objectives of the Paris Agreement on Climate Change. Moreover, other Commission proposals include communications on the Sustainable Europe Investment Plan and the

European Climate Pact proposing regulations establishing the Just Transition Fund and revising the guidelines for trans-European energy infrastructure, and EU strategies for energy system integration and for hydrogen, and a new EU strategy on adaptation to climate change. **(**Lipcaneanu, Amanatidis, 2023, p.4-5) Additionally, European Green Deal, presented a new Circular Economy Action Plan (CEAP) in March 2020, in which it announced a sustainable products initiative to make products fit for a climate-neutral, resource-efficient and circular economy, as well as reduce waste and other Directives for Eco Labelling and Eco Design are also some of the major steps taken by the European Parliament in adding value to the ongoing efforts. The all-encompassing Deal not only focusses on sustainable development in business development and economic growth but also adopts the idea of climate justice through transition funds and capacity building programs upholding ideals of equitable development.

The robust international and national programs around the globe are now being seen as a growing trend among governments even at local levels with public participation of civil societies and individuals as the driving forces of sustainable development and climate action. Realising that climate change affects the most vulnerable countries that bear the brunt of climate injustice, the Small Islands Developing States (SIDS) Program by the Kingdom of Netherlands started early as 2016 has gained much momentum and recognition as it now collaborates with the UNDP Centre of Excellence and Aruba Government. It works from its base in the Aruban capital of Oranjestad to serve all SIDS worldwide, offering a platform for North-South cooperation between SIDS as they address their common sustainable development challenges, and facilitating the exchange of knowledge and experience. Its initiatives include an online course on renewable energy (in cooperation with Hamburg University), the development of an online repository of knowledge on the SDGs and SIDS, and in-country technical assistance to selected SIDS, including Antigua, Jamaica, the Seychelles and Vanuatu. (Resilience and Capacity Building Programs for SIDS, 2019)

The Green Climate Cities Program ICLEI[6], an international sustainability organization comprising more than 1,500 local and regional governments, announced a new strategic vision to tackle development challenges and climate change at its World Congress in Montréal (The ICLEI Montréal Action Plan..., 2018) which focus on the five pathways aim to cut across sectors and jurisdictional boundaries and create connection points across urban

[6] ICLEI is a global network of more than 1,500 cities, towns and regions in over 100 countries committed to sustainable development, which acts as a bridge between local and regional governments worldwide.

systems to enable local and regional governments to take an integrated approach to sustainable urban development, for example, by determining where equity intersects with resilience or where nature-based solutions can contribute to resilience building. ICLEI's Green Climate Cities (GCC) program supports local communities that are on the front lines addressing the challenges and opportunities of urban growth, exploring their green economy and green infrastructure, Governments set targets, known as nationally determined contributions (NDCs), with the goals of preventing the global average temperature from rising 2°C (3.6°F) above preindustrial levels and pursuing efforts to keep it below 1.5°C (2.7°F). Every five years, countries are supposed to assess their progress toward implementing the agreement through a process known as the global stocktake. The latest report of 2023 issues warning to the member countries that the world is not on track to meet the long-term goals of the Paris Agreement.

Another important example of the growing partnerships for equitable sustainable development is the EU-India Strategic Partnership as reflected in the Roadmap 2025, (EU-India Strategic Partnership..., 2020) which includes some 20 actions on research and innovation is a reflection of transboundary cooperation. Europe's Global Approach to research and innovation foresees stepping up cooperation with India to address together global challenges and support India's sustainable modernisation process. Among many strategic points in discussion, one major take away from this partnership is the agreement to enhance the EU-India partnership through a wide range of cooperation tools and activities, including through financial and technical assistance such as with development banks and investment banks from both sides, including the European Investment Bank, consistent with and in pursuance of respective obligations and responsibilities under major international agreements such as Agenda 2030, the Addis Ababa Action Agenda, UNFCCC and the Paris Agreement as well as the United Nations Convention on Biological Diversity.(EU-India Strategic Partnership.., 2020, p.3)

Beyond inter-governmental collaborations, global platforms and forums such as the COP have also highlighted various adaptation agendas which outline Adaptation Outcomes to enhance resilience for 4 billion people living in the most climate vulnerable communities by 2030. COP28 held in December this year, greenlit the loss and damage for climate related disasters such as floods, tornadoes droughts etc. to be paid by wealthiest economies, while the aspects of sustainable development in the field of agriculture and food system was also highlighted. For one of the first times at COP, this document demonstrates that there has been recognition of the intersecting challenges of climate change, conflict,

instability, and humanitarian crises, which disproportionately impact women, children, indigenous people, and people with disabilities. (COP28: Key takeaways from this year's climate change conference 2023) reflecting the ideals of climate justice and respect for human rights. Despite not having very ambitious carbon the G20 summit of 2023, resulted in G20 leaders to agree to accelerate efforts to triple global renewable energy capacity by 2030, aligning with recommendations from the International Renewable Energy Agency (IRENA) moving in line with the Paris Agreement targets.(UNEP Emissions Gap Report, 2022, p. 15) In a declaration the Group cites a joint report between IRENA and India's G20 Presidency, titled "Low-Cost Financing for Energy Transitions", which estimates a need for over USD 4 trillion in annual investments by 2030.[7]

Another common overlapping factor between the climate justice and sustainability is the principle of intergenerational equity. The vulnerable communities and groups such as the children being at the helm of the consequences of climate change give way for the need to implement the global policies on carbon neutrality through positive obligation of the states and at the same time fulfilling the sustainability targets set for 2030 and 2050. The climate action cases brought before international and national courts and tribunals are either brought through not-for-profit organizations civil society groups and youth led communities giving voice to the vulnerable communities and individuals. These bodies work as a driving force and catalyst in courts and public forums through direct participation or third-party interventions such as 23 third party interventions have been submitted to the court, including the intervention of CAN member Germanwatch, together with Greenpeace Germany and Scientists for Future in the Swiss case before the Grand Chamber. (CAN Europe, 2023, p.39). It is evident through many youths led groups bringing class action case against governments for non-fulfilment of global policies established by Paris Agreement.

Global trends place climate justice in perspective with other affected rights like human rights before the ICJ, ECtHR, and national tribunals. Human rights are crucial to climate justice and a tool for prosecuting climate injustice, and we have witnessed a rise in cases before the judiciary that are integrated as civil and fundamental rights. Human dignity and rights are essential to accomplishing the sustainable development goals, hence they overlap. Sustainable development goals complement and include human rights by promoting equitable food security, livelihood, health, and inequality reduction. Human rights litigation

[7] IRENA (2023), Low-cost finance for the energy transition, International Renewable Energy Agency, Abu Dhabi.

for climate justice has grown exponentially and become a stronger voice to confront environmental degradation-related injustices and difficulties.

Recently, the United Nations Committee on the Rights of the Child (CRC) applied this standard in Sacchi et al., v Argentina[8], and held that the respondent States had jurisdiction over transboundary climate harm, although some applicants lived outside their territorial boundaries. While this rather broad interpretation could possibly extend jurisdiction to harm unrelated to climate change, some kind of causality-based jurisdiction standard makes sense for climate cases, considering their transboundary nature. Although the application was adjudged to be inadmissible for not exhausting local remedies, the CRC found that countries have extraterritorial responsibilities related to carbon pollution. Using the IACtHR's test for jurisdiction, the Committee found that when transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question.

Therefore, it becomes pertinent to study the kinds of climate action cases having human rights as bases and to understand the procedural implications of climate justice on the different stakeholders as perpetrators and as victims seeking justice before international and national courts as human rights being the core for upholding equity and measuring the success and failure of the climate change efforts in the wake of fulfilling the sustainable development goals.

[8] Sacchi et al., v Argentina CRC/C/88/D/104/2019

II ROLE OF ECHR IN DEVELOPING CONCEPT OF CLIMATE JUSTICE

2.1 Human Rights based Climate action

Climate change is now widely recognised as the "greatest human rights issue of our time".[9](High Commissioner for Human Rights, 2015)

Human rights and environmental rights are inextricably linked, and over the last 20 years, there has been a massive increase in the number of climate action cases filed in both national and international courts. Arguments based on human rights are also used in instances challenging the climate change obligations, and the number of successful cases involving exclusive constitutional and human rights is growing.

To capture the essence of the global endeavours for climate action reflected through the Paris Agreement in 2015, the preamble says that "Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity" (Paris Agreement, 2015)

Climate change litigation has been demonstrated to have direct regulatory impact where formal legal change results from a judicial decision in both the Global North and the Global South (Peel and Osofsky, 2015, Setzer and Benjamin, 2019). Judicial decisions are particularly material in 'climate commitment' cases brought against governments, but it should be noted that climate-related cases of all types, even those that contain no explicit mention of climate change, may have important regulatory consequences (Bouwer, 2018). It is seen that human rights advocacy in climate action could have central, peripheral and incidental role in climate action cases, depending on the obligations of the state to interpret and apply human rights in public and private law and the application of fundamental human rights law as the main arguments in cases. The application of human rights is made in questioning both substantive and procedural obligations of the state or other stakeholders.

One such method for fault-based litigation in climate cases is through attribution of violation to the stakeholders especially the government, directly in control of required

[9] Quote attributed to Mary Robinson, Former UN High Commissioner for Human Rights (see Office of the High Commissioner for Human Rights, 2015).

action as well as for restricting certain practices. The sustainable development goals that aim at targets such as zero poverty, good health and reduced inequalities and provisions for inclusive, participatory and representative decision-making at all levels highlight the spirit of fundamental human rights. The procedural aspect of human rights-based climate action includes participation of individuals, affected people and communities in the decision-making process. The right to be informed and obligations require that states provide access to remedies for human rights violations, which might include monetary compensation and injunctive relief. For example, in one of the most talked about cases Klimaseniorinnen, a group of Swiss elderly applicants have alleged before the European Court of Human Rights that their right to access to justice and to an effective remedy had been breached, due to the national courts' refusal to hear on the merits their complaints over the Swiss State's inadequate climate action.[10]

Climate action cases in connection with rights-based arguments are different than pure human rights litigation. Climate action cases and human rights cases are interconnected, and there is often an overlap between the two, particularly in the context of climate justice. While climate action cases specifically focus on addressing the impacts of climate change and holding entities accountable for contributing to those impacts, human rights cases in the environmental context emphasize the protection of fundamental human rights that may be affected by climate change. To further explain, climate action cases primarily centre on addressing the actions or policies of entities such as governments or corporations that contribute to greenhouse gas emissions and environmental degradation. These cases may seek to enforce regulations, challenge inadequate climate policies, or hold specific entities accountable for their role in exacerbating climate change. These cases often draw on international climate agreements, such as the Paris Agreement, and may invoke national or regional environmental laws and regulations, and frequently involve legal challenges to regulatory and policy frameworks related to climate change. For instance, relating to regulation of licensing of mines and other fossil fuel factories.

In October 2021, the United Nations (UN) Human Rights Council adopted a resolution recognizing 'the right to a clean, healthy and sustainable environment' as a 'human right that is important for the enjoyment of human rights.' (Human Rights Council Resolution 48/13, (2021) p. 1)

[10] KlimaSeniorinnen v Switzerland Application no. 53600/20,2022

Whereas, human rights cases related to the environment, including climate change, emphasize on the protection of fundamental rights that may be impacted. These rights can include the right to a healthy environment, the right to water, the right to food, and the right to housing, among others. Human rights cases often focus on vulnerable communities that are disproportionately affected by climate change. These cases may argue that certain environmental policies or projects disproportionately harm marginalized populations, leading to human rights violations. A landmark decision came through the United Nations Human Rights Committee in 2022 in Daniel Billy and others v Australia (Torres Strait Islanders Petition)[11] whereby the Committee found that the Australian Government is violating its human rights obligations to the indigenous Torres Strait Islanders through climate change inaction. In their complaint brought to the Committee, the Islanders claimed that changes in weather patterns have direct harmful consequences on their livelihood, their culture and traditional way of life. The Committee also ordered Australian Government to compensate the island people for the harm caused due to inadequate action. This case reflects how cultural rights and human rights to a private and family life as well as of traditions and nutrition. (Australia violated Torres Strait Islanders' rights…, 2022) the case is of significance as the U.N. body had found that a country violated international human rights law through inadequate climate policy, adding strong support to the idea that human rights law applies to climate harm. Second, it is the first time that indigenous peoples' right to culture has been found to be at risk from climate impact and highlighted the value of compensation in climate justice matters.

In a study on the statistical outcomes of human rights-based climate cases done in 2021(Savaresi, Setzer, 2021, p.9-10), the authors quantified through study of rights based climate cases the overall trends in climate litigation outside of the US, rights-based cases so far have been comparatively more successful, over half of the decided cases have delivered outcomes that are supportive of climate change action.[12] To further understand the application of Human rights to climate based cases we must look into the application of European Convention on Human Rights by the Court and how this field of jurisprudence is affecting the outcome of cases and contributing to the goals of sustainable development.

[11] Daniel Billy & Ors. v. Australia, CCPR/C/135/D/3624/2019

[12] Setzer and Higham (n 15). The 'neutral' category in climate litigation outside of the US refers to cases that had no impact over climate action and cases that were dismissed as the order became unnecessary. For the US, McCormick et al analysed the outcomes of 873 climate cases between 1990–2016. Their study suggests there were more outcomes that favoured anti-regulatory (n=309) compared to pro-regulatory positions (n=224), with a ratio of about 1.4 to 1. Sabrina McCormick and others, 'Strategies in and Outcomes of Climate Change Litigation in the United States' (2018) 8 Nature Climate Change 829. An updated analysis of outcomes of US litigation is yet to be published

The role played by human rights like right to life and right to private and family life are some of the most argued law points in climate litigation and tend to broaden the definition of the rights provided for in International or regional Human Rights Conventions, while simultaneously providing more weight to the environmental issues. The human rights-based climate cases reflect the need for equity in distribution of resources as well as the disproportionate harm caused to differently placed individuals, making them either more susceptible to the impacts of climate change. Human rights such as right to life and right to private and family life as well as right to be part of the decision-making process provide for a more direct linkage between the effects of environmental degradation caused by anthropogenic factors and inequality faced by the vulnerable individuals and communities.

For instance, in Future Generations vs Ministry of Environment, Colombia (2018). The case involved 25 youth plaintiffs sued several bodies within the Colombian government, Colombian municipalities and several corporations for failure to enforce their claimed rights to a healthy environment, life, health, food and water, as a result of the failure to tackle deforestation of the Amazon or make adequate efforts to reach targets set in relation to the Paris Agreement and Colombia's National Development Plan.[13] The Colombian Supreme Court held that the Colombian Amazon is a '"subject of rights", entitled to protection, conservation, maintenance and restoration by the State and the territorial agencies'. The court ordered various government agencies, with the participation of the claimants, the affected communities and the interested population in general, to formulate short, medium-, and long-term action plans within four months, 'to counteract the rate of deforestation in the Amazon, tackling climate change impacts. (Dejusticia 2018) There are certain decisions like the Ashgar Leghari v Federation of Pakistan and others[14], where even in the absence of explicit recognition of the right to healthy environment in the national law, the courts relied on an unwritten right to healthy environment being implicit in the right to life enshrined in the constitution of the country. This case among a lot of other cases especially of the nations in the global south like India and Pakistan highlight the merger of climate related cases with fundamental rights enshrined in their Constitution. Thereby reflecting how direct link between the human rights to life surpasses the need for direct linkage between climate change impact and harm caused to the applicants. To further understand the application of Human rights to climate-based cases we must look into the

[13] Future Generations vs Ministry of the Environment and Others (Colom Sup Ct, 11001-22-03-000-2018-00319-01, 5 April 2018).
[14] Ashgar Leghari v Federation of Pakistan et al, Lahore High Court, WP no 25501/2015 (4 September 2015) at para 7.

application of European Convention on Human Rights by the Court and how this field of jurisprudence is affecting the outcome of cases and contributing to the goals of sustainable development.

2.2 Climate justice through the lens of ECtHR and Aarhus Convention

In the European Union, governments, parliaments and courts in each country are mainly responsible for ensuring that the rights set out in the European Convention of Human Rights are complied with. However, the European Court of Human Rights acts as a safety net. The European Convention on Human Rights protects several absolute rights that can never be violated by states, such as the right to life or the prohibition of torture. It also protects other rights and freedoms which can only be restricted by law, when necessary, in a democratic society, and under strict conditions, such as the right to liberty and security or the right to respect for private and family life. A number of rights have been added to the initial text of the Convention with the adoption of additional protocols, such as the abolition of the death penalty, the protection of property, the right to free elections or freedom of movement (Peel and Osofsky, 2015)

It is important to highlight that the Convention, despite the longstanding recognition of the interconnectedness of human rights, human dignity, and the environment, does not include a dedicated provision or supplementary protocol safeguarding the environment (Guide on case-law of the Convention..., 2022, p.9-10). The provisions of the European Convention on Human Rights, nevertheless, have been interpreted. As a result of the dynamic nature of the convention, a number of its provisions are now applicable to circumstances that were not anticipated during the period when it was initially implemented, this encompasses situations that were unforeseeable at the time of its original adoption - including on environmental issues. This is particularly the case with Articles 2 protecting the right to life and 8 of the Convention protecting the right to a private and family life. Therefore, it can be said that in this respect, the Convention is not specifically designed to provide a general protection of the environment as such.[15] The Court will therefore only consider environmental damage if it can be directly linked to violations of individual human rights.

Human rights protection is one of the core values of the Union, as emphasised in the founding Treaty of the EU.[16] The centrepiece of EU fundamental rights law and policy is

[15] Kyrtatos v Greece (application no 41666/98) 22 May 2003, para 52.
[16] According to Article 2 of the Treaty on European Union: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality and respect for human rights, including the rights of persons belonging to minorities".

the EU Charter for Fundamental Rights, which became binding in 2009 upon the entry into force of the Lisbon Treaty. It has a specific provision relating to the environment which requires a "high level of environmental protection and the improvement of the quality of the environment" to be integrated into the policies of the Union. (Article 37 of the EU Charter for Fundamental Rights). Europe has been the most active region for rights-based climate litigation since 2015. This geographical distribution differs from trends observed in general climate litigation. (Savaresi and Setzer, 2021, p.11-12.)

More than 10 climate cases have been introduced to the Court since 2020. The Court is holding Grand Chamber hearings in three of these cases, namely Duarte Agostinho and Others v. Portugal and 32 Others[17], Verein Klimaseniorinnen Schweiz and Others v. Switzerland[18] Carême v. France[19] and judgements in the others will follow afterwards.[20] This demonstrates that the Court takes these issues seriously. The EU also has its own system for the protection of fundamental rights.

In addition to the European Convention on Human Rights the UNCEC Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus Convention entered into force on 30 October 2001, and is generally acknowledged as the world's foremost international instrument that links environmental and human rights. In addition to state obligation to impart information of environmental danger under Article 10 of the ECHR, it imposes obligation on each Party to guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention. (Aarhus Convention, 2001, Art.1) The idea of intergenerational development and protection of environment is an important aim of the document. The Convention requires Parties to make practical and other provisions for the public to participate in decision-making on plans or programmes within in a transparent and fair framework, having provided the necessary information written, visual, electronic etc to the public. The Convention has a broader definition of public authority to an extent that even private entities, depending on the particular arrangements adopted in the national law, should be

[17] application no. 39371/20)
[18] application no. 53600/20)
[19] application no. 7189/21
[20] See the status of several pending climate cases on this press release issued by the Registrar of the European Court of Human Rights on 9 February 2022

treated for the purpose of access to information as falling under the definition of a "public authority", in the meaning of article 2, paragraph 2 (b) or (c) of the Convention.[21]

In addition to that as per article 9, the Convention aims to provide access to justice in all three stages of requesting information, participation in decision making as well as implementation of national laws pertaining to environmental protection. On upholding the proper dissemination of information and participation the Compliance Committee decision[22] also highlighted the provisions concerning notification in both EIA and IPPC Directives which provide for early and effective notification within the envisaged scope of both procedures which play slightly different roles in the decision-making under the Community law within the European Union. A time bound dissemination of information and proper inclusion of public participation must be ensured as per the provisions of the Convention. Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters. Andrusevych, Kern, 2016, p.23). In the case of Armando Ferrão Carvalho and Others v. The European Parliament and the Council Court of Justice of the European Union[23], wherein applicants aimed draw the attention of the EU courts to the fact that, although climate change has been recognised as a problem since 1992 by the EU, it is still not taking adequate measures to protect the fundamental rights of the complainants, which have already been violated due to the impacts of climate change. The Court announced that the plaintiffs did not have a right to challenge the EU for its climate inaction, based on old case law dating back to the 1960s, whereby an individual must be "uniquely" affected by an EU legislative act in order to be allowed to challenge it. The Court feared that, if this criterion of uniqueness was not applied, many people would then bring cases to challenge the EU on environmental grounds. This is in clear contradiction with the fundamental principle of human rights, as the interpretation of the EU courts means that the more universal and serious the problem, the fewer people can seek legal protection before the EU courts. The Court's restrictive interpretation of this uniqueness criterion limits access to courts for citizens, and the People's Climate case therefore highlighted the lack of access to justice in the European Union on environmental and climate issues. Access to justice is a basic right that is protected by the Aarhus Convention, an international treaty that applies to the EU and all

[21] Belarus ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, 12 May 2011, para.67
[22] European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.10,2 May 2008, para. 47)
[23] Armando Carvalho and Others v. The European Parliament and the Council, no. C-565/19 P, Judgment of 25 March 2021

its member states.[24]The judgement in this case reinforced the findings made by the Aarhus Convention Compliance Committee,[25] a board of independent experts in charge of monitoring the correct implementation of the Aarhus Convention. As a result, access to justice in environmental matters has been discussed several times in recent years. (CAN Europe, 2023, p.42)

Assistance mechanisms to remove or reduce financial and other barriers to access to justice are to be considered. The convention provides for a review process to ensure that a person wronged due to incorrect information or ignorance can be redressed the costs of the review process should be limited in order to enable NGOs and groups of individuals to benefit from more affordable access to justice. The national laws are required to be in compliance to the Convention through its statutes, procedural laws as well as the adjudication by national courts dealing with environmental cases.[26] Although the Convention has faced some complications within implementation in line with national laws, the overall impact has seen wider compliance to international environmental policies of Conventions like Rio Declaration among the member parties and stands as a binding instrument in the hands of affected individuals and environmental activists alike. Insufficient government action may lead to applicants to reach the doors of international Courts such as in the recent cases brought before ECtHR by Swiss women and the Mayor of France. While these cases remain to be decided there are various landmark precedents set by other European countries within domestic courts.

There are various strategies when it comes to the desired outcome of the climate cases based on human rights. First, rights-based litigation may seek to force states to increase their efforts or adopt more appropriate measures to tackle the climate crisis. These strategies aim to provide the post-Paris climate regime with mechanisms for translating the long-term temperature goal of the Paris Agreement into legally binding domestic laws and commitments. (Rodríguez-Garavito, 2022, p.16) In order to make up for the lack of ambition and governance in climate action, human rights are being utilised. Secondly, in certain instances, the goal of the lawsuit is to compel the states to carry out preexisting climate laws, which may address adaptation strategies, mitigation efforts, or both. This is

[24] Article 9(3) of the Aarhus Convention states that "members of the public [must] have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment."
[25] See for example the findings and recommendation made by the Aarhus Convention Compliance Committee towards the European Union in its case ACCC/C/2008/32 Part I (in 2011) and Part II (in 2017). The Committee found that "the jurisprudence established by the [CJEU] is too strict to meet the criteria of the Convention".
[26] Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 36)

where the human rights arguments come into play as a means of holding governments to their word. A third tactic is to say that governments shouldn't do anything that could limit people's ability to exercise their human rights, like approve certain policies or engage in certain activities. Lastly, states may be compelled to execute procedural environmental duties in order to uphold human rights. States must indeed ensure public access to environmental information, participation in environmental decision-making and access to environmental justice.[27] The changing patterns of climate litigation with a shift from the traditional interpretation of environmental protection cases in line with fault-based practices to the answering questions of transboundary effects of climate change and responsibility to mitigate climate change as a human rights issue.

The application of the European Convention on Human Rights and the Aarhus Convention can be further studied through the court's decisions in the cases dealing with the different strategies discussed above in light of the different provisions of the Conventions.

- Right to life and right to respect for private and family life –

The right to life is protected under Article 2 of the Convention. This Article does not solely concern deaths resulting directly from the actions of the agents of a State, but also lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction. The positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction resulting from the first sentence of the first paragraph of Article 2, applies in the context of any activity, whether public or not, in which the right to life may be at stake. In the court's decision of The Court of Öneryıldız v. Turkey[28] the court explained that the positive obligation to protect life applies a fortiori to industrial activities, which are dangerous by their very nature, as in this very case in which a methane explosion in April 1993 in a rubbish tip in a suburb of Istanbul had caused a landslide which had buried slum housing on lower-lying land; thirty-nine persons had lost their lives, including nine members of the applicant's family. This case also highlighted the duty of the state to establish proper preventive measures.

In addition, the Court must consider the particular circumstances of the case, such as the domestic legality of the authorities' acts or omissions, the domestic decision-making process, including the appropriate investigations and studies, and the complexity of the

[27] In accordance with the Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention). 46 European states and the European Union are parties to the Aarhus Convention

[28] Öneryıldız v. Turkey [GC], no. 48939/99, ECHR 2004-XII

issue, especially where conflicting Convention interests are involved.[29] The court through its decisions also emphasized on the importance of procedural rights of the prosecutors for a well-formed investigation and judicial procedure for adjudicating the cases. [30] This case and following many cases dealt with direct impacts of the anthropogenic activities of industrial activities establishing liability for negligence as well as invoking positive action from the stakeholders to prevent such harms.

Article 8 of the Convention, protects the right to respect for private and family life and the home. This right implies respect for the quality of private life as well as the enjoyment of the amenities of one's home or essentially the "living space". While determining the harmful effect of the environmental degradation the courts determine whether a causal link exists between the activity and the negative impact on the individual and whether the adverse have attained a certain threshold of harm. When dealing with the issue of right to respect for personal and family life, environmental case-law has to a large extent developed on the basis of the Court's finding in the case of López Ostra v. Spain[31] whereby court found that the directness of the harm caused by severe environmental pollution can have adverse effects on the personal life of individuals even if the severity of the harm does not necessarily affect the health and fundamental rights of the individual. For Article 8 to be applicable, the applicant must be able to show that, there was actual interference with his private sphere on account of the environmental situation complained of, and that interference attained a minimum level of severity[32].

A similar stance was taken in Cordella and Others v. Italy[33] the European Court of Human Rights held, unanimously, that there had been a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights, and a violation of Article 13 (right to an effective remedy) of the Convention. The Court found, in particular, that the persistence of a situation of environmental pollution endangered the health of the applicants and, more generally, that of the entire population living in the areas at risk. It also held that the national authorities had failed to take all the necessary measures to provide effective protection of the applicants' right to respect for their private life. Lastly, the Court considered that these applicants had not had available an effective remedy

[29] Kolyadenko and Others v. Russia, nos. 17423/05 and 5 others, 28 February 2012
[30] Seen in judgements of the court like Boudayeva and Others v. Russia, 2008, §§ 161-165, the Court found a violation under the procedural limb of Article 2 on account of the fact that the accident in question had never as such been investigated or examined by any judicial or administrative authority
[31] López Ostra v. Spain, 9 December 1994, Series A no. 303-C, also see Brânduşe v. Romania, paragraph 67.
[32] Çiçek and Others v. Turkey (dec.), no. 44837/07, 4 February 2020
[33] Cordella and Others v. Italy (applications nos. 54414/13 and 54264/15)

enabling them to raise with the national authorities their complaints concerning the fact that it was impossible to obtain measures to secure decontamination of the relevant areas. (HUDOC, 2019)

A new era of cases dealing with climate change have evolved over the past few years. rights-based cases against corporate actors are a developing trend, several strategies can already be identified. First, such cases may argue that corporations have a positive duty to reduce their emissions and must therefore adopt measures to contribute to climate mitigation. This is what happened in the Milieudefensie v Shell case. Human rights arguments can be used to argue that corporations have a duty to support climate policies and their enforcement rather than oppose them. (CAN Europe, 2023, p.16) In reference to the climate change issues, the European Court of Human Rights has seen influx of many important application in the past years focusing on the obligation of the state to do the best in their capacity to prevent, mitigate and adapt to climate change impacts through proper implementation of international Conventions like Paris Agreement as well as the existing domestic laws that require more severity in application of general principles of Human rights in connection with climate change. For instance, to fulfil the positive obligation to align with the Paris Agreement was questioned in Duarte Agostinho[34], whereby, six children and young people, all residing in Portugal, filed an action against Portugal and 32 other States for their joint failure to cut greenhouse gas emissions in line with the 2015 Paris Agreement. The complainants invoked the extra territorial jurisdiction of the court as they claim that their right to life is threatened by the effects of climate change in Portugal such as forest fires, and that their right to privacy includes their physical and mental wellbeing, which is threatened by heatwaves that force them to spend more time indoors; and that as young people, they stand to experience the worst effects of climate change. This is a clear shift from the earlier cases of environmental degradation whereby direct effect and causality was mandate for measuring the severity of harm caused to decide attributability of either action or inaction on part of the stakeholders both public and private.

Another much-anticipated decision in the case of KlimaSeniorinnen v Switzerland[35], highlighted the issues of direct effects of global warming on the health of older women in Switzerland. After having exhausted all national remedies available, with the final decision from the Swiss Supreme Court communicated to the parties in May 2020, on November 26, 2020 an association of senior women (Senior Women for Climate Protection

[34] Duarte Agostinho and Others v. Portugal and Others (communicated case) - 39371/20
[35] Ibid 10

Switzerland) took the Swiss government to the European Court of Human Rights because their health threatened by heat waves was made worse by the climate crisis. The third-party intervention of European Network of National Human Rights Institutions (ENNHRI) observe that in Switzerland, between 1991 and 2018, 31.3% of heat-related deaths were attributable to human induced climate change, with elderly women and infants being particularly affected.[36](Climate Change 2022: Impacts, Adaptation..,2022) Older persons, especially those living in urban areas, are particularly vulnerable to heatwaves due to both social and physiological factors.[37] Specifically, the plaintiffs alleged the government had violated articles 10 right to life, 73 sustainability principle, and 74 environmental protection of the Swiss Constitution and articles 2 and 8 ECHR. Having been taken to the European Court of Human Rights the case was relinquished to be heard by a 17-judge bench and aims to answer a lot of questions of applicability of human rights arguments in climate justice and clarifications on the obligations of state organizations. Another important case of Carême v. France[38] wherein, the applicant sees this rejection and the alleged inaction to take appropriate steps against the rise of greenhouse gases produced on French territory as a violation of his rights under the Convention (art. 2, art. 8). He expects his home to be subject to flooding by 2040. The case was relinquished in the previous year to answer the question that whether there is a violation of Article 8 of the ECHR based on exposure to climate risk caused by insufficient government action. This case also highlights the technicalities of personal interest and victim status of the applicant himself. These pending cases not only answer the questions of causation, victim status, but also the general compatibility of the Convention with the complex, multi-faceted phenomenon of global warming. All these important cases and their gaining popularity will really reflect how heavily will the Grand Chamber come down on imposing state responsibility towards climate action as well as shift from the understanding on direct link, extraterritorial jurisdiction and effective control arguments.

- Right to fair Trial and access to justice

Article 6 guarantees the right to a fair trial, which the Court has found includes the right of access to a court. Article 13 guarantees to persons, who have an arguable claim that their

[36] ENNHRI-3rd-party-intervention, Klimaseniorinnen-v.-Switzerland, Written observations in application no. 53600/20,2022

[37] Also see Bunker et al., "Effects of air temperature on climate-sensitive mortality and morbidity outcomes in the elderly; a systematic review and meta-analysis of epidemiological evidence," EBioMedicine 6 (2016); UN OHCHR, Analytical study on the promotion and protection of the rights of older persons in the context of climate change, UN Doc. A/CCPR/47/46, 2021.

[38] Carême v. France (relinquishment) - 7189/21

rights and freedoms as set forth in the Convention have been violated, an effective remedy before a national authority. The right to access the court and its procedures is affected by the "civil right or obligation" and it applies if there is a sufficiently direct link between the environmental problem at issue and the civil right invoked. In the case of in Okyay and Others v. Turkey,[39] the Court had regard to the facts that the protection of the applicants' physical integrity had been infringed of account of their exposure to the impugned pollution and that they had *locus standi* in Turkish courts to complain of activities threatening the environment and seek compensation in the event of failure to enforce favourable decisions, highlighting the traditional stand of the court. The Aarhus Convention is also applicable to member nations which specifically applies to procedural obligations of the state to provide individuals the right to information and participation in the decision-making process relating to environmental policies and access to justice. The Aarhus convention was applied in the case of Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox and Mox v. France[40] the Court ruled that an environmental protection association could claim on its own behalf the relevant public right to information and to participation in the decision-making process in the environmental sphere, as recognised under domestic law and France being party to the Aarhus Convention has positive obligation to provide information, allow participation and access to justice. Violations of the right to fair trial and effective remedy have also been argued by applicants in the Swiss case wherein, the women and the organization claimed that their rights to a fair trial pursuant to Article 6 of the Convention had been infringed on account of the allegedly arbitrary dismissal of their case by the Swiss Federal Supreme Court. Additionally, the applicants submitted that the refusal to deal with the merits of the case before the Swiss domestic courts led to a violation of the right to an effective remedy as protected under Article 13 of the Convention.

- Freedom of Expression, assembly and association

The basic human rights to voice opinion and to be able to expression through joining forces with other like-minded people in a peaceful manner constitutes an important right of every individual. Subjects relating to the protection of nature and the environment, health and respect for animals are issues of general concern which, in principle, enjoy a high level of protection under the right to freedom of expression. Dissemination information on

[39] Okyay and Others v. Turkey, no. 36220/97, ECHR 2005-VII
[40] Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox and Mox v. France (dec.), no. 75218/01, 28 March 2006, see also Association Burestop 55 and Others v. France, 2021)

ecological issues, animal rights and environmental degradation is an essential tool for raising awareness in general public. As witnessed in Drieman and Others v. Norway[41] The extent of public gathering and mode of demonstration may not be legitimised in cases where the obstruction caused by such groups of individuals misuse the privileged level of freedom of expression and use coercive means. Therefore, the margin of appreciation is broader when assessing right to assembly even though expression of individuals may enjoy more protection in environmental cases. However, in a recent judgment of 2023, the court in Bryan and Others v. Russia (application no. 22515/14), whereby the court found violations of Article 10 as the applicants who were 30 Greenpeace activists at the Russian offshore oil-drilling platform Prirazlomnaya and were arrested and detained by Russian coast guards. The Court found that their detention had amounted to an interference with their freedom to express their opinion on a matter of significant environmental interest which had not been prescribed by national law. (HUDOC, 2023)

- Right to property and environmental protection

Socio-economic aspects cannot be looked at separately from environmental issues as evidenced by the growing corporate cases highlighting the responsibility imposed on the private stakeholders to implement sustainability and governance in the line with global and national sustainability agendas. Limitations to property rights as human rights reflect the negative obligations of the stakeholder's both public and private.

As per Article 1 of the Protocol 1of the Convention, every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. This right has a social obligation towards not causing harm through the use of their private property and in the case of climate change related issues the potential harm to the future generations. However, it also recognises that public authorities are entitled to control the use of property in accordance with the general interest. Right to enjoy one's property peacefully may in some cases be restricted when public policies concerning ecological conservation is the moot point. There are examples from case-law where the ECtHR has considered it a legitimate regulation of land-use under the Convention to impose affirmative obligations on landowners for environmental reasons. (McCarthy, Frankie, 2023 p. 90). In assessing the balance of private property and environmental protection cases, the margin of appreciation is broader with national courts

[41] Drieman and Others v. Norway (dec.), no. 33678/96, 4 May 2000

as seen through judgments in The Pine Valley Developments Ltd and Others v. Ireland[42] whereby, the Court concluded that the annulment of the building permission could not be considered disproportionate to the legitimate aim of preservation of the environment and thus that there was no violation of Article 1 of Protocol No. 1. Protection of the environment, nature, forests, the coastline, threatened species, biological resources, the heritage and public health are *public-interest* matters. The ideology of property being inseparable from social obligations inclusive of environmental factors has also been recognised by the court. The Court has even gone further and stated that property rights should not be afforded priority over environmental protection considerations, as persuasively put in the following passage in Hamer v Belgium [43] wherein order for the demolition of a holiday home built in woodlands to which a ban on building applied did not amount to violation of the right of the applicant under Article 1 Protocol 1. The strict stance on environmental protection of land was also revealed in the Lithuanian case[44] where the Curonian Spit or the dunes were added to UNESCO world heritage site and was given leverage over commercial property rights of individuals.

The ECtHR has yet to articulate its views on whether and to what extent the issue of intergenerational equity affects the interpretation of the Convention. In Duarte Agostinho the Court refers to the same provisions, but also Articles 3 and 14, as well as A1P1, communications indicate that the Court will interpret the provisions by considering intergenerational equity. However, it is difficult to hypothesize why the Court refers to A1P1 in this respect. Is the Court indicating that Member States have broader positive obligations under A1P1 when it comes to future generations. (Petersen, 2023, p.26-27)

2.3 Effectiveness of the ECHR decisions

In the recent judgments directly questioning state obligation towards climate action reflect the evolution of human rights jurisprudence emphasising the need to clear the grey areas of procedural and statutory shortcomings in climate change laws creating a ripple effect for climate justice. The issues that surround some of the recent cases pertain to admissibility, victim status, directness and severity of the harm caused to applicants. First and foremost, the question of jurisdictional aspect of the court differentiates in territorial and transboundary impacts of the climate change. An important distinction in that sense is to be made between diagonal claims and non-diagonal claims. Diagonal claims are

[42] Pine Valley Developments Ltd and Others v. Ireland, judgment of 29 November 1991, paragraph 57-59.
[43] application no. 21861/03
[44] Kristiana Ltd. v. Lithuania, no. 36184/13, 6 February 2018

transboundary claims or claims brought by individual or groups against States other than their own. The Portuguese Youth case is an example of a diagonal claim, that questions the state responsibility of 33 countries, having failed to act towards mitigating harmful effects of climate change on the youth of Portugal as a vulnerable community being victims of serious health issues, through the European Convention on Human Rights.

Another aspect, of the climate action through courts and climate change litigation is whether international climate change treaties are relevant at all to the interpretation of human rights obligations of States parties to the human rights treaty. The harmonising effect of International Treaties and Conventions like Paris Agreement is reflected through the increasing claims in national courts for inefficient implementation of international environment law. When multiple States are responsible for the same wrongful act such as high GHG emissions causing climate change, the general principle is that 'each State is separately responsible for the conduct attributable to it, and that responsibility is not diminished or reduced by the fact that one or more States are also responsible for the same act'(Article 47 of State Responsibility rules) It is to be emphasised in that sense that the European Convention is not placed outside that general framework of general international law. The rules of State attribution are relevant to ascertain State responsibility under the Convention.[45].

Another issue is relating to question the of locus standi or *actio personalis* under Articles 34 and 35 of the Convention, applicants must show that they are 'victims', i.e., that they have, personally and directly suffered a significant disadvantage. As a matter of fact, in December 2022, the Court declared inadmissible for lack of victim status two climate cases against the United Kingdom.[46]In the French case of Carême vs France of 2019, Mr Carême, together with the municipality of which he is the former mayor, lodged an application with the French Conseil d'Etat, alleging that French authorities had failed to take all appropriate measures to comply with their Paris Agreement objective. The case was relinquished to be heard before the Grand Chamber the ECHR will deal with the applicant's claim that he is the victim of a violation of his 'right to a normal private and daily life', which is a departure from the 'right to respect for private and family life' protected under Article 8. In the Swiss case judgement, the Swiss Federal Court held that the applicants were not sufficiently

[45] ECtHR, Kotov v Russia, Application No 54522/00, 3 April 2012 [Grand Chamber] at paras 30-32; Al Nashiri v. Poland, Application No 28761/11, 24 July 2014, at para 207.
[46] Humane Being v. the United Kingdom, no. 36959/22, Decision (single judge) of 1 December 2022. And Earth and Others v. the United Kingdom, Appl. no. 35057/22, Decision of 13 December 2022

affected by the alleged failures in terms of their right to life, or their right to respect for private/family life and home, for them to assert an interest worthy of protection within the meaning of the Swiss Federal Law. Switzerland as the defendant state regards the application as an *actio popularis*, incompatible with the Court's case law and general mission to offer legal remedies to individual complaints, which could pose threat to overall admissibility question of the case.

The ECtHR has previously cautioned against a "rigid, mechanical and inflexible" application of the victim requirement, acknowledging that an "excessively formalistic" interpretation would make rights protection "ineffectual and illusory" Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania, paras. 96, 105. In this vein, the ECtHR has been prepared to bend the requirements on standing, allowing complaints over potential violations in some cases (para. 36) and accepting the petition of an NGO on behalf of a particularly vulnerable person in the absence of any formal representation. In the climate cases currently pending before the ECtHR, the applicants highlighted their heightened vulnerability as children and young persons or elderly women, respectively, placing them at a higher risk of being affected by climate change than the average population. (Raab, 2022)

Additionally, the court decision[47] on indirect victim status defined that 'to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end, could be a supportive argument for broadening the definition in the upcoming cases. In the Carême case the question of the imminence of the danger and, on the other, whether it is sufficiently serious and real. It is in particular on this point that the application before the ECtHR could be based to demonstrate that the risk is indeed present, serious and real, and that the requirement of its imminent nature should not prevent the Court from assessing the violation of the obligation of the State consisting in putting in place a legislative and regulatory framework aimed at effective prevention and deterring the right to life from being jeopardised. This overriding obligation, which had to be translated into preventive measures on the part of the administration – for example, the establishment of a prevention plan and a plan for adapting to climate change – must be at the heart of the applicant's argument, if the Court is to find a violation of Article 2. The newer questions of future risks are also something that will be answered by the Grand Chamber in this case.

[47] Case of Vallianatos and others v. Greece (Applications nos. 29381/09 and 32684/09)

The Pine Valley decision in applying the proportionality test, the ECtHR emphasises the importance of environmental protection as a community need, its legitimacy as an aim which can justify the limitation of human rights and the role of planning regimes as an instrument to protect the community interest. The three important cases of the Portuguese case, the Swiss Older women and the Carême vs France case before the ECtHR remain highly awaited judgments in terms of answering transboundary attribution of state obligation as well as the linkage between basic human rights and climate issues. Property rights also involves the interpretation of the Convention articles as well as precautionary principle and inter-generational equity. In Duarte Agostinho the Court refers to the same provisions, but also Articles 3 and 14, as well as A1P1. However, the decision of the case may potentially indicate that Member States have broader positive obligations under A1P1 when it comes to future generations and, thus, a positive obligation towards future property owners. Based on this understanding of social obligation and guidance from the ECtHR's legal precedents, it is clear that landowners are required to present compelling justifications for compensation in cases where land-use decisions are made to combat climate change, unless there is deprivation involved. Landowners bear a significant social responsibility due to the crucial public interest at stake.

III NATIONAL LEGISLATION

While major International Conventions like Stockholm, Paris Agreement, Rio Declaration and European Union managed to bring almost all the nations to realise and collaborate in climate action and goals for Sustainable development, the participation in global multilateral and bilateral treaties has also increased significantly. From the evolutionary standpoint up till 2015 the network of signatory countries has become increasingly dense over time, indicating that countries interact with each other more and more intensively and countries are not isolated when coping with environmental issues. While number of states become party to international agreements regional agreements are also on the rise and see wider ratification rates. (Bellelli, Scarpa, et al., 2022, p.26) The wider margin of appreciation with nations give way for more active participation and implementation of national and regional bodies in realising climate action. The great technological and economic disparity between nations of the world affect the pace in which the countries implement international environmental policies in their own national legal system. This chapter will focus on the national legislations and court decisions of nations like France, Netherlands, Germany as one of the forerunners in progressive and innovative judgments taken in the field of climate justice through its national court decisions like Urgenda, the latest Deutsche Umwelthilfe case to the international collaborative works supporting the Island countries from the exponential effects of climate change through programs like SIDS. On the other hand, the largest democracy of the world India (European Parliament, 2014) home to the largest population in the world, is gaining geopolitical influence in global efforts through hosting and leading the G20 Summit in its capital, that resulted in technology sharing treaties with western nations as well as being one of the few countries having a specialised Tribunal to hear environment related cases. It is being closely monitored for its role and impact on climate action which will impact implementation of climate justice in the wake of sustainable development goals especially in the global south.

3.1 The European Nations and Climate justice

Right off the bat, the legislations in the Netherlands are focusing on green financing and international cooperation through capacity-building support for mitigating climate change and for promoting sustainable development. (OECD, 2021) On 1 September 2019, the Dutch Climate Act entered into force. This act provides a framework for the development of policies aimed at an irreversible and step-by-step reduction of Dutch greenhouse gas emissions to limit global warming and climate change. To achieve this target before 2050,

the Dutch Climate Act strives to a reduction of greenhouse gas emissions of 49 per cent in 2030 and a full CO2-neutral electricity production in 2050. (Integrating Environmental and Climate Action…, 2021)

In addition to the efforts of ecological government policies two very important case laws relating to climate change gained much momentum in the development of climate justice and its relationship with human rights agenda. In June 2015 the District Court of The Hague ordered the government to cut the Netherlands' GHG emissions following a lawsuit put forward by a collective of citizens, known as the Urgenda Climate Case.[48] A central question of the case was whether the state had a duty to impose further reductions on greenhouse gas emissions above the limits already established in Dutch climate policy. Urgenda pointed to three sources of law supporting this duty of care Articles 2 and 8 of the European Convention on Human Rights, and the Article 21 of the Dutch Constitution and the general duty of care in the Dutch civil code. The Hague District Court declared that Urgenda could not rely on either the European Convention on Human Rights or the Dutch constitution, however, determine that the State breached its duty of care under the Dutch civil code, which requires parties to take precautionary measures to mitigate a hazardous situation.[49]

Another important aspect of the judgment was that the Court declared that international obligations and principles have a "reflex effect" in national law.[50] Courts may take international law obligations and principles into account when they interpret open standards in national laws. The case was appealed and the question of implementing the ECHR was taken up again. The Appellate court interpreted that the requirements of Article 34[51]of the convention does not preclude access to justice before the Dutch Courts as it may before the European Court of Human Rights, as the national law allows class actions by interest groups in domestic courts. Court of Appeals explained that these provisions impose a positive obligation on the state to protect its citizens from "all activities - public and non-public, which could endanger the rights protected in these articles"[52]

[48] State of the Netherlands v. Urgenda Foundation, ECLI:NL:HR:2019:2007, Judgment (Sup. Ct. Neth. Dec. 20, 2019) (Neth.).
[49] Id p.54
[50] Id p.43
[51] Individual Application: The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.
[52] Ibid 38

The Dutch Court not only upheld violation of human rights under Article 2 and 8 but also adjudged that the state failed its obligation to reduce greenhouse emissions. This judgment reflects the national legal mindset and interpretation of climate justice having a wider inclusivity and meaning in the light of human rights. The principle of sustainability and the precautionary principles formed the basis of this decision, establishing state's duty of care.

In the second climate change-related case[53] brought before a Dutch court, another environmental NGO, Milieudefensie (Friends of the Earth Netherlands), together with six other organizations and 17,000 citizens launched proceedings against the oil and gas company Royal Dutch Shell, claiming breaches of both Dutch tort law and of human rights protected by the ECHR. This case aimed at extending the responsibility and positive obligations to corporations, whereby the plaintiffs seek a ruling from the court that Shell must reduce its CO2 emissions by 45% by 2030 compared to 2010 levels and to zero by 2050, in line with the Paris Climate Agreement. The main argument is based on the principles of duty to care to reduce its greenhouse gas emissions and negligence on the part of the corporation. Plaintiffs base this duty of care argument on Article 6 (162) of the Dutch Civil Code[54] as further informed by Articles 2 and 8 of the European Convention on Human Rights (ECHR) which guarantee rights to life and rights to a private life, family life, home, and correspondence. The court decision also upheld that the Corporation also had responsibility to take due care for its emissions not limited to just national borders but for the effects of climate change caused by transboundary impact. These landmark cases reflect the strong stance of the Netherlands in complying with the international promise made in the Paris Agreement for carbon emission reduction. Environmental sustainability through infrastructural development, and new reforms like Recent tax initiatives include revisions to the carbon dioxide (CO_2) levy for industry, an energy tax reform, a CO_2 price floor for power generation, a car tax reform, and an increase in the air passenger departure tax, most of these measures are outlined in the Dutch Recovery and Resilience Plan.[55] (MOF, 2022) Other measures in the Plan include complementary public investments in clean technology infrastructure. (Chen, Kirabaeva et al., 2023, p. 7) The climate change action through litigation and government policies are all witness to the ambitious aims of 55% emission

[53] Milieudefensie v. Royal Dutch Shell, District Court of the Hague (DC), 26 May 2021, ECLI:NL: RBDHA:2021:5337
(Milieudefensie),EnglishtranslationECLI:NL:RBDHA:2021:5339availableat:https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339

[54] Art. 6:162(2) BW. This provision defines tortious acts as including acts and omissions 'in violation of … what according to unwritten law has to be regarded as proper social conduct.

[55] MOF, 2022. Dutch Recovery and Resilience Plan. Ministry of Finance, Government of Netherlands

reduction set by EU and Netherlands having its own visible rise in the sea level on its coasts is working robustly towards a sustainable future.

The cases of the national courts reflect the importance of the climate justice cases to establish attribution for inaction on part of the stakeholders such as the state governments, corporation's public and private, in compliance with the international standards set by European Union as well as Paris Agreement. For instance, traditionally positive state obligations include those, that establish and carry out policies to mitigate climate change by reducing environmental pollution, particularly that which comes from carbon emissions and other damaging greenhouse gases, as seen in Notre Affaire à Tous and Others v. Total, whereby citizens and NGOs sued Total, relying on France's corporate due diligence legislation that requires corporate actors to adopt measures to protect human rights and the environment.[56] Secondly, the state has a duty to undertake better measures to adapt to the changes and lastly to provide redressal for the harm and loss caused to vulnerable communities and individuals in the form of compensation.

The case invoked Articles 2 and 8 of the European Convention on Human Rights (ECHR) and the French Charter of the Environment as well as the "right to a preserved climate system" enshrined in national and international law such as the Stockholm Declaration, the World Charter for Nature, the Rio Declaration, the UN Framework Convention on Climate Change, the Kyoto Protocol, the Paris Agreement, and the Climate action and renewable energy package for 2020. On February 3, 2021, the court ruled that ecological damage in France is directly attributable to climate change and that the French state is at least partly responsible for that damage. The state's culpability stems from failing to comply with its greenhouse gas emission reduction targets. (Mehring, 2023) Additionally, substantive obligations impose negative duties to refrain from activities that may lead to human rights violations associated with climate impacts. Therefore, this case is a good example to showcase that rights-based claims may aim to force corporations to refrain from activities that may cause harm as the projects aimed to develop a pipeline in Uganda and Tanzania which would provoke violations of human rights and serious environmental damage.

While Germany grapples with effects of climate change on its coast, the government is often questioned and taken to court for its inefficient mitigation and adaptation efforts. One such decision that highlights the wider interpretation of fundamental right in line with ECHR is the 2021 historic decision made in the Neubauer, et al. v. Germany German

[56] Notre Affaire à Tous and Others v. Total (2021)

Federal Constitutional Court[57] whereby, the German Federal Constitutional Court (BVerfG) announced its decision to set a new standard for climate action and the protection of fundamental rights. In Germany, the fundamental rights of the Basic Law are to be interpreted in accordance with the European Convention on Human Rights (ECHR), in particular with Articles 2 and 8. The applicants argued that these provisions imply a right to climate protection, which is translated in each State's obligation to act to the extent of "its" share in preventing dangerous climate change. The outcome of the decision raised the temperature goals of the Paris Agreement and the achievement of climate neutrality to a constitutional status: Article 20a of the Basic Law, which protects "in responsibility for future generations, the natural foundations of life and animals," became enforceable (justiciable). With its decision, the Federal Constitutional Court provided a contemporary redefinition of the concept of freedom in the climate crisis. The state's obligation to protect the freedom of the young generation in the future results in an obligation to do more to protect the climate in the present. The new measures announced by the government shortly after the ruling to reduce greenhouse gas emissions by 65% by 2030, 88% by 2040 and to achieve climate neutrality as early as 2045 - are major steps in the right direction. (CAN Report, 2023, p.32)

Another significant win for Germany's climate litigation has been made in DUH and BUND v. Germany[58], the Higher Administrative Court Berlin-Brandenburg decided on November 30, 2023, that the federal government is required by the Federal Climate Change Act (CCA) to implement an immediate action programme, or "Sofortprogramm." The program's goal is to guarantee that the transportation and building sectors' yearly emission objectives for the years 2024 to 2030 are met. In contrast to the Federal Constitutional Court's decision in Neubauer et al. v. Germany, the decision's focus is on administrative issues related to climate governance and enforcement rather than basic rights. Given that German environmental legislation, at least as expressly written, does not grant environmental associations the authority to file a lawsuit to force the implementation of rapid action programmes under the CCA, the complaint's simple admissibility is a success in and of itself. On the other hand, the plaintiffs argued that environmental associations should be able to file a lawsuit to request the issuance of an emergency action programme since

[57] Neubauer et al. v Germany, Case No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20 - Germany
[58] DUH and BUND v. Germany 213/22FH/LH, 20. Januar 2023

German procedural law should be interpreted in compliance with the Aarhus Convention and European law, an argument which was concurred by the court. (Bönnemann, 2023)

3.2 The Republic of India

Surpassing China in becoming the largest population in the world, India being a large democracy is a fast-growing economy, influencing a lot of the global south efforts and initiatives on international platforms. India participated in the global communes as it signed the UNFCCC[59] on 10 June 1992 and was the 38th country to ratify it on 1 November 1993. Obligations to countries under the convention are primarily to undertake measures to reduce anthropogenic GHG emissions, and prepare for adaptation to the impacts of climate change. The following decades saw an exponential industrial and economic growth in India as its neighbours like China resulting in large scale urbanization and pollution, the impacts of which are contemporarily witnessed in poor air quality in cosmopolitan cities in the country.

International conventions had always been taken as policy guidelines in national legislations in India. The 42nd Amendment to the Indian Constitution in 1976 introduced principles of environmental protection in an unambiguous manner into the Constitution through Articles[60]48–A and 51–A. (The Constitution of India, 1950) The Stockholm conference is honoured by references in the Air Act and the Environment Act, a result of effective applications of Article 253[61] of the Indian Constitution, fulfilling India's international obligations. The Union or Central Government of India, in pursuance of the Stockholm Declaration of 1972 and acting under Article 253, adopted the Water (Prevention and Control of Pollution) Act, 1974 and the Water (Prevention and Control of Pollution) Cess Act, 1977[62]. Agenda 21 established as an outcome of the Rio Conference was implemented in India at a much larger level. India has been very active in implementing all the objectives of Agenda 21 with the active and energetic participation of all stakeholders like the Government, international organizations, businesses, NGOs, and citizen groups. Many other Acts were also legislated specifically focusing on wildlife protection, and new programs like the Ganga Action Plan focussing on protecting river basins from pollution were also launched. India does not have a specific Climate Change

[59] The United Nations Framework Convention on Climate Change, 1992
[60] Article 48–A: "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."; Article 51–A[g]: "To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures".
[61] Art.253 Constitution of India, 1950
[62] Madireddy Padma Rambabu v. District Forest Officer Kakinada E.G. District and Ors AIR 2002 AP 256.

Law, but it does have the National Action Plan on Climate Change (NAPCC) adopted on June 30, 2008 in addition to India's Intended Nationally Determined Commitments (INDC) submitted to the UN Framework Convention on Climate Change (UNFCCC) in October 2, 2015. The Tribunal in its judgment[63] not only adjudged the application of the Action Plan on Climate change to environmental cases but also ordered other States in India to implement action plans in line with NAPCC.

International collaborative efforts like International Solar Alliance (ISA) was launched at the United Nations Climate Change Conference in Paris on 30 November 2015 by India and France, in the presence of Mr. Ban Ki Moon, former Secretary-General of the United Nations. Under the Paris Agreement, India has made three commitments. India's greenhouse gas emission intensity of its GDP will be reduced by 33-35% below 2005 levels by 2030. Alongside, 40% of India's power capacity would be based on non-fossil fuel sources. Meanwhile the efforts to transition to renewable energy to reduce CO2 emissions in underway and remains answerable depending on every 5 year of COP reports. (India's Updated First Nationally..., 2022, p.2-3)

The indigenous and eco-centric religion-based approach of the Indian jurisprudence is reflected through the case law history of the county in combatting environmental pollution and its harmful effects on individuals and marginal communities has largely based on the Constitutional right to life[64], which is all inclusive of clean environment being essential to a dignified life. The case[65] to reduce vehicular air pollution in big city like Delhi brought through public interest litigation is one of the many such litigations brought before the judiciary, wherein the courts have not only established committees for reporting but also compensated the vulnerable groups most harmed by non- fulfilment of state action and negligence on part of the administration as well as establishing principles of "absolute liability" of private individuals[66] alike. The traditional paradigm of judicial process meant private law adjudication was replaced by a new paradigm that was polycentric and even legislative. While under the traditional paradigm, a judicial decision was binding on the parties—*res judicata*—and was binding *in personam*, the judicial decision under public interest litigation bound not only the parties to the litigation but all those similarly situated. (Chaturvedi, 2021, p.1461) Vellore Citizens Welfare Forum vs Union Of India & Ors came

[63] Kumar Bansal v. Union of India & Others, NGT, 2021
[64] Art. 21 Right to life "Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law." Constitution Of India, 1950
[65] MC Mehta v Union of India, M.C.Mehta vs Union Of India And Ors on 14 March, 1991 SCR (1) 866, 1991 SCC (2) 353 and AIR 2002 SC 1696 (CNG Vehicles Case)
[66] M.C. Mehta And Anr vs Union Of India & Ors on 20 December, 1986, 1987 AIR 1086, 1987 SCR (1) 819

as a welcome judgment by the apex court ordered the central Government to constitute an authority and confer on it all powers necessary to deal with the situation. The authority was to implement the precautionary principle and the "polluter pays" principle. It would also identify the families who had suffered from the pollution and access compensation and the amount to be paid by the polluters to reverse the ecological damage. The court required the Madras High Court to monitor the implementation of its orders through a special bench to be constituted and called a "Green Bench".

However, in some of the following judgments of the apex court when decided the impacts of development projects like hydroelectric dams in Narmada Bachao case (2000) and the Bombay Environmental Action Group and Ors (2006) it was emphasized that sustainable development also means harmonizing the two aspects - need to protect the environment as a priority, also the necessity to promote development especially when it involves electricity generation and employment. (Chowdhury, 2016, p.86) which reflected the dilemma and paradox that is economic and ecological development.

While filing of number of cases continued the more complicated scientific questions in climate related cases lead to the need for establishing a specialised judicial body to deal with environmental issues requiring expertise dealing with both civil and criminal aspects. Pursuant upon the recommendation, the Government of India passed the National Environment Tribunal Act, 1995 to deal with the cases of environmental pollution. Although, these Tribunals could not achieve much and there was a growing demand that some legislation must be passed to deal with environmental cases more efficiently and efficaciously. Ultimately the Indian Parliament passed the National Green Tribunal Act, 2010 to handle all the cases relating to environmental issues.

The National Green Tribunal (NGT) has jurisdiction over all the environmental law acts of the country and expeditious disposal of cases relating to the subject of forest, environment, biodiversity, air and water. The National Green Tribunal is India's first dedicated environmental court with a wide jurisdiction to deal with not only violations of environmental laws, but also to provide for compensation, relief and restoration of the ecology in accordance with the 'Polluter Pays' principle and powers to enforce the 'precautionary principle'. Section 15 of the NGT Act 2010 provides the Tribunal with special jurisdiction to order relief and compensation to victims of pollution and other environmental damage arising under the enactments specified in Schedule I, for restitution of damaged property and for restitution of the environment in such areas as the Tribunal may think fit. (Gill, 2015) Thus, the dimensions and areas in which the NGT may exercise

jurisdiction are very wide. The NGT is mandated to pass orders, decisions and awards in conformity with sustainable development, and the precautionary and polluter pays principles.[67] (National Green Tribunal Act, 2010). In M.P. Patil v. Union of India[68]the Tribunal observed that the three principal maxims governing the field of environment are the sustainable development, the polluter pays and the precautionary principles. Under the Indian environmental jurisprudence, these three principles are statutorily prescribed.

The NGT's case list has been dominated by EIA disputes. The primary data analysis has revealed that, disputes relating to environmental clearances granted form the basis for a majority of the cases (Patra and Krishna 2015). Seen in the case of Jeet Singh Kanwar and Another v MoEF and Others (2013), environmental clearance granted by the MoEF for the installation and operation and of a power plant in the village of Dhanras in Chhattisgarh was challenged by two residents of that village. The court relied on a judgment of the Supreme Court relating to mining activity in the Delhi–Haryana border (M C Mehta v Union of India (2004) and quoted that when in doubt (as to the environmental impact of allowing an activity or the negative economic impact of stopping an activity), protection of environment would take precedence over economic interest. Again, applying the precautionary principle, the NGT ruled the well-laid out burden of proof test that whoever is proposing change will have to adduce the evidence that the proposed development is sustainable.

In a more recent judgment of Ridhima Pandey v Union of India[69] before the NGT, a nine-year-old from the Uttarakhand region, is the named plaintiff in a climate change case filed in March 2017 with the National Green Tribunal of India. Plaintiff's petition argues that the Public Trust Doctrine, India's commitments under the Paris Agreement, and India's existing environmental laws and climate-related policies oblige greater action to mitigate climate change. The petitioner also argued that climate change affects children disproportionately. Children were more vulnerable to impacts like heat waves, displacement, diseases, and malnutrition. As climate was an inherent part of the environment, she asserted that safeguarding the environment and protecting forests was critical to addressing climate change. Citing judgments like Urgenda v Netherlands[70],

[67] NGT Act 2010, s. 20.
[68] NGT Judgment, 13 Mar. 2014.
[69] Ridhima Pandey v. UoI, Application No. 187/2017 (Jan. 15, 2019) (India).
[70] Ibid 37

Leghari v. Pakistan[71], etc the demand was made to remedy the alleged injury to the present and future climate, the petition asked the court to order the national government to undertake a variety of measures, including but not limited to inclusion of climate change in the issues considered by environmental impact assessments, preparation of a national greenhouse gas emissions inventory, and preparation of a national carbon budget against which particular projects' emissions impacts can be assessed. Although, the petition was dismissed as the mitigation measures were found to be reasonably in line with Paris Agreement, the case raised genuine questions of state accountability for climate action.

In the case of The Court on Its Own Motion v. State of Himachal Pradesh and Others,[72] the Tribunal was faced with the challenge of dealing with the impacts of climate change on the glacier of Rohtang Pass in the Himalayas, facing serious pollution issues and with the passage of time, being degraded environmentally, ecologically, and aesthetically. Having lack of any specific climate law the tribunal subsequently, directed the state government to adopt measures that include contribution on the polluter pays principle, effectively banning the plying of heavy vehicles in the region and charging a fee from other private and public vehicles. The amount so collected is to be used for prevention and control of pollution, development of ecologically friendly market at Marhi, restoring the vegetative cover and afforestation. (Chaturvedi, 2021, p.1468).

3.3 Effectiveness and role of national decisions

The Urgenda case, where the Dutch Supreme Court held that, while global climate change is caused by the emissions of all countries, the duty on the Netherlands was to do its part, the Court of Appeals' human rights reasoning went as follows Articles 2 and 8 include protection in environment-related situations affecting or threatening to affect the right to life, as well as against adverse effects on the home or private life reaching a minimum level of severity. Both rights include the positive obligation to take concrete actions to prevent a future violation of these interests a duty of care. While assessing the effects of the case, in 2020 the state fulfilled its target of reduction up to 25%, yet this was largely attributed to the Covid19 which resulted in lower transportation emissions and non- importing of waste for incineration from other countries. The short-term achievement of the 2020 goal however is not seem to carry forward as effectively as much depends on the government will and

[71] Ashgar Leghari v Federation of Pakistan (2015) W.P. No. 25501/201, also see Juliana v United States whereby action was made by young plaintiffs asserting that the federal government violated their constitutional rights by causing dangerous carbon dioxide concentrations

[72] NGT, Sher Singh v. State of Himachal Pradesh, No. 237 (THC)/2013 (CWPIL No.15 of 2010) (India)

policies of international trade offs as judicial decisions cannot be seen in isolation and are still in check through separation of powers.

With wider margin of appreciation with states to set targets for climate action, the applicability of one set target for carbon emission by one country like in the case of Urgenda, for all of the countries has its own shortcomings such as opposing political will, disproportionate effects on global emissions through displacement and creation of stringent expectations and goal-setting which might discourage other countries from collaborating. In comparison the supranational courts are generally unlikely to formulate positive obligations that are overly precise or demanding, as it is not their task to interfere with national policy-making and budgetary issues. National courts will be mindful not to upset the balance of powers. This goes a fortiori for climate litigation on the basis of the ECHR, climate action is a politically sensitive issue, while the ECHR norms on the face of it neither provide environmental, nor positive protection. (Leijten, 2019)

Nevertheless, the decision is first of its nature to widen the meaning of state positive obligation in environmental matters through interpretation of human rights provided for in ECHR. The outcome set precedent for another national case of Royal Shell which aimed at extending the responsibility and positive obligations to corporations, whereby the plaintiffs seek a ruling from the court that Shell must reduce its CO2 emissions by 45% by 2030 in line with the Paris Climate Agreement.

The creation of an indigenous form of public interest litigation, also called social action litigation, has become a unique and powerful mechanism for speedy and less costly recourse to redress common human rights grievances which affect the lives of many Indians which has widened the meaning of fundamental rights and directive principles of state policies to be inclusive of environmental protection. Since the early 1980s, the established rules of common law on locus standi have been modified for the purpose of giving effect to the new constitutional rationale and climate justice issues.

The judicial interpretation as seen in the Vellore Case of Indian Constitutional rights provides for establishing a theoretical connection by stating that the precautionary principle and the polluter pays principle are essential features of sustainable development, precautionary principle entails administrative authorities to anticipate and prevent environmental degradation in the face of threats of serious and irreversible damage, so does other cases decide by the Supreme court of India. Though most environmental cases

decided by the apex court are based on the utilitarian understanding of sustainable development, and balance of greater good of individuals in terms of economic growth was heavier than improper assessments of projects like dam constructions seen in the Narmada Bachao case.

The NGT has made a determined effort to move away from this simplistic majoritarian understanding of sustainable development, which inordinately focuses on clean up and pollution control rather than on prevention. Further, it has sought to highlight the subsistence aspects of natural resource management and the relationship between environmental degradation and poverty. More significantly, the NGT has sought to strengthen procedural safeguards which ensure the value of public participation in environmental decision-making. The direct challenge posed by the youth of India in the Ridhima case, calling out the government for inadequate harmonisation of Paris Agreement comes as a parallel to the global efforts in climate change litigation. Through the case of Himachal Pradesh wherein the court displayed legal innovation in addressing climate change issue of increasing global temperature and its impact on glacial coverage of the Himalayas.

National courts are definitely aiming at mitigating the effects of climate change and upholding the ideals of sustainability, through legal innovation. The answerability of Netherlands government post Urgenda to robustly increase its efforts to mitigate climate change has put a pressure to outperform within the European Union, yet the challenges of non-isolation of its policies of switch to renewable energy by closing coal factories and taxation of waste imports, has not seem to reduce global or even EU carbon emission levels, however the case law is the first of its nature to impose positive obligation on national policies to mitigate climate change. Limited by technical challenges of narrow interpretation and exhaustive definition of Articles 2 and 8 of the ECHR, Urgenda lacks popularity as a precedent but has started a movement of climate action litigation around the globe.

On the other hand, Indian environmental jurisprudence has heavily depended on public interest litigation in enlarging the definition of right to life and directive principles of state policy and directive principles to include environmental justice. The NGT as a specialised tribunal with scientific expertise comes as a strong judicial tool to implement climate justice as seen in many cases, yet the ultimate decision of the Supreme Court still weakens the impact of the decisions of the tribunal.

The outcome of the decision in Neubauer raised the temperature goals of the Paris Agreement and the achievement of climate neutrality to a constitutional status: Article 20a of the Basic Law, which protects "in responsibility for future generations, the natural foundations of life and animals," became enforceable (justiciable). The latest victory of the green movement in the DUH and Bund, the judgment not only highlights how important judicial enforcement is as a core dimension of climate governance but has also strengthened this dimension beyond the case at hand. The case provided a perfect ground for pointing out large gap between the targets set by the government and the actual ground realities.

As it is evident that the legal innovation and interpretation of climate justice is evolving at different pace for different nations of the world, however the core principles of sustainable development, mitigation policies and attributability for non-fulfilment of obligations by State authorities remains the same. Most definitely the ecological, socio-economic and geographical differences in the different states studied above impact the rate of implementation of climate justice cases. Yet the more progressive and climate justice friendly decisions of the national courts reflect more ambitious and braver take on questions of ecological and intergenerational equity, attribution and state responsibility towards the most vulnerable of the society. National courts and Tribunals reflect the wider margin of appreciation in interpretation and implementation of Paris Agreement as well as in some cases application of the provisions of the ECHR compared to the restrictive interpretation at the Strasbourg Court. Undoubtedly, no one State’s reductions can solve climate change, but no State’s reductions are negligible either, these decisions inspire courts around the globe to take braver steps in exercising their judicial independence in the wake of global crisis like climate change.

CONCLUSION

The General conclusion is that the ideals of climate justice, upholding equitable benefits and accountability of all nations realized through evolving court decisions, capacity building alliances and community participation is pertinent for realizing sustainability of all nations.

1. The emergence of global youth-led climate action movements and the growing volume of lawsuits before international tribunals, including the European Court of Human Rights, underscore the growing discourse and elevated accountability around climate justice. The human rights-based climate action cases are on the rise as it is clear that good life means safe and healthy environment. Inter- generational aspect of climate action is witnessed in many cases brought before the ECtHR as well as national courts and Tribunals of non – EU countries brought forth by younger generations as qualifying to be more vulnerable and ultimate victims of climate change acting as the core of sustainable development. Thus, reflecting the link between ideals of sustainable development with justice in climate action.

2. Despite the technical challenges of admissibility and victim status the living instrument that is the ECHR, is ever evolving to accommodate more questions and give voice to climate justice issues. The Court's decision to relinquish three significant rulings in favour of a more thorough comprehension and interpretation of states' obligations with regard to climate justice is indicative of the critical role that climate justice plays in the advancement of environmental equity and sustainability as well as the broadening interpretation of human rights being inclusive of climate justice and principles of sustainability.

3. National legal jurisprudence of different nations reflects the distinct but complementary development in line with sustainability, which is necessary to comprehend where we are currently and what gaps we witness in climate action worldwide, showcasing progressive and brave take on climate cases. Progressive decisions of the national courts and establishments such as The Green Tribunal, reflect the growth of different nations, gaining momentum in addressing the challenges posed by climate change through legal innovation.

4. The socio-economic aspects of climate justice and sustainable development are being answered by standardisation policies of Green Deal, capacity building projects like SIDS and ICLEI and their spillover to international relations, highlighting the growing need for equitable growth and responsibility among nations, while promoting the sustainable development goal that calls for all nations to come together for global partnership for sustainable development.

5. The role played by civil society as active applicants and third-party interveners has provided for a better platform for representation of more vulnerable classes, groups and communities across the world. The academic and scientific studies and reporting by such organizations act as a strong pillar for establishing climate justice across boundaries both tangible and intangible.

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SUMMARY

Not just limited to SDG 13 that calls for nations to take urgent action to combat climate change and its impacts, the ideals of climate justice focus on reduction of inequality within and among countries as laid down in SDG 10. The inseparable connection between human rights, climate justice and sustainability are ever so reflected through the SDG 16 that calls for all nations to develop effective institutions that not only are accessible but provide for participation in decision making, this widens the scope for attribution of fault to stakeholders strengthening climate justice through polluter pay principles, due diligence and principle of sustainability. The civil society is pushing the envelope towards climate action and sustainability, upholding principles of intergenerational equity at the heart of it. The recent judgments directly question state obligation towards climate action reflect the evolution of human rights jurisprudence highlighting gaps in procedural and statutory provisions in interpreting climate change laws. The gravity of the situation is highted through the relinquishment of three cases before the ECtHR, for interpretation of rights-based climate action brought forth by vulnerable communities of the young, the old and that of a single individual. Transboundary obligation of Netherlands for carbon emissions as one of the contributors in Urgenda set the tone for greater responsibility of states for climate injustice. The National Green Tribunal of India is the outcome of legal innovation, that reflets the growing need for scientific expertise in climate related cases. Even though issues of admissibility and shortcomings of victim status and directness are some of the evident technical challenges in such cases, yet the evolution of a wider definition of climate justice through court decisions, policies like Green Deal, and alliances for energy transition movements among different nations become essential for upholding the goals of sustainable development of all nations in some form or the other.