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## FOREWORD

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*Nirma University Law Journal has a landmark journey of publication on exploring and changing dynamics of law at national and global scenarios, with a sense of spirit of inquiry resulting the new knowledge and path-breaking insights into mundane ideas and ways of living.*

*I am pleased to present to you all Volume -XIII, Issue – I December 2023 a thematic Issue on 'Changing Contours of Global Governance' Nirma University Law Journal (NULJ) Peer reviewed and refereed journal. The Journal aims to encourage writings that are interdisciplinary in nature expanding contemporary issues across disciplines likewise as sociology, Political Science, Public policy, Economics, Science and Technology, and contemporary aspects in the context of law. I am happy to share that the article that has been published in this Journal is indexed to HeinOnline, EBSCO, Manupatra, and SSC Online. The overwhelming response we received from contributors for the publication of Volume XIII, Issue I.*

*The veritable contributions are indicative of the efforts and ingenuity of the author, and the academic and practical impact on the reader must be credited to the qualitative and insightful writings of the authors. On behalf of Nirma University, I congratulate the authors for maintaining the highest standards of academic honesty and purity of thought and the editorial board members including Samarth Jain and all peer reviewers of NULJ December 2023 Issue.*

*We feel pride in being a medium of expression broadcasting novel ideas and being a crucial platform for legal, interdisciplinary, and contemporary legal discourse.*

**Prof. (Dr.) Madhuri Parikh**

Chief Executive, Nirma University Law Journal

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# CLIMATE JUSTICE AND GLOBAL GOVERNANCE FRAMEWORK: A COMPREHENSIVE ANALYSIS OF CHALLENGES AND OPPORTUNITIES

Dr. Paritosh Nandi \*  
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## ABSTRACT

*Climate change has become a legal and governance challenge along with the environmental challenge that requires innovative legal solutions and global cooperation. An effective global governance framework is necessary to address climate change. International agreements, collaboration, and procedures for resolving climate-related challenges should all be included in this framework.*

*Climate justice (CJ) highlights the moral and ethical aspects of climate change, emphasising wealthier countries' historical accountability for greenhouse gas emissions and their obligation to support the most impacted. CJ advocates for equitable distribution of the costs and benefits of addressing climate change, with a special emphasis on marginalised and vulnerable groups that are disproportionately impacted by these changes as well as methods of mitigation and adaptation to ensure that future generations and the impoverished are not forced to face the burden of climate impacts. A big step in this approach is the 2015 Paris Agreement, which brought governments together to reduce global warming followed by CoP 26 at Glasgow in 2021 which gave a thrust to global cooperation through carbon markets. This article highlights the complex nature of*

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*climate change issues and examines the legal obstacles associated with climate change governance, using pertinent case laws in India and abroad.*

**Keywords:** *Clean Development Mechanism, Climate Justice, Conference of Parties, Greenhouse Gases, National Green Tribunal, Paris Agreement, Sustainable Development Goals.*

## I. INTRODUCTION

One of the most important global issues of our day is climate change. It is a multifaceted, interrelated problem with broad ramifications for society, the environment, and the world economy. Therefore, it is a difficult task to combat climate change through legal frameworks at the national and international levels. Long-term changes in temperature, weather patterns, and environmental conditions are hallmarks of climate change, a serious worldwide catastrophe mostly brought on by human activity such as the burning of fossil fuels and deforestation. Rising temperatures, more frequent and severe weather events, an increase in sea level, and dangers to ecosystems and biodiversity are some of the effects. In order to overcome this dilemma, global governance is vital. It entails institutions and global cooperation with the goal of reducing and adapting to climate change. The Intergovernmental Panel on Climate Change (IPCC)<sup>1</sup>, the Paris Agreement<sup>2</sup>, and the United Nations Framework Convention on Climate Change (UNFCCC)<sup>3</sup> are important elements. These organisations create goals, assist in talks, and offer scientific evaluations to direct the reduction of greenhouse gas emissions and contain global warming. Developing and implementing plans to fight climate change and safeguard the planet's future depends on effective global governance.

Addressing climate change through legal frameworks is crucial for several reasons:

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<sup>1</sup> Intergovernmental Panel on Climate Change, <https://www.ipcc.ch/> (Last visited Feb. 11, 2024).

<sup>2</sup> The Paris Agreement, <https://unfccc.int/process-and-meetings/the-paris-agreement> (Last visited Feb. 11, 2024).

<sup>3</sup> United Nations Framework Convention on Climate Change, <https://unfccc.int/> (Last visited Feb. 11, 2024).



- **Accountability:** Legal frameworks offer a foundation for making public authorities, private enterprises, and private citizens answerable for their contributions to climate change. They create norms and guidelines that are enforceable, guaranteeing that those involved keep their promises to lower greenhouse gas emissions and safeguard the environment.
- **International Cooperation:** International cooperation is necessary to address the global issue of climate change. Countries can unite and commit to collective action by establishing goals and deadlines for carbon reductions and other climate-related actions through legal accords such as the Paris Agreement.
- **Certainty and Stability:** Legal frameworks provide investors and enterprises with a sense of security and stability by establishing unambiguous norms and laws. Investment in sustainable technologies, renewable energy, and climate adaptation strategies is thereby encouraged.
- **Penalties and Incentives:** Economic tools like carbon pricing can be incorporated into legal frameworks to provide financial incentives for switching to greener energy sources and to encourage emission reductions. Additionally, they have the authority to penalise noncompliance, which deters environmentally damaging behaviour.
- **Protection of Vulnerable Groups:** Ensuring that vulnerable groups, who are disproportionately impacted by climate change, have a voice in decision-making processes and receive support and compensation when necessary, is something that legal frameworks may address.
- **Research and Innovation:** By offering financing, incentives, and intellectual property rights, legal frameworks can promote research and innovation in fields like carbon capture technologies, energy efficiency, and renewable energy.
- **Adaptation and Resilience:** Requirements for planning climate adaptation and resilience can be imposed by legal frameworks, guaranteeing that

communities are ready for the effects of climate change, including rising sea levels, extreme weather, and shortages of food and water.

- **Planning for the Long Term:** Since climate change is a long-term issue, legislative frameworks may require long-term planning as well as plans to cut emissions and move toward a low-carbon economy.

### **I.1. STATEMENT OF RESEARCH PROBLEM**

In the area of climate justice, the research study could center on how to present legal frameworks to handle the disproportionate effects of climate change on disadvantaged populations, with an emphasis on gaps in current laws and policies globally. The research study investigates to identify shortcomings in inclusivity, effectiveness, or enforcement, aiming to bridge these gaps and contribute to a more equitable and robust climate justice framework.

#### **Legal Challenges in Climate Change Governance:**

One of the primary challenges in addressing climate change from a legal standpoint is the effective implementation of international agreements. The landmark international agreement in this regard is the Paris Agreement, adopted in 2015, which seeks to limit global warming to well below 2 degrees Celsius. However, translating the commitments made under such agreements into national legislation and concrete actions is a considerable challenge. Translating international climate agreements into national laws and actions is a complex and multifaceted challenge. It requires legal adjustments, administrative capabilities, financial commitments, political determination, and a commitment to transparency and accountability. Success in addressing this challenge is essential to realizing the global goals set forth in international climate agreements. Legal frameworks that promote cooperation and coordination between national and international levels are crucial in overcoming these challenges. In India, the case of *Lavanya Kumari vs. Union of India* (2009)<sup>4</sup> is an illustrative example. This case highlighted the need for effective implementation of international

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<sup>4</sup> *Lavanya Kumari vs. Union of India*, O.A.No.1016 of 2009, S.C.

agreements at the domestic level. The court emphasized India's commitment to international conventions and protocols related to climate change and environmental protection. The case underscored the importance of translating global commitments into tangible domestic actions.

### **Implementation of International Agreements**

The global governance of climate change has a major difficulty in translating international climate agreements into national laws and policies. While nations may make bold climate pledges at the international level, there are several difficult obstacles to overcome to integrate and carry out these promises at the national level. Through the perspectives of law, institutions, and politics, this problem can be investigated.

**Legal Structures and Harmonization:** Ensuring that national legal frameworks are in line with international commitments is one of the key challenges. Frequently, for nations to fulfill their international obligations, new laws must be passed or amended. This means analysing current laws, finding loopholes, and implementing the required adjustments. National legal systems do not automatically adopt international agreements. To give effect to international obligations, they must be domesticated, which entails enacting national laws and regulations. When international accords require national implementing measures and are not self-executing, this process becomes especially difficult.

**Administrative and Institutional Capacities:** Implementing climate agreements often requires multiple government agencies to collaborate. These agencies may have different priorities, expertise, and resource allocations, leading to coordination challenges. This can result in overlaps, inefficiencies, or even conflicts in responsibilities. Many countries, especially developing nations, may lack the institutional capacity and expertise to implement complex climate commitments effectively. Building the necessary administrative capacity to monitor, report, and verify emissions reductions and climate actions is a considerable challenge.

**Allocating Resources and Financing:** Signing global accords frequently requires substantial outlays of cash. Finding and obtaining financing sources for climate initiatives can take time and effort, especially for nations with less developed economies. Dividing scarce resources among conflicting demands is a difficult undertaking. Climate action frequently necessitates large expenditures on capacity building, adaption strategies, and renewable energy, which may take funds away from other vital industries like healthcare and education. Therefore, financing climate initiatives and resource allocations are two pivotal blocks in climate negotiations.

**Public Support and Political Will:** Persistent political will is necessary for the implementation of climate agreements. Opposition to elected authorities is possible, particularly if climate initiatives require immediate sacrifices or if there are competing political agendas. Climate policies have the potential to become divisive topics, which makes enactment and enforcement difficult. It's also critical to increase public support for bold climate change initiatives. Advocacy, education, and public opinion all have a significant impact on how politics are decided. However, since the short-term advantages aren't always evident, garnering widespread public support for climate efforts can be challenging.

**Observation and Documentation:** Countries are frequently required by international accords to produce periodic reports detailing their progress toward fulfilling their climate pledges. It can be difficult to ensure accountability and openness in reporting since nations may have incentives to exaggerate their accomplishments or underreport their emissions. It might be difficult to gather precise and thorough data on emissions and climate-related actions. It demands the creation of trustworthy measuring, reporting, and verification (MRV) systems, which could call for a significant investment of money and technical know-how.

**Respect for the Law and Its Enforcement:** Robust enforcement mechanisms may be absent from climate agreements. As a result, countries may not suffer serious repercussions for breaking their accords, which could reduce the agreements' efficacy. To enforce compliance, legal remedies can

be required in specific circumstances. This could entail using international dispute settlement procedures or bringing legal action under the home legal system. It can be difficult to establish and use such remedies, particularly if nations are unwilling to fight each other in court.

### **III. RESEARCH METHODOLOGY IN CLIMATE JUSTICE AND GLOBAL GOVERNANCE FRAMEWORK**

In researching climate justice within the global governance framework, a comprehensive methodology includes:

- The analyses of specific instances where global governance mechanisms have addressed or failed to address climate justice concerns.
- An evaluation of international policies and agreements related to climate change, assessing their effectiveness in promoting justice and equitable outcomes.
- Compare approaches to climate justice and global governance across different regions or countries to identify best practices and areas for improvement
- Scrutinize existing international legal frameworks, treaties, and agreements to identify strengths, weaknesses, and gaps in addressing climate justice
- Engage with stakeholders, including representatives from vulnerable communities, NGOs, and policymakers, to gather diverse perspectives on climate justice and global governance.
- Utilise statistical analysis to evaluate the distributional effects of policies addressing climate change, taking into account variables such as geographic location and socio-economic position.
- Encourage interdisciplinary cooperation amongst economics, sociology, law, and environmental science to develop a comprehensive grasp of climate justice concerns. One can contribute to a complex knowledge of climate justice in the context of the global governance framework by using a multidimensional research technique.

#### **IV. ROLE OF THE JUDICIARY IN ENSURING COMPLIANCE WITH INTERNATIONAL AGREEMENTS AT THE NATIONAL LEVEL**

Ensuring national adherence to international climate change accords is a critical function of the courts. It plays a complex and essential function in keeping nations accountable for their obligations under these agreements. An examination of the judiciary's function in this situation is discussed below as:

International climate change agreements are interpreted by the judiciary to guarantee that their contents are accurately understood and implemented at the national level. Courts resolve any doubts or ambiguities that may emerge in the interpretation of the promises and obligations under these agreements, giving legal clarity to them. The legal system makes sure that national rules and regulations that a nation adopts to comply with international climate agreements are followed. Courts have the authority to hold people, organizations, or governments responsible for breaking national climate laws that are intended to carry out international agreements. National regulatory bodies frequently carry out climate policy. The judiciary keeps an eye on these organizations to make sure they follow the goals and regulations established by international agreements. If regulatory organizations break from their international commitments, courts have the authority to evaluate their judgments and acts and order corrective action.

The courts ensure that governments meet their climate obligations. Legal action may be taken against governments that do not implement policies that comply with international agreements or take appropriate action. Courts have the authority to impose decrees or injunctions that compel governments to fulfill their commitments, establish goals for reducing emissions, or carry out particular climate-related measures.

The right to a clean and healthy environment is acknowledged in many international climate accords. These rights are maintained and safeguarded by the judiciary. When these rights are threatened by the effects of climate change, the courts have the authority to impose measures to lessen

environmental harm. International agreements and conflicts pertaining to climate change can be settled in court. This covers situations in which parties claim to have violated international agreements. Courts may also hear legal challenges brought by civil society organizations or individuals against government actions (or inaction) that are seen as inconsistent with international climate obligations. By compelling governments to reveal information about their climate action and emission policies, the judiciary encourages transparency and accountability. Governments may be ordered by courts to produce records, studies, or information proving their adherence to international agreements.

Court rulings on climate change issues have the power to establish legal precedents that influence cases and actions down the road. The development of climate jurisprudence is facilitated by these precedents. The direction of climate policy and the significance of adhering to international accords can be influenced by the judiciary's interpretations and legal reasoning.

A vital check on national adherence to international climate change accords is provided by the judiciary. It guarantees that organizations, individuals, and governments fulfill their responsibilities and offers legal recourse if they don't. In the worldwide effort to address the climate issue, the judiciary's role in promoting climate accountability and safeguarding fundamental rights is crucial.

#### **IV.1. COMPLIANCE AND MONITORING**

In the governance of climate change, ensuring compliance with targets for reducing greenhouse gas (GHG) emissions is a major concern. Following are the several elements that make this challenge. A lot of international agreements, including the Paris Agreement, provide nations with discretionary goals to meet. Although this strategy encourages widespread participation, the lack of legally enforceable requirements makes it difficult to enforce compliance. Because each country is sovereign over its policies, it can be challenging to implement emission reduction measures if they conflict with international goals. The capacity to enforce compliance is restricted by this notion of sovereignty. It is difficult to monitor and record greenhouse

gas emissions accurately. Finding out if a nation is fulfilling its goals can be difficult due to differences in approaches and data quality between nations, which can lead to controversies and uncertainty. Attempts to confirm compliance may be hampered by certain countries' partial or opaque disclosure of their emissions. Strong industries and interest groups frequently oppose climate initiatives. Strict emission reduction regulations may be resisted due to financial concerns and employment loss fears, which would undermine compliance. In general, international agreements do not provide strong consequences for non-compliance or incentives for compliance. As a result, nations frequently lack incentive to achieve their goals. Political upheavals inside a nation may cause policy and priority changes with regard to climate change. Maintaining compliance over time may be difficult due to the potential lack of commitment from new leadership regarding climate goals. To make compliance even more difficult, some nations may claim they lack the resources or technology needed to meet their emission reduction commitments. Diplomatic ties have the power to affect nations' willingness to hold one another legally responsible for violations. Countries may be reluctant to take firm action against noncompliant nations out of concern that it might damage their relations with other countries. The international community can take into consideration the following tactics to solve these issues and enhance adherence to GHG emission reduction targets.

Enhancing the accuracy and transparency of emissions data and verification processes can improve trust and accountability. Introducing mechanisms for rewarding countries that exceed their targets and imposing penalties for non-compliance could motivate nations to adhere to their commitments. Diplomatic efforts and international peer pressure can be used to persuade non-compliant nations to meet their targets. Providing support to countries that face technological or economic challenges in reducing emissions can facilitate compliance. Influencing domestic policies by engaging with stakeholders, including businesses, can foster greater commitment to emission reduction goals.

It takes a combination of legal, diplomatic, and economic tactics, as well as the determination of governments to properly address this urgent global



issue, to ensure compliance with GHG emission reduction targets. In this regard, the Kyoto Protocol compliance mechanism<sup>5</sup> is intended to uphold the environmental integrity of the Protocol, bolster the legitimacy of the carbon market, and guarantee the Parties' openness in their accounting. Facilitating, encouraging, and enforcing adherence to the obligations of the Protocol is its main goal. It is one of the most thorough and exacting compliance procedures for a global environmental accord that exists. A robust and efficient compliance mechanism is essential to the Protocol's successful implementation. The two branches that comprise the Compliance Committee are the enforcement and facilitative branches. As their names imply, the enforcement branch is in charge of deciding what happens when Parties fail to uphold their obligations, while the facilitative branch seeks to advise and support Parties in order to encourage compliance. Ten people make up both branches: one from the small island developing states, two from Annex I and non-Annex I Parties, and one from each of the five official UN regions (Africa, Asia, Latin America, and the Caribbean, Central and Eastern Europe, and Western Europe and Others). Members of both branches convene in plenary sessions, and the chairperson and vice-chairperson of each branch form the bureau that supports the Committee's operations. A double majority of both Annex I and non-Annex I Parties is additionally necessary for decisions made by the enforcement branch, but decisions made by the plenary and facilitative branches may be made with a three-quarters majority.

**Difficulty in holding countries accountable:** A number of logistical, political, and legal obstacles make it difficult to hold nations accountable for their climate pledges. These difficulties result from national sovereignty, the nature of international agreements, and different countries' ability to fulfill their obligations. The following are some major challenges in ensuring that nations fulfill their climate commitments. Robust enforcement tools are a common deficiency in international climate agreements. Instead of being bound by laws, they usually rely on peer pressure and voluntary agreements.

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<sup>5</sup> An Introduction to the Kyoto Protocol Compliance Mechanism, [https://unfccc.int/process-and-meetings/the-kyoto-protocol/compliance-under-the-kyoto-protocol/introduction#:~:text=It%20is%20among%20the%20most,branch%20and%20an%20enforcement%20branch.\(Last visited Feb. 12, 2024\).](https://unfccc.int/process-and-meetings/the-kyoto-protocol/compliance-under-the-kyoto-protocol/introduction#:~:text=It%20is%20among%20the%20most,branch%20and%20an%20enforcement%20branch.(Last%20visited%20Feb.%2012,%202024).)

There are few means by which nations can be held responsible for their failure to uphold their obligations if there are unclear legal procedures for enforcement. Since nations are sovereign entities, they are able to decide for themselves. It may be difficult to apply fines or legal penalties for non-compliance because of this idea. Any international group or court that wants jurisdiction over a nation's internal policy is frequently faced with opposition due to national sovereignty. When it comes to tackling climate change, different countries have different capacity and duties. Developed countries might own greater resources and past emissions, whilst developing nations would have limited ability to take action. It is difficult to measure and validate a nation's emissions and climate initiatives with accuracy. Data inaccuracies, discrepancies, and a lack of transparency may occur during the collecting, monitoring, and reporting processes. Nations may contest the veracity of emissions data, making it challenging to hold them responsible. There is frequently a delay in the effects of climate change. Decisions made today might not have an immediate impact, which makes it difficult to determine if a nation is living up to its obligations. Some nations may become complacent or inactive as a result of this temporal gap. There are numerous technical details and intricate legal frameworks associated with international climate agreements. These guidelines can be difficult to interpret and apply, which can cause disagreements about what exactly qualifies as compliance. Legal disputes may cause accountability initiatives to be delayed. Violations of climate agreements frequently result in the absence of robust legal remedies in international legal arenas. Penalties may not be imposed in cases before international courts or tribunals. There may not be much of a penalty for noncompliance even after judgments are made. New administrations or governments may prioritize different issues than climate change, and political leadership is subject to change. Changes in climate policy and commitments may follow from this. It gets harder to hold nations accountable when their positions are changed by new leaders. Government decisions can be influenced by public and civil society pressure. Activism and public awareness may occasionally result in greater responsibility. However, when governments oppose such pressure, popular pressure alone might not always be enough to hold nations accountable. Enforcing national governments to fulfill their climate pledges is a complex

task with legal, political, and practical considerations. While global cooperation is facilitated by international climate agreements, enforcement and accountability mechanisms frequently encounter obstacles, thus it's imperative to come up with creative solutions to guarantee that nations carry out their commitments to effectively solve the climate catastrophe.

#### **IV.2. ROLE OF THE INTERNATIONAL COURT OF JUSTICE (ICJ) IN ADDRESSING DISPUTES RELATED TO CLIMATE AGREEMENTS**

The International Court of Justice (ICJ)<sup>6</sup>, also known as the World Court, is a major player in resolving conflicts with climate agreements. Despite not being a dedicated environmental court, the ICJ has been involved in a number of issues involving the environment and climate change. An outline of how the ICJ resolves disputes pertaining to climate change is provided below:

**IV.2(a). Advisory Opinions on Legal Questions:** As permitted by the UN Charter, the ICJ may offer advisory opinions on legal matters that are referred to it by the Security Council, the General Assembly, or other specialized bodies. Member states or international agencies may request an advisory opinion from the ICJ to explain legal matters, including the interpretation of international treaties, in circumstances where disagreements over climate agreements include legal interpretations.

**IV.2(b). Interpretation and Applicability of Treaties:** International treaties, including those pertaining to climate change, are interpreted and applied by the International Court of Justice (ICJ). When disagreements emerge over how to interpret or implement climate agreements, the ICJ has the authority to render legally binding decisions. If a member state feels that another has broken a climate treaty or has not complied with its duties, it may file a dispute with the International Court of Justice (ICJ).

**IV.2(c). Responsibility for Environmental Harm:** Cases where a state claims another state has harmed the environment, including harm from

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<sup>6</sup> International Court of Justice (ICJ), <https://www.icj-cij.org/home> (Last visited Feb. 12, 2024).

climate change, may be heard by the ICJ. It can establish whether the state in question bears legal responsibility for the harm caused. This part of the ICJ's mandate is pertinent when damages are brought on by climate change, including rising sea levels or transboundary air pollution.

**IV.2(d). Compliance with International Law:** The International Court of Justice evaluates adherence to international law, encompassing climate change-related duties. It can establish if a state's deeds or inactions are compliant with international legal standards. If a state has violated any of the terms of international climate agreements, the International Court of Justice (ICJ) has the authority to rule on the matter.

**IV.2(e). Mode of Dispute Settlement:** States involved in issues relating to climate change can use the ICJ as a dispute resolution instrument. Member nations may file lawsuits in court to try to resolve disagreements over climate agreements through the legal system. Climate conflicts can also involve rights, obligations, or compensation under international climate agreements.

**IV.2(f). Transboundary Environmental Conflict Prevention and Resolution:**

Transboundary environmental disputes have come before the ICJ, and these disputes may have an impact on the climate. When it comes to shared natural resources or environmental concerns, the court can assist in preventing or resolving disputes between states.

**IV.2(g). Public Advocacy and Awareness:** The public's understanding of climate change challenges and the significance of international legal norms can be increased through cases before the ICJ. They can be used as advocacy tools, bringing debates and initiatives connected to climate change to light. It's crucial to remember that the ICJ's authority rests on the agreement of the parties, and the states that are parties to a given case are the only ones obligated by its rulings. Furthermore, a state's desire to participate in the legal system and acknowledge the court's jurisdiction determines how effective the court will be in resolving conflicts on climate

change. International climate governance still heavily relies on political concerns and diplomatic discussions, even if the ICJ can be a useful tool in settling conflicts related to climate change.

## **V. LIABILITY AND COMPENSATION**

Determining liability for climate-related damages and providing compensation is a complex and contentious challenge. Climate change is a global issue with diverse contributors, making it difficult to assign blame to specific actors. Several factors contribute to this challenge: Establishing a direct causal link between a single entity's actions and specific climate impacts, such as extreme weather events, is intricate. Climate change results from cumulative emissions over decades, making it challenging to pinpoint responsibility. A wide range of entities, including governments, businesses, and private citizens, are involved in climate change. It is difficult to determine who is responsible when multiple parties are engaged. Because climate change affects people everywhere, it might be difficult to decide which legal jurisdictions will be most appropriate for handling culpability claims. In this sense, international law is still developing. The timetable for assigning blame is complicated because the effects of carbon emissions can materialize years or decades after emissions. Developing countries can contend that because of past emissions, developed countries are more accountable. Liability and compensation arguments are further complicated by equity concerns. The creation of legal frameworks that take into account the global character of climate change, enhanced scientific understanding of attribution, and international cooperation are all necessary to address these issues. Furthermore, in order to assist nations and communities who are particularly vulnerable to the effects of climate change, compensation mechanisms such as climate finance must be implemented.

A major precedent for handling culpability in environmental disasters was established by the Bhopal Gas Tragedy of 1984<sup>7</sup>, in which a toxic gas leak from a Union Carbide pesticide plant in Bhopal, India, resulting in

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<sup>7</sup> Bhopal Disaster, <https://www.sciencedirect.com/topics/medicine-and-dentistry/bhopal-disaster> (Last visited Feb. 12, 2024).

thousands of deaths and long-term health difficulties for many. This tragedy significantly altered how situations of this kind are handled in multiple ways.

The Bhopal case brought to light how inadequate the judicial systems are for handling multinational companies in the wake of environmental catastrophes. As a result, international agreements and conventions aiming at making businesses responsible for their transnational activities were developed. The catastrophe made it clear how important it is for corporations to take accountability for violations of human rights and the environment. It sparked conversations about corporate liability, which in turn made corporate accountability and the need for more stringent rules more important. The Bhopal Gas Disaster brought attention to the significance of compensating victims fairly and resolving environmental harm<sup>8</sup>. In the event of an industrial disaster, it established a precedent for the creation of compensation funds and procedures for repairing environmental damage. The Bhopal tragedy's worldwide publicity and public outcry served as a spark for increased environmental advocacy and public understanding. It demonstrated how important it may be for the general public to hold both companies and governments responsible. The Bhopal Gas Tragedy brought attention to the need for global cooperation, corporate responsibility, comprehensive compensation, and remediation efforts, which had a significant impact on how liability is handled in environmental disasters. It established a standard for later legislative and regulatory advancements in this area.

The idea of "loss and damage" is becoming more prevalent in international climate law, recognizing that some climatic impacts are inescapable and cause severe harm despite efforts to mitigate and adapt. Its legal ramifications are complex. "Loss and damage" calls into question the legal responsibility of nations and organizations that have traditionally been in charge of emitting greenhouse gases. It demands that the legal obligations and responsibilities of individuals who contribute to climate change and its effects be clearly defined. This idea emphasizes the necessity of systems to make up for losses suffered by communities and nations that are particularly

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<sup>8</sup> Bhopal Gas Leak Disaster, <https://chemicals.gov.in/bhopal-gas-leak-disaster> (Last visited Feb. 12, 2024)

vulnerable to the effects of climate change. The legal problem arises in establishing financial sources and criteria for compensation distribution. To address loss and harm, the idea has spurred talks about bolstering the legal frameworks in international climate agreements. Determining the extent and bounds of legal channels for seeking compensation is part of this. Considering climate justice, emphasizing fair solutions, and addressing the disproportionate burden on vulnerable nations are among the legal ramifications. It seeks to fairly and justly strike a balance between past emissions and current effects. Thus, “loss and damage” adds intricate legal elements to international climate law by navigating the questions of accountability, recompense, and equity relating to harm caused by climate change.

## **VI. CONSTITUTIONAL AND HUMAN RIGHTS ISSUES**

One of the biggest challenges to human rights of our day is climate change, which puts people’s basic rights to food, health, and a decent quality of living in jeopardy as well as those of communities everywhere. This Report<sup>9</sup> evaluates the connection between human rights law and climate change in order to assist public and private decision-makers. Key facts published by the World Health Organisation<sup>10</sup> are laid down here. Heatwaves, wildfires, floods, hurricanes, tropical storms, and other natural disasters are all directly caused by climate change and are getting bigger, more frequent, and more intense. 3.6 billion people currently reside in regions that are extremely vulnerable to climate change, according to research. Climate change is predicted to result in an additional 250,000 fatalities year between 2030 and 2050, just from heat stress, malaria, diarrhea, and undernourishment. By 2030, the predicted direct costs to health (not including expenses in areas that influence health, like agriculture, water, and sanitation) might reach \$2–4 billion annually. The least equipped to handle the situation without help to plan and react will be those with inadequate health infrastructure, which is primarily found in developing nations.

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<sup>9</sup> Climate Change and Human Rights, <https://www.unep.org/resources/report/climate-change-and-human-rights> (Last visited Feb. 12, 2024).

<sup>10</sup> World Health Organisation (Climate Change), <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health> (Last visited Feb. 12, 2024).

An important issue is about national rights and responsibilities as well as individual human rights in regard to climate change. The United Nations General Assembly (UNGA) passed a resolution in March 2023, requesting the International Court of Justice (ICJ) to issue an advisory opinion on states' responsibility under international law to maintain the climate system. The lawsuit was started by the small Pacific Island nation of Vanuatu<sup>11</sup>. In compliance with Article 96 of the UN Charter, the International Court of Justice may offer legal guidance to the UN or a specialized agency in the form of an advisory opinion. Consultative opinions on 'any legal matter' may be requested by the Security Council and the General Assembly.

The Uttarakhand High Court was instrumental in asserting the fundamental right to a clean environment in the case of *Girish Kumar Pandey v. State of Uttarakhand* (2018)<sup>12</sup>. The Indian Constitution's Article 21<sup>13</sup> guarantees the right to life, which includes environmental protection, was upheld by the ruling. The court ruled that it is the state's responsibility to uphold and defend everyone's fundamental right to live in a clean and healthy environment. The significance of sustainable development and the state's obligation to maintain a pollution-free environment were highlighted in this case. It brought attention to the necessity of strictly enforcing environmental rules and regulations. The ruling was a turning point in Indian environmental jurisprudence since it emphasized that the right to a clean environment is not only a legal one but also a moral one and a constitutional obligation. Consequently, it established a standard for similar cases in the future and reaffirmed the significance of environmental preservation in the legal system of the nation. The significance of sustainable development and the state's obligation to maintain a pollution-free environment were highlighted in this case. It brought attention to the necessity of strictly enforcing environmental rules and regulations.

The legal intersection of environmental rights and human rights within the context of climate change is a complex and vital area of concern. Climate

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<sup>11</sup> Why the ICJ? <https://www.vanuatuicj.com/why-icj> (Last visited Feb. 12, 2024).

<sup>12</sup> *Girish Kumar Pandey v. State of Uttarakhand* (2018), 2378 UK.

<sup>13</sup> Article 21 of the Constitution of India, [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf) (Last visited Feb. 12, 2024).



change impacts, driven by environmental degradation and greenhouse gas emissions, directly threaten various fundamental human rights. The right to life, which includes the protection against severe weather conditions and air pollution, is in jeopardy. Heatwaves and illnesses linked to the climate compromise people's right to health. Food and clean water access are essential elements of human dignity that may be compromised. Communities that are marginalized and indigenous frequently suffer disproportionate harm that violates their rights and customs. The rights of impacted populations are put in jeopardy by climate-related relocation.

There are several obstacles in the way of developing and implementing successful climate policies, and case law frequently sheds light on these obstacles. The Nagri Hakku Suraksha Samiti & Ors. v. State of Jharkhand & Ors. (2011)<sup>14</sup> case serves as an illustration of how these difficulties may appear in a court of law. The court considered matters pertaining to the purchase of property in Jharkhand, an Indian state, for the purpose of constructing a thermal power plant. Concerns were raised by the project regarding its possible effects on the environment, especially with regard to contamination of the air and water and greenhouse gas emissions. The following issues with creating and enforcing climate rules are brought to light by this case:

**Balancing Economic Development and Environmental Protection:**

Governments often grapple with the need for economic growth and the imperative to protect the environment. Striking the right balance between these two goals is challenging, as seen in cases where development projects clash with environmental concerns. Long-running legal disputes pertaining to climate policies may cause delays in their execution. This case serves as an example of both the difficulties in guaranteeing the enforcement of environmental legislation and the drawn-out procedure of dispute resolution. Enforcing climate legislation efficiently is vital, and governments and companies must comply. One of the ongoing challenges is making sure that rules are followed and that sanctions are applied when needed. Projects related to climate change often have disproportionate effects on

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<sup>14</sup> Nagri Hakku Suraksha Samiti & Ors. v. State of Jharkhand & Ors. (2011).

marginalized groups. As demonstrated by the case, striking a balance between these populations' rights and interests is a difficult task. Comprehensive environmental protection necessitates the alignment of climate rules with other policies, including land acquisition and energy planning. In many jurisdictions, ensuring this coherence might provide a challenge. Although there are many intricate obstacles to overcome, climate regulations are crucial for solving the global climate catastrophe. The significance of managing these obstacles is highlighted by the aforementioned case law, which shows how to balance environmental preservation with economic development, effectively settle conflicts, and guarantee compliance while defending the rights of impacted communities. Environmental Impact Assessments (EIAs), which assess the environmental effects of projects, policies, or activities, are essential to the rules addressing climate change. With an emphasis on greenhouse gas emissions, energy use, and adaptation strategies, EIAs evaluate how proposed projects either exacerbate or lessen climate change. EIAs give decision-makers the vital information they need to approve or modify projects with the knowledge that takes climate change into account. EIAs recommend actions to reduce carbon footprints and prepare for the effects of climate change, such as the adoption of renewable energy sources and the resilience of infrastructure. By allowing interested parties to voice concerns about climate change and guaranteeing transparency, EIAs include the public in the decision-making process. EIAs assist in meeting legal obligations, lowering the possibility of legal disputes, and guaranteeing that the effects of climate change are taken into account. They assess the combined effect of several initiatives, taking into account the long-term and regional implications on the climate. EIAs are critical for improving sustainability, coordinating development with climate goals, and protecting communities and ecosystems from the effects of climate change.

**Legal Standing and Access to Justice:** There are major obstacles to accessing justice and legal standing in climate change litigation. It might be difficult for many people and communities impacted by climate change to draw a clear connection between the harm they experience and a particular project or government action. This may jeopardize their ability to file

lawsuits. People with little money may be discouraged from pursuing climate change cases due to the high cost and duration of legal proceedings. Funding and legal assistance for climate lawsuits are frequently insufficient. Climate change is a global issue, and it can be challenging to determine which court or jurisdiction should hear a case. This can lead to jurisdictional disputes and delays.

**Terrorism and Counterattacks:** Threats and reprisals against individuals and environmental activists may deter them from taking legal action. Those seeking justice for harm caused by climate change may encounter challenges due to the length and complexity of legal procedures. In order to ensure that lawsuits pertaining to climate change are heard and that justice is available to all, efforts are being made to overcome these obstacles through legal reforms, more money for climate litigation, and assistance for vulnerable groups and individuals.

The *Urgenda Foundation v. The Netherlands* (2019)<sup>15</sup> case is a landmark legal decision that emphasized the role of the judiciary in addressing climate change issues. In this case, the Dutch environmental organization Urgenda sued the Dutch government for its failure to take sufficient action to mitigate climate change. The following main ideas emphasize the function of the judiciary. The decision upheld the idea that governments have an obligation to defend their citizens' human rights, which includes the right to a secure and healthy environment. It underlined that governments might be held responsible for carrying out this obligation by the courts. Following the court's decision in favor of Urgenda, the Dutch government was mandated to drastically cut greenhouse gas emissions. This ruling demonstrated the judiciary's ability to become involved in climate cases and force governments to act more forcefully. The case established a worldwide precedent, inspiring judges in other nations to take up cases pertaining to climate change. It proved that courts may be crucial in promoting climate change. Urgenda served as an example of how the courts may ensure that governments fulfil their obligations under international accords and their climate commitments

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<sup>15</sup> *Urgenda Foundation vs. the Kingdom of the Netherlands*, <https://www.recht.nl/rechtspraak/uitspraak?ecli=ECLI%3ANL%3AGHDHA%3A2018%3A2591> (Last visited Feb. 12, 2024).

by bridging the gap between climate policy and the law. The case increased public awareness of the judiciary's involvement in climate change issues and attracted a lot of attention from the media. It reaffirmed the idea that using the legal system as a strong weapon in the battle against climate change can be effective.

In climate cases, Public Interest Litigation (PIL) serves as a valuable tool for ensuring that the interests of the broader public and future generations are considered and protected in the face of climate change. It empowers individuals and organizations to advocate for climate justice and environmental protection through the legal system.

**Evolving Legal Landscape:** The legal environment surrounding climate change is always changing. It is a reflection of the complexity and increasing severity of the climate concerns. Aspects that are changing include the appearance of historic court cases pertaining to climate change, the creation of new environmental laws and regulations, global climate agreements such as the Paris Agreement, and a growing understanding of the necessity of climate justice. Governments are modifying their legal systems to address the effects and emissions of climate change, and courts throughout the world are becoming more involved in climate-related litigation. It is anticipated that as the effects of climate change worsen, the legal system will adapt even more to meet the needs of a changing global community. The National Green Tribunal<sup>16</sup> was established on October 18, 2010, in accordance with the National Green Tribunal Act, 2010, to handle cases pertaining to environmental protection, the preservation of forests and other natural resources, the enforcement of environmental rights, and the provision of relief and compensation for damages to people and property. It is a specialist body having the knowledge and experience needed to resolve environmental conflicts involving multiple disciplines. The Tribunal will follow natural justice principles instead of following the process outlined in the Code of Civil Procedure, 1908<sup>17</sup>. Specialized environmental tribunals, with their

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<sup>16</sup> The National Green Tribunal, <https://www.greentribunal.gov.in/about-us> (Last visited Feb. 12, 2024).

<sup>17</sup> The Code of Civil Procedure, 1908, <https://www.indiacode.nic.in/bitstream/123456789/2191/1/A1908-05.pdf>. Last visited??

knowledge and concentrated attention on environmental and climate-related matters, are essential to the changing legal scene. These tribunals help to expedite the judicial process by addressing disputes related to the environment. This ensures that complicated environmental cases are handled effectively and with a thorough understanding of environmental law.

The grave issues created by climate change have given rise to emerging legal conceptions in international law, such as Climate Refugees and Climate Justice.

**Climate Refugees:** This phrase refers to the necessity of safeguarding and supporting people and communities that are compelled to relocate as a result of climate-related effects, such as rising sea levels or harsh weather. The fact that it is not yet legally defined emphasizes how urgent it is to acknowledge and cater to the interests and rights of persons who have been displaced due to environmental issues.

**Climate Justice:** Ensuring equal and fair responses to climate change is the goal of climate justice. It highlights the need for historically high-emitting countries to step up their efforts to slow down climate change and help the weaker countries and populations that are disproportionately impacted by its effects.

**International Legal Challenges:** Due to several issues, international climate agreements and talks are inherently difficult. First and foremost, almost all of the world's nations are affected by climate change, each with its distinct objectives, interests, and stages of development. It is a complex task to coordinate these disparate nations to reach a consensus on shared objectives.

Additional layers of complication are created by divergent national interests and historical obligations. Developed countries, who have traditionally been significant polluters, need to negotiate with emerging countries that are aiming for economic growth while taking equality and justice issues into account. Other issues include developing and putting into practice legislative

frameworks, dealing with enforcement procedures, and guaranteeing openness. Making decisions is made more difficult by the complex and diverse subject of climate research, which is always changing.

These agreements are complex because of the responsibilities played by the business sector and civil society organizations, changing political environments, unanticipated world events, funding, and technology transfer. It takes diplomacy, collaboration, flexibility, and a shared resolve to address the pressing global issue of climate change to handle this complexity.

The ocean absorbs the majority of the surplus heat brought on by rising greenhouse gas concentrations in the atmosphere, which results in ocean warming. The ocean can store a huge quantity of energy due to its large mass and high heat capacity. Between 1971 and 2010, the ocean is thought to have absorbed over 93% of the Earth's total excess heat storage. United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10, 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, also known as 'the Fish Stocks Agreement'.<sup>18</sup> The other two reports of the UN Secretary-General on Oceans and the Law of the Sea address "The effects of climate change on oceans"<sup>19</sup> and "Sea-level rise and its impacts"<sup>20</sup>. The relevant publications from the Intergovernmental Panel on Climate Change (IPCC) are a significant source of inspiration for both of these studies.

In international climate change discussions, liability and compensation are divisive topics: The historical accountability for greenhouse gas emissions is the source of disagreements. Developing nations argue that wealthier countries should be more responsible for climate impacts because historically they have emitted the most. Developed nations frequently oppose taking full accountability for past emissions. The irreversible effects of

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<sup>18</sup> The United Nations Fish Stocks Agreement, <https://www.un.org/oceancapacity/unfsa> (Last visited Feb. 12, 2024).

<sup>19</sup> Report of the Secretary-General on "The effects of climate change on oceans", of 6 March 2017 (A/72/70)

<sup>20</sup> Report of the Secretary-General on Oceans and the law of the Sea on "Sea-level rise and its impacts" of 16 March 2020 (A/75/70).

climate change cause “loss and damage” to low-lying and vulnerable countries. They claim that past emissions are to blame for these losses and demand payment for them. Richer nations are reluctant to offer this kind of reimbursement. In international climate negotiations, reaching a consensus on accountability and compensation is challenging due to the intricate political factors surrounding these problems.

**Exemplary Case:** September 2023 saw six young Portuguese citizens file a case against 32 nations before the European Court of Human Rights (ECHR) for their lack of protection from climate change. The plaintiffs, who are all Portuguese and range in age from 11 to 24, will contend that they are directly impacted by climate change and request that the court order these nations to swiftly step up their efforts to combat it<sup>21</sup>. Youths claim that the effects of the climate issue, particularly Portugal’s yearly heat waves and wildfires, threaten their way of life and health, which is why they decided to crowdfund the legal case in October 2017. The youths claim that the effects of the climate issue, particularly Portugal’s yearly heat waves and wildfires, threaten their way of life and health, which is why they decided to crowdfund the legal case in October 2017.<sup>22</sup>

## V. CONCLUSION

Climate change stands as a paramount legal and governance challenge demanding innovative solutions and unprecedented global cooperation. Its far-reaching impact transcends borders, necessitating legal frameworks that evolve with the dynamic nature of environmental threats. Implementing effective policies, enforcing commitments, and addressing the complexities of climate-related disputes require collaborative efforts on a global scale. International cooperation, enforcement, liability, and striking a careful balance between protecting the environment and commercial considerations are among the legal problems in climate change governance. Determining

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<sup>21</sup> Truly a David and Goliath case’: Six young people take 32 countries to court in an unprecedented case, <https://edition.cnn.com/2023/09/27/europe/portugal-climate-lawsuit-human-rights-court-intl/index.html> (Last visited Feb. 12, 2024).

<sup>22</sup> Portuguese youths sue 33 European governments at EU court in largest climate case ever, <https://theconversation.com/portuguese-youths-sue-33-european-governments-at-eu-court-in-largest-climate-case-ever-214092> (Last visited Feb. 12, 2024).

and upholding emission reduction pledges, resolving disparate effects on disadvantaged populations, and managing intricate jurisdictional overlaps are crucial concerns. The process of using legal measures to combat climate change becomes more complex when clear frameworks for accountability and efficient execution are established. Legal frameworks must be modified if complex issues relating to climate change are to be successfully addressed. Strong and adaptable legal frameworks are necessary as the climate crisis develops in order to address new problems, promote international cooperation, and hold organizations responsible. We can better adapt to the dynamic nature of environmental challenges, protect vulnerable people, and advance sustainable behaviors by iteratively improving and updating legal frameworks. As nations grapple with the urgency of mitigating climate change, fostering innovation in legal approaches becomes imperative. Only through unified, adaptive, and forward-looking legal solutions can we hope to navigate the complexities of climate governance, safeguard our planet, and ensure a sustainable future for generations to come.



# GLOBAL GOVERNANCE AND INTERNATIONAL MIGRATION IN THE POST-GLOBALIZED WORLD

Dr. Varadharajan Udayachandran\*

## ABSTRACT

*Throughout history, man has always been migratory, moving from one corner of the world to another, especially in search of good conditions where they can survive. Since the advent of the Westphalian notion of 'sovereignty', States have been increasingly protective about their citizenry and their borders tightening norms of political membership. However, industrial evolution and the globalization that ensued in the 19<sup>th</sup> and 20<sup>th</sup> centuries facilitated free flow of trade and capital on an unprecedented scale hitherto unheard of. The 'duo effect' of both globalisation and international migration has brought consequences to the migrant's States of origin as well as the receiving or host States. Despite the 'duo effect' control of international migration by large remains under the clutches of the 'sovereign' State with the States unrelenting to let go of control over it triggering calls for a 'global authority' to govern matters relating to international migration. The existing hard and soft law on the point is*

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*inadequate and has unsettled regulation of international migration. There is therefore intervention at both legislative levels as well policy making stages to deal with contemporary challenges posed by international migration. Therefore, realising the effects brought about by globalization and international migration, it is contingent that States should commit towards a 'global governance' model for regulation of international migration which would be win-win situation for all the stake holders concerned viz., migrants and their families; migrants' States of origin; and the destination or host States.*

**Keywords-** *Globalisation, Global Governance, International Migration, Multiculturalism, Sovereignty.*

## **I. INTRODUCTION**

The Global Commission on International Migration<sup>1</sup>, observed that: “The world has been transformed by the process of globalization. States, societies, economies, and cultures in different regions of the world are increasingly integrated and interdependent. New technologies enable the rapid transfer of capital, goods, services, information, and ideas from one country and continent to another. The global economy is expanding, providing millions of women, men, and their children with better opportunities in life. But the impact of globalization has been uneven, and grow disparities are to be found in the standard of living and level of human security.”

The Commission observed that these disparities have triggered international migration, which was hitherto unheard of. According to the World Migration Report 2020<sup>2</sup>, at present, there are a staggering 272 million people who are international migrants working or have settled globally.<sup>3</sup> Migrants today exist in almost all parts of the world. These migrants have travelled

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<sup>1</sup> Global Commission for International Migration, *Migration in an Interconnected World: New Directions for Action*, GCIM (2005).

<sup>2</sup> Marie McAuliffe and Binod Khadria (eds.), *World Migration Report 2020 of the International Organization of Migration*, IOM (2020).

<sup>3</sup> *Ibid.*

form one part of the world to another for a variety of reasons, which the researcher wants to show are triggered by the globalizing world economy.<sup>4</sup>

International migration or human mobility has over the years, become an integral component of the global economy, with states and corporates looking for skilled workforce across borders. This is evident from the fact that large clusters of migrants are found in the so-called *global cities*, as observed by M. Czaika, is where *dynamic, innovative and highly cosmopolitan urban centres that are enabling people, places and cultures in 'different parts of the world to become increasingly interconnected.'*<sup>5</sup>

In this light, the paper is broadly divided into four parts, where the article *firstly* explains the consequences of the 'duo-effect' of globalization and international migration upon all the stakeholders *viz.* migrants and their families, the migrants' States of origin and the destination or host States; *secondly* discusses how the regulatory regime of international migration lies fragmented and inadequate to meet the challenges posed by globalization and *thirdly* this article concludes by suggesting that States should commit towards a 'global governance' model for regulation of international migration which would be win-win situation for all the stake holders concerned.

## II. CONSEQUENCES OF THE 'DUO EFFECT' OF GLOBALISATION AND INTERNATIONAL MIGRATION

Globalization as a new phenomenon has altogether changed the global migration scenario for the immigrants. Though primarily coming developing States or underdeveloped States, they arrive at the destination states with specific communication and technological skills. Parallely, globalization also has, to a large extent transformed the destination states to be more welcoming and multicultural, at the same time there are numerous methods of retaining ties with their States of origin.<sup>6</sup>

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<sup>4</sup> ALEXANDER T. ALEINIKOFF & VINCENT CHETAIL (EDS.), *MIGRATION AND INTERNATIONAL LEGAL NORMS* (T.M.C. Asser Press 2003).

<sup>5</sup> CZAIIKA, *infra* note 16.

## **II. (1) MIGRATION FLOWS FROM LOW-WAGE STATES TO HIGH WAGE STATES**

One common phenomenon surrounding the flow of migration is that there is always international movement from labour-abundant low-wage States to labour-scarce high wage destination States. Therefore, it can be emphasized that the flow of migration from the regions of Africa, Asia, and Latin America to largely developed States is predominantly due to abundant opportunities opened up by the globalization. Globalization benefited States with abundant resources, high demand for labour, political stability, standard of living. Though there is an abundance of natural resources available in other regions of the world, economic and political conditions would not favour immigration, rather they might force the masses to emigrate to other states. The following are the reasons why immigration to developed States is generally preferred:

- The economic and political conditions are stable in the destination State;
- The standards of educational facilities are higher.
- Entrepreneurs who go in search of business opportunities find developed states giving good rates of return in the destination states, plus there is also human resource surplus.
- Property rights including Intellectual Property Rights (IPRs) are adequately protected under well-defined legal regimes within the destination States.

Whatever the reasons that may be attributed, globalization did bring millions of people out of poverty, especially in the sending States, yet the gap between the rich and the poor still persists. The economic disparities between the rich and the poor are widening. Developing States are reeling under severe economic crises and poverty, unable to create jobs for the huge young talents these States have. The Global Commission on International Migration also

found out that there were other factors that had triggered the international migration of people *viz.*, *poor governance, lack of human security, governmental corruption, authoritarianism, gross human rights violations, and armed conflicts.*<sup>7</sup>

Therefore, the people are on the constant lookout for jobs, opportunities, better living conditions, etc., beyond the borders that are not available in their native lands. With the means to reach destination States with a plethora of opportunities to the farthest corners of the world. This human mobility is logical because people from affluent states do not migrate to states where people are living under despotic conditions with poor human rights records and governments failing to protect their own people.

This is one side of the story, on the other hand, it is not that developed States can avoid international migration or close their borders preventing the entry of foreigners into their territories. It is an undisputed fact that for the developed states to continue with the economic development they have achieved over the years, they must continue to permit foreign workers into their borders as it is these migrants, who have for decades built nation-states into their territories. With plentiful jobs and minimal workforce, these States were always in constant demand for workforce. There is growth in demand for a workforce that would be ready to work for comparatively low wages as well as under harsh conditions. Therefore, migrants from developing or underdeveloped States fill in that gap. This is the same case with high-skilled migration as well. These sectors are facing an acute shortage of workforce with appropriate sets of skills.

And when capital and goods flow inside a State, labour becomes a prerequisite. However, labour is not received as freely as capital is being received in the destination States. There are huge disparities in State's

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<sup>6</sup> Mehdi Bozorgmehr, Anny Bakalian, and Sara Salman, *Host Hostility and Nativism* in STEVEN J. GOLD AND STEPHANIE J. NAWYN (EDS.) THE ROUTLEDGE INTERNATIONAL HANDBOOK OF MIGRATION STUDIES 19 (Routledge International Taylor & Francis Group 2013).

attitude and actions in its treatment of capital on one hand and labour on the other hand. The following are some of the issues that popup in all international migration discourses: brain drain from developing and least developed States to the developed world, discrimination and continuous exploitation of immigrants, human trafficking as an outcome of illegal migration, securing borders and ensuring effective control, migrants replacing natives, demographic ageing, etc.

## II. (2). GROWTH OF MULITCULTURALISM

The impact of globalization triggered by the internet revolution, coupled with the ease of international travel has resulted in two important consequences: *firstly*, migrants have gotten closer to their homes and this has in turn triggered further migration; *secondly*, the whole idea of *multiculturalism* has transformed into what can be termed as 'plural monoculturalism' in Amartya Sen's language.<sup>8</sup>

Therefore, with the constant surge in the international movement of people, it can be easily understood that, by this movement, people have gained access to jobs with comparatively high wages, excellent business opportunities, technological advancements, knowledge, and ideas that could not have been put at optimum use at their home State.<sup>9</sup> Therefore, with globalization, people of different cultures started living together in peaceful co-existence while developing roots in their new home state. Societies became plural societies with respect for each other's cultures. Mass migrations have actually altered the ethnic and cultural composition of host societies. Though at times such conflict of cultures has given rise to tension amongst communities, majority of the host societies have developed tolerance to such ethno-cultural changes.

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<sup>7</sup> *Supra* note 3

## II. (3). BRAIN -DRAIN FROM DEVELOPING STATES

Globalization has produced exponential results in international migration both high-skilled and low-skilled migrant workers from developing States to rich developed States.<sup>10</sup> IT professionals, Doctors, Engineers, Astronauts, artistes etc. have migrated in search of better opportunities to the developed world. However, as Andres Solimano observes, *there is an asymmetry that exists in the current patterns of international migration.*<sup>11</sup> While on one hand high-skilled are the most preferred class of immigrants, on the other hand low-skilled immigrants are not as much welcome. On an average comparison, it can be shown that the number of high-skilled migration is much more than the volume of low-skilled migrants.<sup>12</sup> This high-skilled migrant amount to a meager 10% of the total international migrants, the others being semi-skilled and low-skilled migrants.<sup>13</sup> However, in many developed States, high-skilled migrants have been rewarded economically. Why does this phenomenon occur? The ensuing portion seeks to address the question raised above. Although international migration tends to benefit the receiving State, it is the sending state that is at a loss on account of high-skilled migrants leaving their territory in search of better employment and living conditions. The researcher in the context of the study emphasizes that as far as the source States under the present research study are concerned, already high-skilled and semi-skilled talent is concentrated in the European Union, while States like India, China, etc. are producing new talents *en masse*. Globalization has increased the demand for so-called *knowledge*

<sup>8</sup> See AMRTYA SEN, *IDENTITY & VIOLENCE* (PENGUIN BOOKS, 2006).

<sup>9</sup> RINUS PENNINX ET. AL., *THE DYNAMICS OF INTERNATIONAL MIGRATION AND SETTLEMENT IN EUROPE: A STATE OF THE ART* (Amsterdam University Press 2006).

<sup>10</sup> Dominique van der Mensbrugge and David Roland-Holst, *Global Economic Prospects for Increasing Developing Country Migration into Developed Countries*, UNDP Research Paper 2009/50 October (2009).

<sup>11</sup> *Supra* note 8.

<sup>12</sup> Marc Helbling & Hans-Peter Kriesi, *Why Citizens Prefer High- Over Low-Skilled Immigrants: Labour Market Competition, Welfare State, and Deservingness*, 30(5) EUROPEAN SOCIOLOGICAL REVIEW, 595-614 (2014).

<sup>13</sup> *Ibid*

*people*<sup>14</sup> that just like capital these high-value and highly productive talents also get tapped in destination States, and, therefore, any uniform distribution amongst rich, moderately rich and poor States is practically not possible.<sup>15</sup>

## **II. (4) PREFERENCE OF HIGH SKILLED OVER LOW SKILLED MIGRANTS**

In the history of international migration to the destination States that the researcher has studied, one common phenomenon emerged. High-skilled were welcome wherever they wanted to migrate. Destination States would only rarely have a second thought on accepting high-skilled migrants. Different States have given several concessions and privileges to such migrating highly skilled immigrants. In this part, the researcher seeks to find an answer to this problem as to why elites are always the class of immigrants preferred. The movement of high-skilled was a logical consequence of the -brain drain- process discussed above. As working conditions in the host States were conducive for a lot of reasons, these high-skilled immigrants have always preferred working in developed and rich States than in their own States of origin. Though States facilitated the global movement of high-skilled immigrants to a large extent, it raised serious botheration among immigration policymakers and others. One issue that bothered them the most was local and global productivity and the development that will follow. International migration of high-skilled migrants traditionally deprived the source states of the benefits of talent and now this migration is also affecting the local workforce of the receiving State. So, there was an imminent loss to societies and States, both sending as well as receiving. It is said that high-skilled immigrants *aka* elites, possessed human capital and currency and are proclaimed as the builders of economic

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<sup>14</sup> Mathias Czaika & Hein de Haas, *The Globalization of Migration: Has the World Become More Migratory?* 48 INTERNATIONAL MIGRATION REVIEW, 283-323 (2014).

<sup>15</sup> *Supra* note 8, 173



power structures.<sup>16</sup> Mills had called them *power elites*.<sup>17</sup> Elites are professionals who work in institutions ranging from business corporations to educational institutions and even the military. Castells has portrayed the role of elites in the entire globalization process and the impact they created on global capitalism through technologies, trade, and labour.<sup>18</sup>

Elites' talent is considered a key economic resource and has led to innovations in science, technology, and business amongst other fields. The values of these economic talents have significantly risen with the development of globalization, the spurt in information technologies, and the international movement between the source States and the receiving States being shortened. There is always constant demand for such talent and many states consider this as indispensable in the global economic race. On the contrary, low-skilled labour is often perceived as easily replaceable and, therefore, the guarantees granted to elites are not extended to low-skilled migrants in the ordinary nature of circumstances.

## II. (5) BORDERLESS WORLD

Satvinder Juss asserts that, *already by the end of the closing years twentieth century, the advent of globalization means that there was a talk of a borderless world*.<sup>19</sup> In today's world, while there is free flow of information and capital, it becomes imminent that there shall be free flow of people too. For the free flow of people, states as political entities, should establish a framework of global governance.<sup>20</sup> A globalized world would lead us to

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<sup>16</sup> Christian Schneickert, *Globalizing Political and Economic Elites in National Fields of Power*, *Historical Social Research / Historische Sozialforschung* 43 (3) (165), SPECIAL ISSUE: ECONOMISTS, POLITICS, AND SOCIETY *New Insights from Mapping Economic Practices Using Field-Analysis* 329-358 (2018).

<sup>17</sup> CHARLES WRIGHT MILLS, *THE POWER ELITE* (Oxford University Press 1956).

<sup>18</sup> 2 MANUEL CASTELLS, "THE INFORMATION AGE: ECONOMY, SOCIETY AND CULTURE: THE RISE OF THE NETWORK SOCIETY", 162 (Oxford: Wiley Blackwell 2009).

<sup>19</sup> SATVINDER JUSS, *INTERNATIONAL MIGRATION AND GLOBAL JUSTICE*, (Routledge (Taylor & Francis) 2006).

<sup>20</sup> K. OHMAE, *THE BORDERLESS WORLD*, CHARLES WRIGHT MILLS, *THE POWER ELITE* 12-13 (Parper Collins, 1991).

discourses on what Yasemin Soysal, terms as *post-national citizenship*.<sup>21</sup> She is of the considered opinion that ‘world-level pressures towards more expanded individual rights have led to increasing incorporation of foreigners into existing membership schemes.’<sup>22</sup>

Further according to her, extending membership to foreigners has rendered national citizenship meaningless.<sup>23</sup> The logical reason for her assertion was that, *territorially bounded nation-state with which we are so familiar was the dominant form for not only 100 years from the mid-nineteenth to the mid-twentieth century, and the emergence of universal personhood is eroding the territorially bounded nation-State.*<sup>24</sup>

Globalisation is not only an economic concept as stated in the following terms:

*Globalization is the development of an increasingly integrated global economy marked specifically by free trade, the free flow of capital, and the tapping of the free labour market.* Stated in simple terms, it is nothing but the intensification of economic, political, social, and cultural expression. “it is simply the compression of time and space”<sup>25</sup>. Globalization is said to produce the following consequences:

- It simulates a situation of mutual dependence as there is a free flow of trade, movement of people across borders, and the confluence of various cultures;
- Innovative modes of transport and networking chains have constantly kept people on the go and today, goods, investments, and people move more rapidly than ever in the history of mankind;

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<sup>21</sup> YASEMIN SOYSAL, *THE LIMITS OF CITIZENSHIP: MIGRANTS AND POSTNATIONAL MEMBERSHIP IN EUROPE*, 1 (Chicago University Press, 1994).

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> Linda Bosniak, *Citizenship Denationalized*, 7(2) INDIANA JOURNAL OF GLOBAL LEGAL STUDIES, 447-509 (2000).

<sup>25</sup> DAVID HARVEY, *THE CONDITION OF POSTMODERNITY: AN ENQUIRY INTO THE ORIGINS OF CULTURAL CHANGE*, (Wiley-Blackwell 1992).

- Any incident happening in any corner of the world today, has international ramifications, signifying that the artificial distinction on the basis of borders is becoming increasingly extinct.

In a world without borders, where people of the world can enjoy the *right to free movement* by moving from one country to another, as *Utopian* as the idea might sound, is worth imagining in the era of globalization and most importantly without losing hope. A borderless world may not only reduce tensions amongst *Sovereign* states but also tap the resources and energy thrust into managing or rather regulating the entry of people into *Sovereign State's* borders. There are several authors like Saskia Sassen who argue for a cosmopolitan world<sup>26</sup> asserting the natural right of people to decide where they wanted to live.<sup>27</sup> Though this right exists only partially, i.e., the right of individuals to leave their own territory there is no right to enter another state's territory unless explicitly or impliedly authorized.<sup>28</sup> Article 13 (2) of the UDHR, provides as follows: '*Everyone has the right to leave any country, including his own, and to return to his country*'.<sup>29</sup>

As stated above, there is international protection in the majority of cases to leave one's own state, however, the right of entry is not automatic. Emigration can be called a matter of right but not immigration.<sup>30</sup> While capital flows freely in a globalized world, isn't it pertinent to assert the 'right to mobility' is very much quintessential? Historically, international

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<sup>26</sup> SASKIA SASSEN, *LOSING CONTROL? SOVEREIGNTY IN AN AGE OF GLOBALIZATION*, (Columbia University Press 1996). | Also see, Saskia Sassen, *Globalization or Denationalization?* 10 (1) *REVIEW OF INTERNATIONAL POLITICAL ECONOMY*, 1-22 (2003).

<sup>27</sup> Bonnie Kristian, *Why is there no right to live where you please?* THE WEEK (Oct.24,2018), <https://theweek.com/articles/803178/why-there-no-right-live-where-please>.

<sup>28</sup> CHRISTOPHER HEATH WELLMAN, *Freedom of Movement and the Rights to Enter and Exit* in *MIGRATION IN POLITICAL THEORY: THE ETHICS OF MOVEMENT AND MEMBERSHIP*, (Oxford University Press 2016).

<sup>29</sup> GORDON BROWN (ED.), *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS IN THE 21ST CENTURY: A LIVING DOCUMENT IN A CHANGING WORLD* (Cambridge, UK: Open Book Publishers, 2016).

<sup>30</sup> Thomas Kleven, *Why International Law Favours Emigration Over Immigration,* 33 *UNIVERSITY OF MIAMI INTER-AMERICAN LAW REVIEW*, 69-100 (2002).

migration of people has played a vital role in the world economy. In the context of globalization, it must be emphasized that migration flows (both legal and illegal) across the world have always thwarted innumerable attempts by States to regulate the movement across borders. The idea of seeking an 'open world' or 'world without borders' may be more complex than it might seem at the outset. The very notion of *Sovereignty* is deeply intertwined with the border control over the territory to which *Sovereignty* extends. Therefore, calls for a borderless world have always been dismally disregarded as unrealistic even for argument's sake. This phenomenon is not likely to change anytime in the foreseeable future.

As stated above from a human rights perspective, the UDHR and other core international human rights instruments only guarantee the *right to emigrate*. This right is, however, futile without a corresponding right of entering into another State's borders. Stricter immigration laws and policies render immigration a herculean task, often triggering illegal means of attaining this lawful dream.

The supporters of a borderless world, on the other hand, make counter-claims on the pretext that measures aimed at controlling borders have shown to be fruitless and inefficient. Therefore, such measures should be avoided and support be garnered for recognizing the multiple benefits, the movement of people across borders have in the array.

Immigration control models across States show that several governments place heavy reliance on new technologies in managing border and adopt new methods of identifying unauthorized, undocumented migrants once they enter the territory. Security concerns often dominate migration control discourses. There are several states that even seek the co-operation of the sending States in tacking the issue of migrants' influx.

On the other side of the spectrum, there are the so-called States of the developed world, that are formulating and propagating *restrictionist* policies

with regard to immigration.<sup>31</sup> It is to be emphasized at this juncture that these were the States that had reaped the benefits of migration when there was free movement of people. In this context, Satvinder asserts that “The irony is that in so doing, the affluent North and West, have ignored the fact that their own basic rights and liberties were developed when they were once themselves the major beneficiaries of free movement rights in the West.”<sup>32</sup> He further asserts that the people of the West were once migrants by themselves. Therefore, it is easy to assert that the development of the human being as we see it today is nothing but a natural consequence of migration itself. But this historical narrative does not find relevance in the immigration policies developed to curb the inflow of migrants into a state’s territory.

W.M. Spellman, asserts that, *international migration is not a new and problematic issue at all*. On the contrary it is just natural human instinct to migrate. He further states that:

...[t]ogether with unpredictable shifts in climate, natural disasters and threats from hostile neighbours, a life of movement was the norm for most people and, as a result, fixed notions of territory and resource appropriation, the ‘mine and thine’, were largely absent from the collective assumptions of the group or kinship community.<sup>33</sup>

In the modern context, though the ‘*freedom of movement*’ enshrined in the *Universal Declaration of Human Rights 1948* and the *International Bill of Human Rights* asserting that ‘*Everyone has the right to leave any country, including his own, and to return to his country*’, this right is hardly enforceable and does not stand strong against the behest of *Sovereign States* at least when it comes to matters of immigration policies.

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<sup>31</sup> JOEL S. FETZER, *Theories of Open Borders* in OPEN BORDERS AND INTERNATIONAL MIGRATION POLICY: THE EFFECTS OF UNRESTRICTED IMMIGRATION IN THE UNITED STATES, FRANCE, AND IRELAND, (Palgrave Pivot, 2016).

<sup>32</sup> *Ibid.*

<sup>33</sup> W. M. SPELLMAN, THE GLOBAL COMMUNITY: MIGRATION AND THE MAKING OF THE MODERN WORLD, (Sutton 2002).

Though several international human rights instruments proudly declare that the rights and freedoms that they incorporate shall be enjoyed without any discrimination of any kind viz., race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, free movement is still a distant dream for the migrating masses. Though globalization has indeed opened the world and free movement as the same is tantamount to life itself for many, which in the words of Satvinder, *free movement* begets free life, independent *Sovereign* states are yet not on board. They do not realize that a free life means better life chances for the individual.

Ironically even though migration has enabled individuals in the destination states to have integrated migrants into their cultures and immigrants having contributed their bit to the overall growth of the destination states, directly or indirectly, States still try to assert the *Sovereign* rights over their borders over these immigrants. *Right to free* movement is not an absolute right. There are exceptions to the *freedom of movement*. Several international instruments, have some of the following exceptions to the *freedom of movement* like the State may impose restrictions on the *freedom of movement* on grounds of national security, public health, morality, and protecting rights and freedoms of other individuals.

These exceptions to a large extent do limit the scope of *free movement*. This again is the justification for States bringing in stringent immigration laws and policies. The *right to free movement* is as basic as any other right like the right to life, the right to privacy, etc. Civil rights today may not only be confined to the 'right to life'; right to a family etc. It also encompasses the right to *equal opportunities*; the right to achieve what he deserves and not only what is due to him. Therefore, with these arguments, the researcher like several other scholars wishes to assert that in the globalized world, the *right to free movement* is an integral part of the right to life itself and is inseparable from it. The researcher is also of the considered opinion that denying an individual the 'right to free movement' is synonymous with the denial of the 'right to life' of that person.

## II. (6) ILLEGAL MIGRATION AND HUMAN RIGHTS TRAFFICKING

With globalization resulting in an influx of immigrants in destination states, States started taking account the steady increase in the migrant population, and in some cases like the Gulf States and certain European States, the native population have over the years been outnumbered by the migrant population. To address this issue, States started bringing in stricter border control measures including reframing its immigration laws, forcing millions of migrants to gain entry into the destination States illegally.<sup>34</sup> The reasons behind taking such illegal routes can be best attributed to the failure to gain access into States through the legal routes available. It can also be argued that these people also enter States with the same dream as those immigrants entering through the immigration framework. These illegal migrants go to any extent to gain access to the State of their preference includes even getting trafficked at times.

While globalization has produced some positive impacts through the process of international migration of people and assimilating them within host societies. The trends in illegal or unauthorized migration and human trafficking can be seen as one patent defect in the entire migration history of the world. The fundamental question in the context of illegal migration remains: *What forces these illegal migrants to leave their family, native land, and friends resorting to life-threatening hazardous conditions to reach an alien soil without any sort of acquaintances whatsoever?*

To address this question, we must come back to our earlier discussions and assert that globalization has not produced the same impact across the world. While globalization as a process has improved the living conditions of millions of people, looking into the other face of it, it has created vast income, and developmental disparities across the globe, most specifically in

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<sup>34</sup> Khalid Koser, *Irregular migration, state security, and human security*, A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration (GCIM), (2005).

the migrant-sending States. Therefore, several factors influence people to sneak into foreign soil seeking better living conditions, not bothering about the consequences that may arise. Scarcity of resources and opportunities, poverty, poor living conditions, unemployment, demographic situations, and even environmental degradation act as catalysts triggering the movement of people both internally as well as externally. As internal migration is not the subject of the study, the researcher in this part has limited his focus only to external migration or rather international migration of people across borders.

Globalization though restricted in its outreach in modern times, the phenomenon as such is not coming to an end anywhere in the foreseeable future. There is ample evidence<sup>35</sup> to suggest that the flow of migration is not going to end anywhere in the future as the global migrant population continues to increase steadily.<sup>36</sup> From the global population perspective, the researcher puts forth two important trends that the world is witnessing:

- The developed is glaring at a severe workforce crisis as there are issues like aging population, unskilled national workforce, etc., causing severe repercussions in the domestic labour market of these two regions. Therefore, despite stringent immigration controls in these regions, the immigrant workforce cannot be ignored and total dependence on national workforce is far from reality. Nevertheless States continuously strive to control immigration flow and reduce dependence on foreign workforce and place reliance on the domestic workforce.
- As far as the sending States are concerned, these States contains the bulk of the world's population with several states reeling under severe

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<sup>35</sup> See, Nikola Sander, Guy J. Abel, Fernando Riosmena, *The Future of International Migration*, in WOLFGANG LUTZ, WILLIAM P. BUTZ, AND SAMIR KC, *WORLD POPULATION AND HUMAN CAPITAL IN THE TWENTY-FIRST CENTURY*, (Oxford University Press 2014).

<sup>36</sup> Salvador Gutiérrez, *Four Stories to imagine the future of international migration*, IOM BLOG (Nov. 30, 2023), <https://rosanjose.iom.int/site/en/blog/four-stories-imagine-future-international-migration>.



poverty, unemployment, underdevelopment and an excessive workforce whose ability has not put for much constructive use in the States of their origin.<sup>37</sup>

Despite the growth in demand for workforce within the domestic labour markets, developed States always do perceive immigrants with some apprehension of threats to national security, etc. International migration facilitated by globalization is seen as a threat to the nation-State.<sup>38</sup> It is in this light that receiving States have taken extreme steps to curb or minimize the influx of migrants into their borders. The oft quoted reason for bringing in strict immigration control measures like framing stringent laws is because of the undesired illegal immigration into a State's boundary.<sup>39</sup>

Even from the perspective of the *principle of territoriality*, Sovereign States widely consider that they have a right to permit to the exclusion of others only those categories of people whom they deem fit into their territory. As R. McCorquodale puts it:

*The present international legal system is so determined to protect the interest of States and their territorial boundaries that any people who seek to move across those boundaries are seen as intruders. If they can enter at all, they enter at their own risk.*<sup>40</sup>

Immigration is often perceived as a geopolitical imagination that signifies the behaviour of individuals tending to disturb the geographical *Sovereignty* of States.<sup>41</sup> It is argued that immigration directly threatens territorial

<sup>37</sup> See EVA ØSTERGAARD-NIELSEN (EDN.), INTERNATIONAL MIGRATION AND SENDING COUNTRIES: PERCEPTIONS, POLICIES AND TRANSNATIONAL RELATIONS, (Palgrave Macmillan, 2003).

<sup>38</sup> Agreement Lathi Jotia, *Globalization and the Nation-State: Sovereignty and State Welfare in Jeopardy*, B2 US-CHINA EDUCATION REVIEW, 243-250 (2011).

<sup>39</sup> Dennis Broeders & Godfried Engbersen, *The Fight Against Illegal Migration* 50 (12) AMERICAN BEHAVIOURAL SCIENTIST, 1592-1609 (2007).

<sup>40</sup> R. McCorquodale, *International Law, Boundaries and Imagination* in DAVID LESLIE MILLER & SOHAIL H. HASHMI, BOUNDARIES AND JUSTICE: DIVERSE ETHICAL PERSPECTIVES, (Princeton University Press, 2001).

<sup>41</sup> Christopher Rudolph, *Sovereignty and Territorial Borders in a Global Age*, 7 (1) INTERNATIONAL STUDIES REVIEW, 1-2 (2005).

*Sovereignty* and integrity be it refugees or unauthorized immigrants or for that matter even legal immigrants in some cases. Neither the state of their origin is aware, nor the receiving is aware of such unauthorized migrants entering their territory. There is both crossing and entering happening during illegal migration that directly challenges the very notion of *Sovereignty*. And as once observed by the Supreme Court of the United States of America:

*It is an accepted maxim of international law, that every Sovereign nation has the power, as inherent in the Sovereignty, and essential to its self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may seem fit to describe.*<sup>42</sup>

### **III. GLOBAL GOVERNANCE AND INTERNATIONAL MIGRATION IN THE CONTEXT OF GLOBALIZATION**

In the preceding portions, an earnest attempt has been made to link the consequences of the combined effect of both globalization and international migration. It is, however, difficult to ascertain which one preceded the other. It is ironical that international labour migration remains subjected to ‘*a regime of asymmetric global governance*’. While trade and capital moves freely across borders, movement of people across border which is connected with such movement of trade and capital is regulated by multi-layered systems of governance, largely within the controls of the receiving State. There is hardly a system of global governance that acts as a ‘*supra-natural authority*’ and regulates labour migration like the ones available for movement of trade and capital. We can, however, find some fragmented governance within the frameworks of ILO, WTO, etc.

The International Labour Organization (ILO) established in 1919 is responsible for setting international standards in labour management globally. Since it is a tripartite organization consisting of representatives of

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<sup>42</sup> *Nishimur Ekia v. U.S. et al* 142 U.S. 651

labour union confederations, employers' association and governments, focus has always been upon domestic labour alone. This is because even the labour associations are apprehensive about the effects of migrant labour upon the domestic work force. The ILO has comprehensive sets of Conventions and Recommendations that sets and oversees international labour standards. But on account of conflict *sovereign* interests, it does not largely regulate international movement of persons.

World Trade Organization (WTO), the '*supra-national authority*' on the subject of international trade was established with the objective of bringing about "reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade". One important arena that deals with the cross-border movement of people in the WTO trade regime is the General Agreement on Trade in Services (GATS). Mode IV of GATS is deals with "natural persons" who cross boundaries to offer services in other countries. The GATS does not deal with the rights of persons, it only calls for concerned governments to "reduce barriers and improve market access to Mode IV foreign suppliers of services". From the above, it is clear that Mode IV is largely concerned with the trade aspects of international migration rather than the 'rights' approach of international migration. Moreover, GATS is primarily concerned with the movement of 'highly-skilled' migrants than 'low-skilled' migrants. Further, the GATS Annex on "Movement of Natural Persons Supplying Services under the Agreement" assures that nothing in the GATS regime shall impede the *Sovereign's* authority to 'regulate the entry of natural persons, into their territory, or decide the duration of their stay' thereby guaranteeing the rights of the *Sovereign* State to protect its territorial integrity. It is, therefore, to be highlighted that the GATS regime does not impede the *Sovereign* authority and the supervisory role of WTO in matters of movement of natural person is hardly present.

The International Convention on the Rights of All Migrant Workers and Members of their Families (ICRMW),1990 is another framework that deals

with rights of migrant workers. The Convention came into force only in 2003, on account of its failure to garner the minimum number of State parties. As of 2023, there are only 55 ratifications to the Convention. Like other International human rights instruments, the ICRMW also includes a list of rights guaranteed to migrant workers. There are two sets of rights guaranteed under the ICRMW: a) a set of rights that are available to all migrant workers including the illegal migrant workers and their families (Part-III); and b) another set of rights that are available only to regular migrant workers (Part-IV). Further, like another instrument the ICRMW also establishes a “Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families” (ICRMW Committee). The ICRMW Committee entertains “State Reporting Mechanisms and Individual Complaint Mechanisms” which like other Committees within the international human rights regime have been rendered ‘toothless’ and are plagued by several shortcomings. Also, several States particularly the developed ones are reluctant to sign the ICRMW because they do not want to extend any of the guarantees mentioned above to ‘irregular migrant workers. There is a lack of political will and ideological differences between the North-South and this is considered as the key factor for the failure of the ICRMW. Therefore, the ICRMW as observed by Vincent Chetail is the “poor cousin of the UN Treaty Bodies”.

United Nations Sustainable Development Goals (UNSDG) in its 2030 Agenda for Sustainable Development, recognizes ‘migration as a powerful driver of sustainable development’. The UNSDG Target 10.7, requires States to “facilitate orderly, safe, regular and responsible mobility of people including through the implementation of planned and well-managed migration policies. The UNSDG is, however, a work in progress, and only time will tell how States have positively responded to achieve the UNSDG target 10.7.

The Global Compact on Migration (GCM) 2018 is by far the most relevant inter-governmentally negotiated agreement through a ‘Soft Law’ (non-

binding) addressing the issue of international migration within the framework of the UN. Though there were earlier attempts in the form of 'Soft Law', these were not as effective as the GCM 2018. It is drafted consisting of UNSDG Target 10.7. As it is evident from the text of the GCM, GCM 2018 appears to be the first document to emphasize the necessity of 'global governance' of International Migration. According to Kathleen "GCM 2018 deals with 'safe, orderly, and regular migration' and is considered as the 'first comprehensive framework of principles and objectives to guide international cooperation on migration that has been formally negotiated and adopted by States." The global migration crisis of 2015 that produced large unanticipated and unauthorized flows of migrants globally. The GCM 2018 is built upon the premise that "migration is a multi-dimensional reality that cannot be addressed by one government policy sector alone". According to Kathleen from the Migration Policy Institute (MPI), the GCM has three 'core' components, viz., a) reducing the negative factors that compel people to leave their homes from poverty and lack of opportunity to climate change and lawlessness<sup>43</sup>; b) Amplifying the benefits that migration can bring to individuals, communities and countries of origin and destination States<sup>44</sup>; c) Bringing order to the migration process through better understanding of its scale and dynamics, more effective policies, expanded international cooperation, etc<sup>45</sup>. The GCM 2018 is the first international document that comprehensively addresses all aspects of international migration. It strives to strike a balance between the 'rights of migrant workers' and competing 'sovereign' interests. The GCM 2018 is based upon the bulk of International Human Rights instruments that deal with human rights in general and labor rights in particular. As ambitious as it may sound, the GCM 2018 lacks any concrete mechanism for "enforcement" of the goals stated in the document. One of the reasons for the possible conclusion of GCM 2018 is on account of the fact that it does not per se create any binding obligations.

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<sup>43</sup> Kathleen Newland, *Global Governance of International Migration 2.0: What Lies Ahead*, Issue No.8 POLICY BRIEF TOWARDS A GLOBAL COMPACT FOR MIGRATION: A DEVELOPMENT PERSPECTIVE- A SERIES TO INFORM THE DEBATE, 1-11 MIGRATION POLICY INSTITUTE (2019).

<sup>44</sup> *Ibid* 7.

<sup>45</sup> *Supra* note 3.

*The lacklustre response by Sovereign States in international cooperation in global governance of international migration is because of the varying interests of these States in the subject matter. Each sovereign State has its own aspirations and necessities. The fundamental obligation of the State is to protect its identity. Migrants are often seen as threats to a nation's identity. However, States fail to understand that while they continue to enjoy the fruits of globalization, they are reluctant to adjust to the reality of international migration, triggered by globalization itself. Of late, States have started realize that even with the stringent immigration norms, States are not able to prevent the migrant flows into the State. Sovereign States should shed their pre-globalization mind-set of retaining autonomy over migration processes. Migration may be an unpleasant consequence of globalization, but there is hardly anything that can be done by it. Today States are busy engaging in immigration control, combating illegal entry, human trafficking, etc. without any success. The legal chain of migration is not the only method of entering in the destination States any more. States should be wary of the situation and come to terms with globalization and international migration. The GCM is a crucial tool that can be built upon into a robust mechanism, though a 'Soft Law' today, has the potential of becoming a platform for much needed global governance in the future for international migration.*

#### **IV. CONCLUSION**

From the above analysis, it can be emphasised that international migration has been resorted to by people for centuries. Tracing the entire history of international migration does not fit inside the boundaries of this article. However, it can be generalized that people have always migrated to unknown corners of the world looking for better job prospects and economic well-being which is otherwise not possible in their State of origin. However, it is also to be understood that 'globalization' in its modern form exacerbates economic inequalities amongst nation-states, and therefore, migration has

become a matter more of necessity, than of choice to overcome this inequality. A 2023 World Bank Report titled “Migrants, Refugees and Societies” highlights that ‘migration is required for all countries. International Migration is, therefore, gainful not only for migrants and their families but also for the destination or host societies. Adopting proper regulation for the smooth migration of people is a win-win situation for all the stakeholders. Without proper regulation of international migration, skilled migration may come through mainframe migration network, while the unskilled migration may take the illegal route. Illegal migration, brings in people of the working age-category and puts them in constant tension with the native population, at times giving them extraordinarily little chance for earning money in their own motherland. For the immigrants, they are probably earning more than what they would in the country of their origin which leads only to a unilateral increase in the standard of living in the migrant’s country of origin. A global governance model on matters of international migration is the need of the hour as Prof. Jagdish Bhagwati calls it, the international community needs to establish a “World Migration Organization akin to the World Trade Organization (WTO).”<sup>46</sup>

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<sup>46</sup> Jagdish N. Bhagwati, *Borders Beyond Control*, FOREIGN AFFAIRS (Jan.-Feb. 2003).





# IN THE REALM OF FINFLUENCERS: UNDERSTANDING THE INDIAN FRAMEWORK, REGULATIONS, AND FUTURE TRENDS

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## ABSTRACT

*With the COVID-19 epidemic, the world financial scene underwent a significant upheaval that resulted in a rise in digital interaction and a redefining of personal finance. The emergence of financial influencers (finfluencers) –people who use social media to provide financial insights, advice, and knowledge—accompanies this change. This approach became rather popular in India, where a wide range of financial influencers attracted the interest of a growing internet audience looking for direction in the face of economic instability. However, the landscape altered notably with the introduction of new Securities and Exchange Board of India (SEBI) regulations aimed at governing the conduct and practices of financial influencers.*

*The target audience of these finfluencers is the lower middle class and the lower income strata of society. Most of the targeted people are not highly educated and it is easy to manipulate facts for them in the favour of these finfluencers. Through this paper, the authors wish to examine financial literacy, investment habits, and uptake of new financial technologies. It clarifies the difficulties and moral issues raised by this developing field,*

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*such as the necessity of trustworthiness, openness, and discretion in the distribution of financial advice.*

*It focuses on the draft rules and regulations set out by SEBI in India and the confluence of factors that led to their emergence and the subsequent impact of SEBI's regulatory frameworks on their operations, content creation, and engagement with audiences across various digital platforms while getting a glimpse at the global scenario; also provides solutions and recommendations for the betterment of the existing problems in the field of financial influencing through social media platforms.*

**Keywords:** *Finfluencers, Financial Literacy, Financial Technologies, SEBI'S, Financial Services.*

## **I. INTRODUCTION**

The rise of social media as a way to connect with other people as well as to gain knowledge increased significantly during the COVID-19 pandemic. This paved the way for the rise of financial influencers aka 'influencers'. Individuals who offer investment advice, stock recommendations, and fast paths to financial success appear to be in high demand. "Fin-fluencers," as they are sometimes referred to, are well-followed social media users (YouTube, Instagram, Telegram, etc.) who offer financial advice to their target audience.<sup>1</sup> They provide everything from finance plans to stock suggestions to assist consumers in achieving financial success.

But more times than not, these 'influencers' are not qualified to be giving the financial advice they are giving out. In addition to lacking the necessary credentials to offer financial advice, "influencers" have created new avenues for financial literacy. Influencers dissect intricate data into easily understood chunks and provide witty articles on everything related to finance. Because

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<sup>1</sup> Vidya Shreedhar, *Explainer: What SEBI's proposed rules for finfluencers mean for retail investors*, The Economic Times, (Aug. 27, 2023), [https://m.economictimes.com/markets/stocks/news/explainer-what-sebis-proposed-rules-for-finfluencers-mean-for-retail-investors/amp\\_articleshow/103099392.cms](https://m.economictimes.com/markets/stocks/news/explainer-what-sebis-proposed-rules-for-finfluencers-mean-for-retail-investors/amp_articleshow/103099392.cms).

of this, customers are now relying only on the counsel and endorsements of finfluencers rather than the traditional information sources from certified advisors. In a nation whose financial literacy is 6% lower than the worldwide norm, this presents a serious risk to individuals' capacity to maintain their financial stability.

They are like the Trojan horse. To accomplish their objectives, finfluencers employ several corporate strategies, ranging from recommending things for non-monetary advantages to advertising products for platforms or manufacturers in exchange for remuneration. They committed stock manipulation, deceived investors, placed their money at risk, and compromised the integrity of Indian financial markets.<sup>2</sup>

As a result, to regulate these influencers in India, the Securities and Exchange Board of India (SEBI) and the Reserve Bank of India (RBI) had to implement several laws. According to these rules, fin-fluencers must be qualified and experienced to provide financial advice.

## **II. ECOSYSTEM OF FINFLUENCERS**

The rise of content creators that are termed 'finfluencers' has stimulated renewed concerns over the need to regulate and supervise such content. Broadly speaking Finfluencers are the digital media content creators that create content related to all things finance and investment and break down the complexities related to it in the simplest terms so as to be understood by a common person also. Due to their simple explanation of such complex matters, people have abandoned traditional experts or sources and have in turn placed a blind reliance on the advice of these finfluencers. The rise of social media has resulted in fostering a billion-dollar finfluencing industry where such content creators are paid according to their following and engagement on such platforms to promote their brand or their stock market

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<sup>2</sup> Namita Shetty & Adya Garg, End of the Party for Sin (Fin) Fluencers? SEBI's Regulatory Crackdown on Finfluencers, Cyril Amarchand Blogs, (Sept. 13, 2023). [https://m.economicstimes.com/markets/stocks/news/explainer-what-sebis-proposed-rules-for-finfluencers-mean-for-retail-investors/amp\\_articles/103099392.cms](https://m.economicstimes.com/markets/stocks/news/explainer-what-sebis-proposed-rules-for-finfluencers-mean-for-retail-investors/amp_articles/103099392.cms).

assets.<sup>3</sup> Through their social media influence, finfluencers have a disproportionate impact on investors' trading decisions. They filter the information that reaches their followers, shape their investing preferences and trading patterns, and provide powerful coordination mechanisms across large groups of traders, allowing their (and their followers') trading motivations to influence stock price movements. Though the impact of the influence of influential individuals is not a new-fangled concept, before the rise of social media the opinion of the analyst that appeared on channels like CNBC also caused temporary rise and fall in a company's stock market shares even though there was no change in the company's prospects or its fundamentals. Indeed, 1990 research found strong stock market responses to analyst recommendations published in the Wall Street Journal's *Heard on the Street* section between 1982 and 1985.<sup>4</sup>

During the height of Covid-19 these finfluencers were seen as a gateway to a more financially literate society and it would often open the doors for the common people to invest in stock markets bringing about a revolutionary change in the Indian stock market but their increased popularity brought some areas of concerns into light such as qualification of finfluencers, risk of misleading information, collusion and prevalence of high-risk assets such as crypto which are highly unstable and popular among the common public. In a country like India where the financial literacy rate stands just at a meager 27%<sup>5</sup> the unregulated activity of finfluencers who in the guise of genuine advice or by faking a large amount of profits doles out stock tips and misspelling without the required disclosure breach ethics to gain more followers on social media or use it as a ploy to enrich themselves. This blind trust of the public on these finfluencers coupled with their popularity have led Securities and Exchange Board of India (SEBI) to monitor these activities and keep a strict overwatch on their activities which might adversely impact the investors and the stock market. Recently, the popular YouTuber PR Sundar was fined by SEBI in 2023 for allegedly violating the regulations

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<sup>3</sup> Sue S. Guan, *The Rise of Finfluencer*, 19 *N.Y.U Journal of Law and Business* 491, 500 (2023).

<sup>4</sup> Sue S. Guan, *The Rise of Finfluencer*, 19 *N.Y.U Journal of Law and Business* 491, 500 (2023).

pertaining to investment advisors. Sundar had posted videos on his YouTube account giving investing advice without a license as an investment counsellor.<sup>6</sup> In another similar case which yet again brought the gravity of the situation into light was when SEBI issued an interim order in June 2023 against Shujauddin and Farhat Perween of Kabir Financial Services for operating an unlicensed investment advising service on Telegram. The regulator seized their bank accounts and barred them from providing financial advice.<sup>7</sup>

### III. INDIAN PARADIGM

In India, there is an absence of a regulatory framework that deals specifically with the finfluencers. Nevertheless, as a rule, the finfluencers are required to adhere to the general guidelines of the SEBI Act, 1992 provided in Section 12-A which stipulates that no person should indulge directly or indirectly in any act which is fraudulent, deceptive or manipulative in nature relating to any transaction in the stock market.<sup>8</sup> Moreover, Regulation 4 of the Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market Regulations, 2003 (PFUTP Regulations)<sup>9</sup> states that any deliberately false or misleading statement intended to influence the investment decisions of investors is “manipulative fraudulent or unfair trade practice.” This legislation also forbids negligent or negligent broadcast of information or advice that is likely to affect the decisions of investors transacting in securities.

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<sup>5</sup> Indraneel Chatterjee, The growing significance of financial literacy in India – Gaps and opportunities, Financial Express (Jan. 19, 2022, 3:39 PM) <https://www.financialexpress.com/money/the-growing-significance-of-financial-literacy-in-india-gaps-and-opportunities-2410548/>.

<sup>6</sup> Piyush Chandra, Rushikesh Dharmadhikari, Regulating financial influencers in India: A Global Comparison, Bar and Bench (Sep.30,2023,12:38PM) <https://www.barandbench.com/columns/unveiling-financial-influencers-in-india-a-global-comparison>.

<sup>7</sup> Ibid.

<sup>8</sup> Security and Exchange Board of India Act, 1992, No. 15, § 12.

<sup>9</sup> Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, § 4.

In the year 2013, SEBI introduced the SEBI (Investment Advisers) Regulations, 2013 (Investment Adviser Regulations) which made the registration of Investment Advisors a necessity. Notably, finfluencers do not fall under the purview of this Act as the definition of Investment Advisor as provided in the Act states that an investment advisor is a person who charges a remuneration to its customers for the services provided to them.<sup>10</sup> Considering finfluencers generally do not charge their followers and their advice is public, they do not qualify as “investment advisor.” The SEBI (Research Analysts) Regulations, 2014 (the “RA Regulations”) also apply to research analysts (“RAs”). The RA Regulations impose a variety of stringent compliance criteria on RAs, including qualification and certification requirements, as well as a conflict-of-interest disclosure statement. Unregistered influencers, on the other hand, are not subject to RA Regulations. Even the “Advertisement Code for Investment Advisers (IA) and Research Analysts (RA)” released by the SEBI on April 5, 2023, obligates registered IAs and RAs to seek prior permission from SEBI before communicating any form of communication/advertisement subject matter, including on social media platforms or any other form over the internet, seeks to regulate only RIAs and RAs and not finfluencers.<sup>11</sup>

As of March 2023, there are only 1,328 IAs accredited with the SEBI, with around 840 RIAs having individual licenses and 488 RIAs having corporate licenses which is a extremely low figure and the reason behind it can be accredited to several reasons including rigid compliances, excessive approvals.<sup>12</sup> For instance, SEBI issued the Advertisement Code for investment advisers in April 2023, prohibiting them from using superlative phrases such as “best” and “leading” in their advertising. The Advertisement

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<sup>10</sup> *Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, § 2.*

<sup>11</sup> *Securities and Exchange Board of India, Advertisement Code for Investment Advisers and Research Analysts, 2023.*

<sup>12</sup> Namita Shetty & Adya Garg, End of the Party for Sin (Fin) Fluencers? SEBI's Regulatory Crackdown on Finfluencers, Cyril Amarchand Blogs, (Sept. 13, 2023) [corporate.cyrilamarchandblogs.com/2023/09/end-of-the-party-for-sin-fin-fluencers-sebis-regulatory-crackdown-on-finfluencers/](https://corporate.cyrilamarchandblogs.com/2023/09/end-of-the-party-for-sin-fin-fluencers-sebis-regulatory-crackdown-on-finfluencers/).

Code also required RIAs to acquire prior clearance from SEBI before publishing any advertisements. Moreover, with the rise of finfluencers people are unwilling to pay for financial advice as a plethora of its already available online for free.<sup>13</sup>

In light of their growing popularity, the SEBI has recently adopted a severe position on finfluencers who engage in overt activities related to their stock market transactions in order to mislead investors. In the case of Sadhna Broadcast Limited and Sharpline Broadcast Limited, the firms' promoters circulated misleading and fraudulent information in partnership with YouTube producers, driving artificial interest in the scrip. The videos predicted an exponential increase and urged viewers to buy the company's stock right away. Once the investors had invested in the stock, the entities behind the videos sold it at a loss.<sup>14</sup> SEBI in its interim order stated that such misleading activity illegally boosted the stock price, allowing major shareholders, promoters, and some key people to profit considerably.

#### **IV. SEBI'S DRAFT GUIDELINES FOR OVERSIGHT OF FINANCIAL INFLUENCERS**

To make this influencer more accountable and authentic to their consumers, ASCI recently amended the '*Guidelines for Influencer Advertising in Digital Media*' ("Guidelines").<sup>15</sup>

According to the updated Guidelines, before providing advice on investments, influencers in the banking, financial services, and insurance ("BFSI") sectors must be registered with SEBI and meet the required qualifications<sup>16</sup>. It is also required of them to openly disclose their

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<sup>13</sup> Securities and Exchange Board of India, *Advertisement Code for Investment Advisers and Research Analysts*, 2023.

<sup>14</sup> Securities and Exchange Board of India, *Advertisement Code for Investment Advisers and Research Analysts*, 2023.

<sup>15</sup> Guidelines for Influencers Advertising in Digital Media, Advertising Standards Council of India (May 27, 2021) ("Advertising Guidelines").

<sup>16</sup> Addendum II, Advertising Guidelines (August 17, 2023).

practitioner credentials or recognised expert status. This duty appears anytime they offer guidance, advocate for, or discuss the benefits or drawbacks of the goods or services.

In order to follow ASCI norms and avoid SEBI's scrutiny, finfluencers are increasingly renting SEBI registration numbers from RIAs. On August 25, 2023, SEBI published a consultation document titled "2023 Consultation Paper"<sup>17</sup> in an effort to address these malpractices. Influencers in the financial world are required to declare that they are not registered investment advisors and to disclose any conflicts of interest. Fraud and deceptive laws could potentially be faced by them.

By changing the PFUTP Regulations, the paper suggested outlawing anybody other than RIAs from offering trading advice or stock recommendations to the general public using SMS, email, WhatsApp, and other platforms.<sup>18</sup> This strategy was harshly targeted and called an excess of regulation. SEBI opted against enacting such a severe provision after taking the response into account.

Henceforth, even though SEBI has tried to enact provisions to control fraud related to financial advice, it still has a long way to go in maintaining a balance between permitting free yet accurate financial advice in a country with more than half the population being uneducated.

## **V. TRANSNATIONAL JURISDICTIONAL ANALYSIS**

The financial regulatory authorities globally have taken serious note of the threat that the unregulated activities of finfluencers pose to their stock market and investors which includes higher price volatility, bubble

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<sup>17</sup> Securities and Exchange Board of India, Consultation Paper on Association of SEBI Registered Intermediaries/Regulated Entities with Unregistered Entities (including Finfluencers) (August 25, 2023). ("Consultation Paper").

<sup>18</sup> Namita Shetty & Adya Garg, End of the Party for Sin (Fin) Fluencers? SEBI's Regulatory Crackdown on Finfluencers, Cyril Amarchand Blogs, (Sept. 13, 2023). [https://m.economictimes.com/markets/stocks/news/explainer-what-sebis-proposed-rules-for-finfluencers-mean-for-retail-investors/amp\\_articleshow/103099392.cms](https://m.economictimes.com/markets/stocks/news/explainer-what-sebis-proposed-rules-for-finfluencers-mean-for-retail-investors/amp_articleshow/103099392.cms).



formation, financial crime, and/or investment scams. Global financial regulators have been addressing market-disrupting influencers. The European Union in January 2023, brought the finfluencers within the ambit of the Unfair Commercial Practices Directive (**UCPD**).<sup>19</sup> Under the UCPD's "black list" (Annex I), influencers are required to disclose sponsored content (Article 11) and are not permitted to pose as customers under Article 22. With national legislation implementing the UCPD, influencers are required to disclose sponsored content to their audiences. The EU Market Abuse Regulation, MiFID II, and Commission Delegated Regulation 2016/958 apply to Finfluencers.<sup>20</sup> Article 20 of the Market Abuse Regulation requires suggestions for investments along with other investment-related content to be impartial and to disclose any conflicts of interest. Finfluencers who own stocks and exert influence on the market can also commit securities fraud under Article 10(1) d. Influencers have to adhere to MiFID II as it is implemented in each of the member countries.<sup>21</sup>

In France it is illegal to promote any financial products via paid content and violation of this law could lead to a two-year prison sentence and up to a fine of 300,000 Euros.<sup>22</sup> Finfluencers are required by Swiss financial market regulations to be extremely cognizant that their material regarding financial products and services, as well as financial suggestions, may set off certain legal obligations. Finfluencers may be seen to be (i) "advertising" or even<sup>23</sup> (ii) "offering" in the context of the Swiss Financial Services Act (SFS Act) if

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<sup>19</sup> Regulatory posture on social media advertising and finfluencers, Deloitte, (June 28, 2022). <https://www2.deloitte.com/sg/en/pages/financial-services/articles/regulatory-posture-social-media-advertising-finfluencers.html>.

<sup>20</sup> Id.

<sup>21</sup> Linus Martinis & Jennifer Zhao, How Finfluencers Comply with Regulatory Requirements on Social Media, Ernest & Young, (Mar. 10, 2023) [https://www.ey.com/en\\_ch/law/financial-services-law/financial-compliance-requirements-for-finfluencers](https://www.ey.com/en_ch/law/financial-services-law/financial-compliance-requirements-for-finfluencers).

<sup>22</sup> Namita Shetty & Adya Garg, End of the Party for Sin (Fin) Fluencers? SEBI's Regulatory Crackdown on Finfluencers, Cyril Amarchand Blogs, (Sept. 13, 2023) [corporate.cyrilamarchandblogs.com/2023/09/end-of-the-party-for-sin-fin-fluencers-sebis-regulatory-crackdown-on-finfluencers/](https://www.cyrilamarchandblogs.com/2023/09/end-of-the-party-for-sin-fin-fluencers-sebis-regulatory-crackdown-on-finfluencers/).

<sup>23</sup> Linus Martinis & Jennifer Zhao, How Finfluencers Comply with Regulatory Requirements on Social Media, Ernest & Young, (Mar. 10, 2023) [https://www.ey.com/en\\_ch/law/financial-services-law/financial-compliance-requirements-for-finfluencers](https://www.ey.com/en_ch/law/financial-services-law/financial-compliance-requirements-for-finfluencers).

they endorse financial products that meet the requirements to be classified as financial instruments. It is also necessary to assess whether influencers' financial advice qualifies as (iii) "investment advice" for SFS Act purposes. As a result, license requirements under the Swiss Financial Institution Act (SFA Act) and SFC Act may be applicable.<sup>24</sup>

A Guide to Talking About Money Online<sup>9</sup> was released in January 2021 by the Financial Markets Authority (FMA), which oversees the financial markets in New Zealand. It offers advice on risk management for social media influencers and consumers who participate in similar activities. In Australia it is prohibited to operate an unregistered financial services business. The penalties for this infraction range from millions of dollars in fines for huge businesses to up to five years in prison for an individual. The Australian Securities and Investment Commission, or "ASIC," has set objective standards to determine whether advice provided by an influencer qualifies as financial advice. There is likely a conflict of interest, and such advice would be deemed financial product advice if the influencer's income or other advantages are contingent on the actions of its followers. Thus, after a thorough review of the influencer's overall image, the ASIC will evaluate whether or not an AFS license is required. Furthermore, The Australian Securities and Investments Commission (ASIC) released an information sheet (INFO 269) in March 2022 for social media influencers who mention financial goods and services in their content.<sup>25</sup> The fact sheet highlights the applicable rules and regulations, as well as case studies and instances of probable infractions. This strategy inhibits influencers who are not licensed financial advisers from making finance-related posts by informing them

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<sup>24</sup> Linus Martinis & Jennifer Zhao, How Finfluencers Comply with Regulatory Requirements on Social Media, Ernest & Young, (Mar. 10, 2023) [https://www.ey.com/en\\_ch/law/financial-services-law/financial-compliance-requirements-for-finfluencers](https://www.ey.com/en_ch/law/financial-services-law/financial-compliance-requirements-for-finfluencers).

<sup>25</sup> Regulatory posture on social media advertising and influencers, Deloitte, (June 28, 2022). <https://www2.deloitte.com/sg/en/pages/financial-services/articles/regulatory-posture-social-media-advertising-finfluencers.html>.

about potential violations of the Corporations Act 2001, which carries significant incarceration and monetary fines.<sup>26</sup>

## V. CONCLUSION AND SUGGESTIONS

The rise of finfluencer culture on social media platforms as a primary source of information for a huge part of the population in a country like India which has below average literacy rate has been a difficult path to navigate. While the existence of these finfluencers meant easy access to financial information, knowledge, and advice for a lot of people who might not be economically well off<sup>27</sup>, it also meant a lot of scopes for these finfluencers to cheat and provide misinformation to their audience for their benefit.

However the impact of SEBI's regulations prompted a recalibration within the financial influencer ecosystem. Influencers had to navigate the fine line between maintaining engagement with their audience and adhering to the regulatory framework. Challenges emerged regarding the proper implementation of disclosure norms, potential constraints on collaborations with brands or financial institutions, and ensuring the accuracy of information shared.

The relationship between financial influencers, SEBI, financial institutions, and brands evolved, necessitating a more cautious and responsible approach to partnerships and sponsored content. Collaborations became more scrutinized and required adherence to stringent guidelines, fostering a more discerning and discernible landscape for financial advice.

Despite this, the SEBI regulations are not without fault<sup>28</sup>. There also exist multiple loopholes to these rules and regulations. Therefore, there is still

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<sup>26</sup> Michael Shepherd, Jessica J. Zoller & Harley Buggy, Australian Finfluencer Sentenced In Market Manipulation Prosecution, Allen & Overy (July 4, 2023), <https://www.allenoverly.com/en-gb/global/blogs/investigations-insight/australian-finfluencer-sentenced-in-market-manipulation-prosecution>.

<sup>27</sup> The rising role of social media 'finfluencers', Deloitte, (June 28, 2022). <https://www.barandbench.com/columns/unveiling-financial-influencers-in-india-a-global-comparison>.

<sup>28</sup> Piyush Chandra, Rushikesh Dharmadhikari, Regulating financial influencers in India: A Global Comparison, Bar and Bench (Sep. 30,2023,12:38 PM) <https://www.barandbench.com/columns/unveiling-financial-influencers-in-india-a-global-comparison>.

scope for these finfluencers to commit fraud, give out misinformation or cheat their audience for the furtherance of their benefit. Hence the scope for improvement still exists and the authors have provided suggestions regarding the same.

To summarise it can be said that while the rise of finfluencer has been viewed with a sceptical gaze, it is not entirely harmful to a developing country like India. While it has led to a much larger scope for financial crimes, it has also provided cheap and easily accessible financial advice for people. It is not impossible to bring in new laws and amend existing ones to make sure that these finfluencers do not cause any potential harm. Therefore, even though we can't view this new rise in the financial world through rose-colored glasses, we also need not have a jaundiced view of the matter.

The draft discussion paper to govern finfluencers and guarantee effective control over advisers' unsolicited investment guidance on social media platforms is currently being finalized by SEBI. This chapter covers several recommendations that SEBI should take into account while drafting rules to reduce the uncontrolled actions of finfluencers and provide a safer setting for investors. Furthermore, SEBI can also study and apply the best practices of countries like Australia and France to make more effective guidelines to govern the activities of finfluencers.

**Mandatory Disclosure:** The primary method by which these finfluencers earn money is by collaborations. They are paid a handsome amount of money to promote a specific company or shares due to their large social media following and influence on their followers which may in turn lead to misleading these followers. Disclosure may minimize the impact or perhaps assist dissuade undesirable conduct. According to the rules and regulations of the Advertising Standards Council of India, social media influencers must add a disclaimer label on any work that highlights financial service providers as advertising. Nevertheless, there is a need for more stringent guidelines which shall include monetary fines. Moreover, the finfluencers must be

required to disclose any promotional advertising to their viewers. The mandatory disclosure of such information can also be company-based where a company is required to disclose if it has collaborated or paid any influencers to promote it or its stock or other financial products. In India, regulated investment advisors are already required to disclose any holding, securities, or financial products which is the focus of the advice. SEBI should ensure that the same stringent guidelines should apply to finfluencers as well. Financial literacy and retail engagement may be further enhanced by influencers who disclose sponsored marketing to their viewers. This can empower their viewers to critically assess information and feel empowered to make decisions.

**Classification of finfluencers:** As stated earlier not every Finfluencer gives investment advice or promotes a particular company or a financial instrument. Some finfluencers educate their viewers on the basics of the stock market like explaining to them how to make a demat account or what is Nifty or what is intra-day trading etc. Such influencers are only striving to increase the financial literacy of their viewers and SEBI must be careful and it is imperative to make sure that such influencers do not suffer any harm. However, when this factual information is conveyed in a way that suggests whether or not to acquire a specific investment product, it qualifies as investment advice and must be subject to the proposed legislation. As a result, distinguishing between what constitutes financial advice and what falls under the category of educational material becomes critical.

**Definition of ‘investment advisor’:** The Investment Adviser Regulations defines “investment advice” solely as information pertaining to securities transactions communicated in writing, orally, or via any other form of communication. This description, nonetheless ignores the impact of implied suggestions or opinions from advisers that might impact an investor’s behaviour. Conversely, many countries provide more detailed definitions of investment advice. The Australian Securities and Investments Commission, for example, defines “financial product advice” as “a suggestion or statement

of opinion aimed to influence, or legitimately believed to influence, an individual making a financial product decision.” Similarly, the European Securities and Markets Authority widens the definition of “investment recommendation” to include explicit or implicit opinions or suggestions about investment strategy, as well as the current or future value or price of such instruments. To address these constraints in India, SEBI ought to adopt a new definition of “investment advice” that is consistent with international norms.

**Monetary fines on financial influencers:** Keeping in line with the latest trend where the financial influencers solicit a sum of money from their viewers to know or get access to their recommended financial stocks or recommended companies, SEBI in its draft guidelines should include a provision where there’s influencers are heavy penalized for their actions and additionally as most of their audience are from the middle-class background they should be required to return the so-called subscription to their subscribers and such influencers should be prohibited from making any finance related content in the future. Such approach will deter any such influencers and will safeguard the interest of any such investors.

# **SOCIAL AND MORAL IMPLICATIONS OF UNBORN CHILD RIGHTS: A LEGAL STUDY WITH REFERENCE TO SUSTAINABLE DEVELOPMENT GOALS**

Dr. Prashant Kumar Varun\*

## **ABSTRACT**

*Children are the most vulnerable members of society, and it is our responsibility to ensure that they are protected from harm and provided with a safe and nurturing environment to grow and thrive. It is essential to recognize the rights of the unborn child and protect them, as they are the future of society. The rights of the unborn child are an integral part of sustainable development, as they represent the future generation that we must protect and nurture. By recognizing the rights of the unborn child, we can ensure that every child has a fair and equal chance to live a healthy and fulfilling life. The rights of the unborn child are crucial for their survival and well-being. The Indian Constitution guarantees certain fundamental rights to all individuals, including the right to life and personal liberty, which extend to the unborn child. The rights of the unborn child under personal laws are based on the same principles as those under the Constitution of India, namely the right to life and personal liberty. Personal laws play an essential role in shaping the rights of individuals, including the unborn child. While these laws provide some protections, there is still a need for stronger legal protections and enforcement mechanisms to ensure that the rights of the unborn child are upheld. It is essential to recognise the*

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*importance of protecting the rights of the unborn child, as they are the future of society.*

**Keywords:** *Foetal Rights, Unborn child Rights, Personal Law, Sustainable Development Goal, and Right to Life.*

## I. INTRODUCTION

The legal status of an unborn person, also known as foetal personhood, is a controversial and complex issue that varies depending on the jurisdiction and legal system in question. The law recognizes the legal personality of unborn children. A child in a mother's womb is by fiction treated as already born. The legal status of unborn children varies significantly between different nations and legal systems. While some countries recognize foetuses as having legal rights and protections, others do not consider them to have any legal status until they are born. Today there is a need to protect the rights of unborn children in order to achieve Sustainable development goal or a global goal as the United Nations accepted a set of 17 goals adopted by member countries, including India, to promote sustainable development and eradicate poverty and inequality by 2030. While the SDGs do not specifically address the issue of the legal status of unborn children, they do contain several goals and targets related to maternal and child health, which are closely related to the issue. In the Indian context, several SDGs are relevant to the issue of unborn children and their legal status. It recognizes good health and well-being to ensure access to quality health services, including reproductive health services,<sup>1</sup> gender equality,<sup>2</sup> and reduced Inequalities<sup>3</sup>. Achieving these goals can help ensure that women and children have access to the healthcare and services they need and that laws and policies related to their health and well-being are just and equitable. In the Indian context,

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<sup>1</sup> U.N. General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1, SDG 3.

<sup>2</sup> U.N. General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1, SDG 5.

<sup>3</sup> U.N. General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1, SDG 10.



these goals are relevant to the issue of maternal and child health, including access to prenatal care and safe and legal abortion services. The moral implications of unborn child rights are complex and can be approached from two perspectives. Firstly, from a pro-life perspective, the unborn child has an inherent right to life that should be protected by law and society. They argue that life begins at conception and that the unborn child should be accorded the same rights and protections as any other human being. On the other hand, secondly, from a pro-choice perspective, the right to reproductive autonomy and bodily autonomy of the woman is paramount. They argue that the pregnant woman has the right to decide whether to continue or terminate the pregnancy, as it is her body and her choice. The moral implications of unborn child rights also extend to issues such as the use of assisted reproductive technologies, surrogacy, and fetal research. These issues raise questions about the status and value of the unborn child, the limits of reproductive autonomy, and the ethical implications of technological advancements in reproductive medicine. Overall, the moral implications of unborn child rights are multifaceted and require a nuanced understanding of various perspectives and values.

## **II. GLOBAL LEGAL IMPLICATIONS OF UNBORN CHILD RIGHTS**

In the United Kingdom, a foetus is not considered a person under the law until it is born alive. However, the law does provide for criminal charges to be laid against a person who causes a miscarriage or stillbirth through violence. Canadian law recognizes the legal personality of an unborn child. In the historic case of *Montreal Tramway Co. v. Leveille* a claim was made by a female infant against the tramway company for the deformity caused to her while in her mother's womb due to the defendant's negligence. The court held that the Montreal Tramways Company had a duty to ensure the safety of its passengers and awarded damages. The U.S. Constitution does not explicitly address the issue, and the Supreme Court has not definitively ruled on whether foetuses have legal rights or protections. However, in the landmark case of *Roe v. Wade* (1973), the Supreme Court held that a woman

has a constitutional right to choose to have an abortion without undue interference from the government, at least during the first two trimesters of pregnancy. This decision is still the subject of ongoing debate and controversy, and there have been numerous challenges to its validity over the years.

There is no comprehensive international legal framework specifically dedicated to the protection of the rights of the unborn child but there are international instruments and human rights bodies that recognize the importance of protecting the child's right to life and recognize its status as a human being. The United Nations Convention on the Rights of the Child (UNCRC) recognizes the child's right to life and the obligation of states to ensure that all children receive the protection and care necessary for their well-being. While the UNCRC does not define when life begins, it acknowledges that the child has a right to life from the moment of birth. Additionally, the Universal Declaration of Human Rights, 1948 (UDHR) recognizes the right to life and liberty<sup>4</sup> as a fundamental human right, without specifically mentioning the unborn child. It further provided that "all are equal before the law and are entitled without any discrimination to equal protection of the law."<sup>5</sup> This principle could be interpreted as protecting the rights of unborn children from discrimination based on their status as unborn. There are also some international human rights bodies, such as the European Court of Human Rights that have recognized the importance of protecting the unborn child in certain circumstances. For example, the Court has held that states have a duty to regulate and prohibit abortion in certain circumstances, such as when the fetus is viable outside the womb.

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<sup>4</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948), art. 3.

<sup>5</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948), art. 7.

### III. NATIONAL LEGAL IMPLICATIONS OF UNBORN CHILD RIGHTS

In India, the legal framework for the protection of the rights of unborn children is primarily based on the Constitution of India, which guarantees the right to life and personal liberty<sup>6</sup> to every person, including the unborn child. The Indian judiciary has also held that the right to life includes the right to a dignified existence, which extends to the unborn child. However, this right is subject to the mother's right to bodily autonomy and privacy. In terms of cultural and religious beliefs, many people in India consider the unborn child to be a sacred and valuable life. This belief is rooted in the Hindu concept of "garbha sanskar," which emphasizes the importance of providing a nurturing and positive environment for the unborn child. Several ancient texts in India discuss the unborn child and its development. In Ayurveda, the ancient Indian system of medicine has several texts that discuss pregnancy and the unborn child. The Charaka Samhita, for example, describes the development of the embryo in detail, including the stages of development of the organs and limbs. The Yoga Vasistha is an ancient text that contains philosophical teachings on the nature of reality and the human condition. It includes discussions on the soul and the nature of consciousness, as well as on the development of the foetus in the womb. The *Garbha Upanishad* is a Hindu text that focuses specifically on the development of the fetus in the womb. It describes the stages of development of the foetus and the different types of consciousness that are present at each stage. The *Brihadaranyaka Upanishad* is another Hindu text that contains teachings on the nature of reality and the human condition. It includes discussions on the development of the fetus in the womb and the different stages of consciousness that the fetus goes through.

### IV. LEGAL RIGHTS OF UNBORN CHILD

Several laws specifically address the issue of the protection of unborn children in India. The legal framework for unborn child rights is primarily

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<sup>6</sup> Indian Const. art. 21.

based on the Constitution of India and various laws and policies related to reproductive health and maternal and child health, which are as follows:

- a) The Constitution of India, 1950 recognises the right to life and liberty<sup>7</sup> under which has been interpreted to include the right to reproductive autonomy and the right to access healthcare.
- b) The Medical Termination of Pregnancy Act, 1971 is the primary law that governs abortions in India. Under this law, a pregnancy can be terminated if it is deemed necessary to save the life of the woman or to prevent grave injury to her physical or mental health. The Act also allows for the termination of pregnancies resulting from rape or incest, or in cases where there is a substantial risk that the child will be born with serious physical or mental abnormalities.
- c) The Protection of Children from Sexual Offences Act, 2012 provides for the protection of children from sexual abuse and exploitation. The Act defines a child as any person below the age of 18 years, including an unborn child.
- d) The Juvenile Justice (Care and Protection of Children) Act, 2015 provides for the protection of children in need of care and protection. The Act defines a child as any person below the age of 18 years, including an unborn child.
- e) The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994: This law prohibits the use of sex-selective techniques in India, including ultrasound and other tests used to determine the sex of a fetus. The law also prohibits the sale of equipment and materials used for sex selection and impose penalties on those who violate the law.
- f) Indian Penal Code, 1860: It does provide some level of protection for the unborn child indirectly through provisions criminalizing acts that could

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<sup>7</sup> Indian Const. art. 21.

harm or endanger the life<sup>8</sup> of the unborn child, the act of preventing a child from being born alive<sup>9</sup> and concealing the birth of a child by disposing of its dead body.<sup>10</sup>

- g) Criminal Procedure Code, 1973: It requires that trials involving women who are pregnant or have recently given birth must be conducted in a manner that ensures their safety and comfort.<sup>11</sup> The definition of victim<sup>12</sup> could include the unborn child in cases where the act or omission of the accused person has caused harm to the unborn child or has caused the death of the unborn child. In India, when a pregnant woman is sentenced to death,<sup>13</sup> the implementation of the death sentence is typically postponed until after the birth of the child. This is because the life of the fetus is taken into consideration, and the state recognizes that it has a responsibility to protect the life of the unborn child.
- h) The Transfer of Property Act, 1872: Transfer of property made in favor of an unborn person is void unless certain conditions are met. One of these conditions is that the transfer must take effect during the lifetime of the unborn person<sup>14</sup> and the transfer must be made to take effect at a future date or upon the occurrence of a certain event.<sup>15</sup>
- i) Surrogacy (Regulation) Act, 2021: In general, surrogacy laws seek to balance the rights and interests of the commissioning parents, the surrogate mother, and the child born through surrogacy. It provided that no person, organisation, surrogacy clinic, laboratory or clinical

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<sup>8</sup> Indian Penal Code § 312.

<sup>9</sup> Indian Penal Code § 315, Act No. 45 of 1860.

<sup>10</sup> Indian Penal Code § 318, Act No. 45 of 1860.

<sup>11</sup> Code of Criminal Procedure, 1973, § 327, Act No. 2 of 1974.

<sup>12</sup> Code of Criminal Procedure, 1973, § 2 (W), Act No. 2 of 1974.

<sup>13</sup> Indian Penal Code § 416, Act No. 45 of 1860.

<sup>14</sup> Transfer of Property Act, 1882, § 13, Act No. 4 of 1882.

<sup>15</sup> Transfer of Property Act, 1882, § 14, Act No. 4 of 1882.

establishment of any kind shall force the surrogate mother to abort at any stage of surrogacy except in such conditions as may be prescribed.<sup>16</sup>

## **V. MORAL RIGHTS OF UNBORN CHILD UNDER PERSONAL LAW**

Personal law in India refers to the laws and legal systems that apply to individuals based on their religious or cultural identities. Different personal laws may apply to individuals belonging to different religions, such as Hinduism, Islam, Christianity, and others. However, the moral rights of unborn children may not be explicitly recognized under all personal laws in India. For example, there may be differences in the way that different personal laws treat issues such as abortion, custody of an unborn child, and the legal status of a child born after the death of a parent. The moral rights of unborn children under personal law in India may be shaped by religious and cultural norms and may vary depending on the community and region. Under the Hindu Succession Act, an unborn child is considered to be a “living person” for the purposes of inheritance. This means that if a Hindu dies intestate (without leaving a will), the property will be divided among the heirs as if the unborn child were already born. If a Hindu dies leaving behind a female heir who is pregnant at the time of his death, the property will be held in trust for the benefit of the unborn child.<sup>17</sup> The property will be divided among the heirs as if the child were already born, with its share being held in trust until its birth. Under the Hindu law if at the time of partition, a son is in the womb, and no share is reserved for him, he can get the partition re-opened.<sup>18</sup> It has been seen that where the father does not take a share on partition, and a son is begotten and born to him after partition, the partition can be re-opened.

Under Muslim law, the status of an unborn child is recognized and protected. In Islamic jurisprudence, the fetus is considered to be a living being from the

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<sup>16</sup> Surrogacy (Regulation) Act, 2021, § 10, Act No. 34 of 2021.

<sup>17</sup> Hindu Succession Act, 1956, § 20, Act No. 30 of 1956.

<sup>18</sup> Diwan, Paras, Family Law (5th ed. 2019).

moment of conception. In Islamic law, a pregnant woman has several exemptions in order to protect her fetus, such as delaying the issuance of *Hudud wa Qisason* a pregnant woman until conception.<sup>19</sup> In Muslim law, gifts to a child in the womb are valid, if the child is born within six months of the gifts. In such a case Muslim law presumes that the child was actually in existence as a distinct entity in the womb of the mother. When we talk about a bequest under Muslim law to a person who was not in existence at the time of the testator's death is void. However, it permits bequests to be made to a child in the womb, provided the unborn child is born within six months of the death of the testator. Further, there is a provision that allows a man to divorce his wife if she is pregnant, but the divorce cannot take effect until after the birth of the child. This provision recognizes the moral rights of the unborn child by ensuring that the child is not unduly affected by the divorce of its parents.

## **VI. JUDICIAL APPROACH TOWARD UNBORN CHILD'S RIGHTS**

The Indian judiciary has recognized the importance of protecting the rights of the unborn child while balancing the rights of the mother and the interests of the state. The legal framework regarding the rights of the unborn child is largely based on a combination of Indian laws, personal laws, and judicial pronouncements. In recent years, there have been several cases where the Supreme Court of India has recognized the rights of the unborn child, such as in a historic case *X vs Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi*,<sup>20</sup> the Supreme Court allowed unmarried and single women whose pregnancies are between 20 and 24 weeks to access safe and legal abortion care on par with their married counterparts. A Bench led by Justice D.Y. Chandrachud pried open the restrictive grip of a 51-year-old abortion law which bars unmarried women from terminating pregnancies which are up to 24-weeks old. The Medical Termination of

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<sup>19</sup> Zainab Amin, *Right of Fetus (Janīn) in Islam and Western Law: A Comparative and Analytical Study*, 6 *J. Pos. Sch. Psychol.* 5731 (2022).

<sup>20</sup> *X vs Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi*, (2022) 2 *SCC* 772.

Pregnancy Act of 1971 and its Rules of 2003 prohibit unmarried women who are between 20 weeks to 24 weeks pregnant to abort with the help of registered medical practitioners. In *Suchita Srivastava v. Chandigarh Administration*<sup>21</sup> the Supreme Court of India ruled that the right to reproductive choice is an integral part of the right to privacy under Article 21 of the Indian Constitution. The court also recognized the rights of the unborn child and held that abortion can only be permitted in certain limited circumstances. In *Rupan Deol Bajaj v. Kanwar Pal Singh Gil*,<sup>22</sup> the Punjab and Haryana High Court recognized the right of an unborn child to maintenance and directed the father to provide financial support to the mother during pregnancy. In *Devki v. State of Haryana*<sup>23</sup> the Punjab and Haryana High Court in this case held that a woman's right to terminate her pregnancy under the Medical Termination of Pregnancy (MTP) Act, 1971 is subject to the right to life of the unborn child. The court observed that in case of a conflict between the two rights, the right to life of the unborn child would prevail. In *Anuradha Shukla v. State of U.P.*,<sup>24</sup> the Allahabad High Court held that a fetus is a "human being" and therefore, entitled to the protection of law under the Indian Penal Code. The court held that causing the death of a fetus amounts to culpable homicide not amounting to murder under Section 304 of the Indian Penal Code. In *National Commission for Women v. State of Rajasthan*<sup>25</sup> the Rajasthan High Court held that the right to life under Article 21 of the Constitution extends to the life of an unborn child. The Court held that the state must protect the life of the child and that the killing of a fetus is a punishable offense under the Indian Penal Code.

In *State of Punjab v. Ramdev Singh*<sup>26</sup> the Supreme Court in this case held that a person can be convicted of causing the death of an unborn child under

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<sup>21</sup> *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

<sup>22</sup> *Rupan Deol Bajaj v. Kanwar Pal Singh Gil*, (1995) 6 SCC 194.

<sup>23</sup> *Devki v. State of Haryana*, (2012) 7 SCC 279.

<sup>24</sup> *Anuradha Shukla v. State of U.P.*, (2013) 3 SCC 721.

<sup>25</sup> *National Commission for Women v. State of Rajasthan*, AIR 2015 Raj 10.

<sup>26</sup> *State of Punjab v. Ramdev Singh*, (2017) 8 SCC 641.



Section 316 of the Indian Penal Code, which criminalizes causing the death of a quick unborn child by an act amounting to culpable homicide.

In *Nisha Priya Bhatia v. State of Maharashtra*,<sup>27</sup> the Bombay High Court held that a woman who is pregnant has a right to medical care and attention to ensure the health and well-being of her unborn child. The Court held that the state must provide medical facilities and treatment to pregnant women, and that the right to life of the unborn child must be protected.

In *Shanti Devi v. State of Haryana*<sup>28</sup> the Supreme Court of India held that a child in the womb is entitled to protection as a human being under the Indian Penal Code and the Constitution of India. The court also held that the rights of the mother and the unborn child are interdependent and that the state must protect the life of the unborn child. In *Satbir Singh v. State of Haryana*,<sup>29</sup> the Punjab and Haryana High Court held that a father has a legal right to seek damages for the loss of his unborn child due to medical negligence. The court recognized the unborn child as a legal entity and held that the father has a right to claim compensation for the loss of the child's life.

## VII. CONCLUSION

In conclusion, the legal and moral rights of the unborn child in India are recognized and protected by various laws and judicial decisions. The Constitution of India recognizes the right to life and personal liberty of every person, which has been interpreted by the judiciary to include the right to life of the unborn child. Additionally, various statutes such as the Indian Penal Code and the Medical Termination of Pregnancy Act provide for the protection of the unborn child. The Indian judiciary has also recognized the moral and ethical dimensions of the rights of the unborn child and has taken steps to ensure that the rights of the child are protected. The courts have

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<sup>27</sup> *Nisha Priya Bhatia v. State of Maharashtra*, 2018 SCC OnLine Bom 1773.

<sup>28</sup> *Shanti Devi v. State of Haryana*, (2019) 9 SCC 1.

<sup>29</sup> *Satbir Singh v. State of Haryana*, (2015) 8 SCC 300.

emphasized the importance of balancing the rights of the mother and the child, and have recognized that the state has a duty to protect the life and well-being of both. However, there are also challenges in ensuring that the rights of the unborn child are fully protected, particularly in cases where the rights of the mother come into conflict with those of the child. Additionally, there is a need for greater awareness and education on the importance of protecting the rights of the unborn child, particularly in the context of sex-selective abortions and other forms of gender discrimination.

# AVIATION'S CARBON FOOTPRINT: EVALUATING GLOBAL GOVERNANCE EFFORTS

Somesh Babu Maddula\*

## ABSTRACT

*The impact of the aviation industry, on greenhouse gas emissions has become a topic in discussions surrounding climate change. This article provides an analysis of how the carbon sector contributes and evaluates the effectiveness of the existing global governance mechanisms. The paper analyses regional initiatives like the European Union's Emission Trading System as well as international initiatives like the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) by the International Civil Aviation Organisation. This article maps the impact on the aviation industry and delves into the future strategies and technological breakthroughs that are poised to reshape the aviation landscape, with a particular emphasis on the roles of India, the USA, and other pivotal nations. While recognising promising strategies like aviation fuels and electric aircraft it also highlights challenges caused by voluntary agreements, limited participation, and complexities unique to this sector. The need for collaboration, technological innovations, and strong policy frameworks is emphasized to achieve a future for aviation. The conclusion stresses the urgency of addressing this issue. Emphasizes that major players in aviation should prioritize environmental sustainability, over short-term gains through collective action.*

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**Keywords:** *Greenhouse gas emissions, climate change, global governance, CORSIA, Sustainable Aviation Fuel, Aviation industry.*

## I. INTRODUCTION

The aviation industry, one of the cornerstones of modern globalisation, has facilitated international trade, tourism, and cultural exchange. However, the rapid expansion of the aviation industry has posed challenges, especially in relation, to the release of greenhouse gases. Aviation plays a role in contributing to greenhouse gas emissions, which are a primary driver of climate change. This study aims to examine the carbon footprint associated with the aviation sector as well as assess global governance initiatives that are being undertaken to reduce the emissions associated with this sector.

It is noteworthy that the aviation sector contributes to CO<sub>2</sub> emissions. The IATA estimates that the aviation industry contributes to about 2% of all human-induced emissions of greenhouse gases. This might seem like a small percentage, but when one considers the sheer volume of global emissions, this 2% translates to a significant amount of CO<sub>2</sub>. Furthermore, aviation's contribution to global warming is not limited to CO<sub>2</sub> emissions alone. The burning of jet fuel at high altitudes results in the release of water vapor, which can form contrails and, under certain conditions, lead to the formation of cirrus clouds. These clouds can trap outgoing longwave radiation and thus have a warming effect on the Earth's surface. When combined with other greenhouse gas emissions, such as nitrogen oxides (NO<sub>x</sub>), which can produce ozone, a potent greenhouse gas when combined with other chemicals in the atmosphere, the aviation sector's overall climate impact is estimated to be around 5% to 8% of global warming.<sup>1</sup>

According to the International Civil Aviation Organization (ICAO), aviation emissions are a serious problem. There have been a number of steps taken to

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<sup>1</sup> Ullah, K. M., & Dwivedi, P. "Ascertaining Land Allocation Decisions of Farmers About the Adoption of Carinata as a Potential Crop for Sustainable Aviation Fuel Production in the Southern United States." *GCB Bioenergy* 14, no. 7 (2022): 824-839. <https://doi.org/10.1111/gcbb.12945>.

address these issues. A major measure is the implementation of Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), the Carbon Offsetting and Reduction Scheme for International Aviation. As of 2020, its primary objective is to decrease carbon emissions. Under CORSIA airlines have a responsibility to track, report and verify their CO<sub>2</sub> emissions. Additionally, they must counterbalance any increase in CO<sub>2</sub> emissions, beyond the levels set in 2020 by purchasing carbon credits from projects that reduce CO<sub>2</sub> in sectors.<sup>2</sup>

However, despite these and other efforts, the global aviation sector's emissions are projected to grow substantially in the coming decades. A study by Dwivedi<sup>3</sup> projected that if no significant measures are taken the aviation industry worldwide could produce 43 billion tons of carbon dioxide emissions by 2050. This increase, in emissions is influenced by factors such as the growth of the global economy the expanding middle-class populations in developing nations who have a growing desire to travel and the limited availability of widely accessible and scalable low carbon technologies, for aviation.

The challenge of addressing aviation's carbon footprint is further compounded by the unique characteristics of the aviation industry. Unlike other sectors where emissions can be reduced by switching to renewable energy sources, aviation largely relies on liquid fossil fuels due to their high energy density. While there are ongoing efforts to develop sustainable aviation fuels and electric aircraft, these technologies are still in their infancy and face significant technical and economic challenges.

In light of these challenges, there is a pressing need for a comprehensive analysis of the carbon footprint generated by the aviation industry. Such an

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<sup>2</sup> International Civil Aviation Organization. "Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)." (2020). Available at <https://www.icao.int/environmental-protection/Pages/market-based-measures.aspx>.

<sup>3</sup> Dwivedi, P. "Sustainable Aviation Fuel Production from Brassica Carinata in the Southern United States." *GCB Bioenergy* 13, no. 12 (2021): 1854-1858. <https://doi.org/10.1111/gcbb.12900>.

analysis is crucial for understanding the scale of the challenge and for evaluating the effectiveness of current global governance efforts aimed at reducing these emissions. By investigating key international agreements, policies, and initiatives in place to mitigate aviation emissions, this paper will provide a foundation for assessing their impact on the industry's environmental performance. Furthermore, by exploring potential future strategies and innovations for reducing aviation emissions, this paper will shed light on the path forward, highlighting the challenges and opportunities that lie ahead.

The aviation industry's carbon footprint is a significant environmental challenge that requires coordinated global action. While there have been notable efforts to address this challenge, there is still much work to be done. This paper aims to provide a comprehensive overview of the current state of affairs, setting the stage for a detailed evaluation of global governance efforts and exploring potential strategies for the future.

## **II. RESEARCH QUESTIONS**

1. How is the aviation industry currently contributing to global greenhouse gas emissions, and how will it change in the future?
2. How successful are the international measures, for controlling aviation emissions like CORSIA and the EU ETS, in reducing the impact of greenhouse gases generated by the aviation industry?
3. What role do major countries, notably the USA and India, play in shaping the trajectory of the aviation industry's environmental impact?
4. What are the challenges and opportunities in adopting sustainable aviation fuels and electric aircraft as future strategies for reducing aviation's carbon footprint?

### III. RESEARCH METHODOLOGY

The research methodology for this study adopts a secondary research framework, concentrating on the critical analysis and synthesis of extant literature related to aviation's carbon footprint and global governance efforts. This approach entails an exhaustive review and discerning interpretation of existing research outputs, eschewing the collection of primary data. Secondary research stands as a cornerstone in dissecting intricate subjects such as global environmental policies and the aviation industry's response, by amalgamating varied viewpoints and conclusions drawn from a plethora of sources.

### IV. GLOBAL GOVERNANCE EFFORTS TO REDUCE AVIATION EMISSIONS

Since the aviation industry contributes significantly to global greenhouse gas emissions, its environmental impact has been highlighted. Recognising the urgency to address this, various global governance efforts have been initiated to curb the emissions from this sector. This article delves deeper into these efforts, with a particular focus on the positions of key countries such as India, the USA, and other significant nations in the aviation sector.

**International Civil Aviation Organization (ICAO) and CORSIA:** In the aviation industry, ICAO, an agency of the United Nations, has actively contributed to establishing standards and policies to reduce emissions. The CORSIA programme is one of the initiatives of ICAO, which was introduced in 2016. It requires airlines to offset their greenhouse gas emissions by purchasing carbon credits from projects that contribute to reducing greenhouse gas emissions in multiple sectors. However, some critics have raised concerns about CORSIA's nature until 2027 and its heavy reliance, on offsetting than focusing on actual emission reductions. The main goal of this initiative is to maintain aviation emissions at 2020 levels by utilizing these offsets<sup>4</sup>.

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<sup>4</sup> Baledón, M. Soria et al. "Alternative Jet Fuels and Climate Geopolitics: What, Why Does It and Who Matters in the Environmental Policy-Making Process." (2021). <https://doi.org/10.1080/15568318.2021.1912225>.

***Position of India and USA:*** The USA, being one of the largest aviation markets, has been proactive in its approach. The country has made sustainable aviation alternative fuels a cornerstone of its Next Generation Air Transportation System strategy. The emphasis is on developing and testing these fuels as a means to reduce CO<sub>2</sub> emissions from flights.

India, on the other hand, has been vocal about the differentiated responsibilities and respective capabilities principle. While it supports the global mission to reduce aviation emissions, it emphasizes that developing countries should have the flexibility and necessary support in achieving these targets. India's stance is rooted in its developmental priorities and the need to strike a balance between growth and environmental sustainability.

***European Union's Emissions Trading System (EU ETS):*** Apart from ICAO's efforts, the European Union has been a forerunner with its Emissions Trading System (EU ETS). This system includes aviation within its carbon trading scheme, necessitating airlines to purchase emission allowances for their flights within the European Economic Area. By doing so, it incentivizes airlines to either reduce their emissions or buy additional allowances to offset their carbon output.

***Alternative Jet Fuels and Climate Geopolitics:*** The adoption of jet fuels (AJF) is considered an opportunity, for change. However, the absence of policies and standardized regulations has posed an obstacle. Within the air transportation community stakeholders believe that this has greatly contributed to the production of AJF in the last ten years. The significance of AJF becomes more apparent when considering occurrences such as the COVID-19 pandemic and the flyskam movement, in Europe, which aims to shame excessive flying<sup>5</sup>.

While these efforts are commendable, the effectiveness of global governance mechanisms in reducing aviation emissions is still debatable. The voluntary

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<sup>5</sup> Baledón, M. Soria et al. "Alternative Jet Fuels and Climate Geopolitics: What, Why Does It and Who Matters in the Environmental Policy-Making Process." (2021). <https://doi.org/10.1080/15568318.2021.1912225>.



nature of some agreements, the lack of universal participation, and the slow pace of implementation are some of the challenges. Moreover, the complex nature of the aviation industry, with its diverse stakeholders and national interests, adds layers of complexity.

For tangible results, there's a need for better coordination and collaboration between governments, airlines, manufacturers, and other stakeholders. The allocation of responsibility for aviation emissions remains a contentious issue, leading to debates among stakeholders. Achieving consensus and fostering collaboration will be pivotal in realizing the goal of sustainable aviation.

The global governance efforts to reduce aviation emissions are a testament to the international community's commitment to addressing climate change. While challenges persist, with collaborative efforts and a shared vision, the aviation industry can chart a sustainable path forward.

## **V. ASSESSING THE EFFECTIVENESS OF GLOBAL GOVERNANCE EFFORTS**

The issue of climate change, on a scale requires an effort from all sectors, including the aviation industry. Since the aviation sector plays a role in greenhouse gas emissions it is crucial to evaluate how effective global governance measures are in reducing these emissions. The Paris Agreement, an treaty established ambitious targets to limit global warming to below 2°C and strive for even lower temperatures of 1.5°C. Achieving these goals will require an approach that involves strategies, such as reducing fossil fuel emissions addressing human made greenhouse gases with long lifespans and tackling shorter term climate influencers, like methane.<sup>6</sup>

One of the key findings from recent studies is the significant impact of anthropogenic CH<sub>4</sub> emissions on the global carbon budget. These emissions

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<sup>6</sup> Hayman, G. D. et al. "Regional Variation in the Effectiveness of Methane-Based and Land-Based Climate Mitigation Options." *Earth System Dynamics* 12, no. 2 (2021): 513-544. <https://doi.org/10.5194/esd-12-513-2021>.

have the potential to offset carbon dioxide emissions in the range of 188-212 Gt C. The potential, for reducing the impact of methane emissions comes from two factors; decreasing the amount of methane released into the atmosphere and changes in how carbons cycled that lead to increased absorption of CO<sub>2</sub> by land and oceans thanks to the fertilization effect caused by CO<sub>2</sub>. It's worth mentioning that mitigating methane emissions has proven to be beneficial in regions, like India, the USA and China where significant amounts of methane are emitted.<sup>7</sup>

Numerous studies have examined the efficiency of land-based approaches to mitigate carbon emissions, such, as afforestation reforestation (AR) and biomass energy, with carbon capture and storage (BECCS). These strategies hold the potential to globally offset an amount of carbon ranging from 51 to 100 Gt C. However, it is crucial to acknowledge that the effectiveness and optimal land management approach, whether it be AR or BECCS may vary depending on the region. Moreover, there are concerns regarding the impact of BECCS implementation on water security, in certain areas<sup>8</sup>.

The positions of countries like India and the USA are of particular importance given their significant contributions to global emissions. India, as a rapidly developing nation with a growing aviation sector, faces the dual challenge of meeting its developmental goals while adhering to its climate commitments. The USA, with its advanced aviation industry, plays a pivotal role in setting global standards and driving technological innovations for emissions reduction.

While these mitigation strategies are promising in terms of reducing the risk of climate change, they are not without challenges as well. There is a possibility that actual carbon budgets are less than estimated since carbon budgets often ignore feedbacks from Earth's systems, such as carbon dioxide released by permafrost thawing and methane released by wetlands. For this

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<sup>7</sup> *ibid*

<sup>8</sup> *ibid*

reason, if we are to achieve the goals of the Paris Agreement, we must reduce emissions sources and implement technologies that remove carbon dioxide from the atmosphere (CDR).<sup>9</sup>

While global governance efforts have made strides in addressing aviation emissions, their effectiveness remains a subject of ongoing research and debate. The dynamic interplay of technological advancements, policy measures, and international cooperation will determine the future trajectory of the aviation sector's carbon footprint. As the world grapples with the pressing challenge of climate change, the onus is on key players, including countries like India and the USA, to lead the way in crafting sustainable solutions for the aviation industry.

## VI. FUTURE STRATEGIES AND INNOVATIONS IN REDUCING AVIATION EMISSIONS

The aviation sector, a significant contributor to global greenhouse gas emissions, is at the crossroads of technological advancements and policy-driven initiatives. As the world grapples with the challenges of climate change, the onus is on the aviation industry to adopt sustainable practices and innovations.

**Sustainable Aviation Fuels (SAFs):** One of the most promising avenues for reducing aviation emissions is the development and deployment of Sustainable Aviation Fuels. Derived from renewable sources, SAFs have the potential to significantly curtail aviation emissions. However, their widespread adoption hinges on addressing challenges related to scalability, cost, and feedstock availability. Both India and the USA have shown a keen interest in promoting SAFs. The USA, with its robust research ecosystem and policy incentives, has been at the forefront of SAF research and deployment. India, on the other hand, with its vast agricultural landscape, sees an

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<sup>9</sup> Hayman, G. D. et al. "Regional Variation in the Effectiveness of Methane-Based and Land-Based Climate Mitigation Options." *Earth System Dynamics* 12, no. 2 (2021): 513-544. <https://doi.org/10.5194/esd-12-513-2021>.

opportunity in biofuel-based SAFs, leveraging non-food crops and agricultural residues.

**Electrification of Aircraft:** Electric and hybrid-electric aircraft represent a paradigm shift in aviation technology. With the potential to eliminate direct emissions, these aircraft, however, face challenges related to range, payload capacity, and infrastructure requirements. The USA, with its tech-driven aviation industry, has been investing heavily in electric aircraft research. Companies like Boeing and startups like Zunum Aero are exploring electric and hybrid propulsion systems. India, while still in the nascent stages of electric aviation, has shown interest, especially for regional connectivity and urban air mobility solutions.

**Operational Efficiencies:** Technological advancements aren't just limited to aircraft design and fuels. Enhancing air traffic management, optimizing flight routes, and improving ground operations can also lead to significant emission reductions. The USA's Next Generation Air Transportation System (NextGen) is a testament to this approach, aiming to modernize America's air transportation system. India's GAGAN (GPS Aided GEO Augmented Navigation) system, developed by the Indian Space Research Organisation (ISRO) and the Airports Authority of India (AAI), is a step in this direction, ensuring efficient air traffic management.

**Collaborative Research and Development:** Collaboration is key to addressing the multifaceted challenges of aviation emissions. Joint research initiatives, public-private partnerships, and international collaborations can accelerate the pace of innovation. The USA, with its rich ecosystem of aerospace companies, research institutions, and federal agencies, often collaborates on various aviation research projects. India, too, has been fostering collaborations, both domestically and internationally. The recent collaboration between the Directorate General of Civil Aviation (DGCA) of India and the US Federal Aviation Administration (FAA) aims to enhance technical cooperation in civil aviation.

**Policy and Regulatory Frameworks:** While technological advancements are crucial, they need to be complemented by robust policy and regulatory frameworks. The USA's stringent emission standards for aircraft and the promotion of alternative fuels through policy incentives are steps in this direction. India, recognizing the growth potential of its aviation sector and its environmental implications, has been working on a comprehensive civil aviation policy that addresses sustainability.

The future of aviation, in the context of sustainability, lies in a synergistic approach that combines technological innovations, policy frameworks, and global collaborations. Countries like the USA and India, given their significance in the global aviation landscape, have a pivotal role to play. While challenges abound, the concerted efforts of governments, industry stakeholders, and research institutions offer a beacon of hope for a sustainable aviation future.

## VII. CHALLENGES AND LIMITATIONS IN CURRENT GLOBAL GOVERNANCE APPROACHES TO AVIATION EMISSIONS

The aviation sector, while essential for global connectivity and economic growth, is a significant contributor to global greenhouse gas emissions. As of 2019, aviation was responsible for approximately 2.5% of global CO<sub>2</sub> emissions.<sup>10</sup> With the expected growth in air travel, this figure is projected to rise substantially. Addressing aviation emissions is crucial, but the global governance approaches to this issue face several challenges and limitations.

**1. Inadequate International Agreements:** The main international framework, for tackling aviation emissions is the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) which falls under the jurisdiction of the International Civil Aviation Organization (ICAO). However there have been criticisms regarding CORSIA's approach until 2027

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<sup>10</sup> Lee, D.S. et al. "The Contribution of Global Aviation to Anthropogenic Climate Forcing for 2000 to 2018." *Atmospheric Environment* (2020). <https://doi.org/10.1016/j.atmosenv.2020.117834>.

and its heavy reliance on offsetting than achieving real reductions, in emissions<sup>11</sup>.

**2. Differing National Interests:** Countries have varied interests based on their economic reliance on aviation. For instance, while the USA has a robust domestic aviation market, countries like India are still experiencing rapid growth in their aviation sectors. This divergence in national interests can lead to conflicts in international negotiations.<sup>12</sup>

**3. Economic Considerations:** The aviation industry is a significant contributor to the global economy. In the USA, the aviation industry supports millions of jobs and contributes over \$1.6 trillion to the national economy<sup>13</sup>. Similarly, in India, the aviation sector is expected to be a key driver of future economic growth. Balancing emission reductions with economic considerations is a persistent challenge.

**4. Technological Limitations:** Current aviation technology does not support large-scale emission-free flight. While there are ongoing research and innovations, such as electric planes, they are not yet viable for widespread commercial use.<sup>14</sup>

**5. Lack of Consensus among Major Emitters:** Major aviation countries, including the USA, China, and EU member states, have differing views on how to address aviation emissions. The USA, for instance, has historically preferred market-based measures, while the EU had introduced an Emission Trading System, which was met with international resistance<sup>15</sup>.

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<sup>11</sup> International Civil Aviation Organization. CORSIA Annual Report (2021).

<sup>12</sup> Schäfer, A.W. et al. "Costs of Mitigating CO<sub>2</sub> Emissions from Passenger Aircraft." *Nature Climate Change* (2016).

<sup>13</sup> Federal Aviation Administration. *Economic Impact of Civil Aviation on the U.S. Economy* (2021).

<sup>14</sup> Grote, M. et al. "The Environmental Impact of Future Aviation Scenarios." *Transportation Policy* (2021).

<sup>15</sup> European Commission. *EU Emission Trading System* (2019).

## 6. Position of India and the USA:

**India:** India's aviation market is one of the fastest-growing in the world. The country emphasizes the principle of "common but differentiated responsibilities" in international climate negotiations, arguing that developed countries should bear a larger share of the emission reduction burden<sup>16</sup>. India has expressed concerns about the economic implications of stringent emission reduction targets on its burgeoning aviation industry.

**USA:** The USA, with one of the largest aviation markets, plays a crucial role in global governance approaches. Historically, the USA has been wary of stringent international regulations that might adversely impact its aviation industry. However, there has been a shift towards recognizing the importance of addressing aviation emissions, especially under recent administrations.<sup>17</sup>

## 7. Other Countries of Importance:

**China:** As the world's second-largest aviation market, China's position is crucial. China has supported CORSIA but has also emphasized the importance of considering the different development stages of countries<sup>18</sup>.

**EU:** The European Union has been proactive in addressing aviation emissions, with measures like the EU Emission Trading System. However, the EU's approach has sometimes been in conflict with other major aviation countries<sup>19</sup>.

**8. Market-based Measures vs. Regulatory Approaches:** There's a debate on whether market-based measures like CORSIA or regulatory

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<sup>16</sup> Ministry of Civil Aviation. India's Aviation Growth Story (2020).

<sup>17</sup> United States Department of Transportation. U.S. Aviation Greenhouse Gas Emissions Reduction Plan (2021).

<sup>18</sup> Zhang, Y. & Yang, L. "China's Position in Global Aviation Carbon Management Initiatives: Interests, Role, and Influence." *Journal of Air Transport Management* (2018).

<sup>19</sup> European Commission. Reducing Emissions from Aviation (2020).

measures are more effective. While market-based measures provide flexibility, they rely on offsetting, which may not lead to actual emission reductions<sup>20</sup>.

**9. Inequities in Global Governance:** Developing countries often argue that global governance mechanisms disproportionately favor developed countries. These inequities can lead to mistrust and hinder effective international cooperation<sup>21</sup>.

While the need to address aviation emissions is undeniable, the path forward is fraught with challenges. Balancing economic growth with emission reductions, technological advancements, and varied national interests makes global governance of aviation emissions a complex issue. Effective solutions will require cooperation, innovation, and a recognition of the shared responsibility to combat climate change.

## VIII. CONCLUSION

The carbon emissions caused by the aviation industry have become a cause for concern particularly due to its contribution, to global greenhouse gas emissions. As the world faces the task of addressing climate change attention is increasingly being directed towards aviation and its endeavours to minimize its impact. This conclusion aims to encapsulate the global governance mechanisms addressing aviation emissions, the roles of major countries, and the path forward.

The past few decades have witnessed a surge in global air travel, with countries like the USA and Europe leading in terms of development and industrialization. However, the environmental repercussions of this growth have been profound. Recent studies highlight that the most impactful

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<sup>20</sup> Gössling, & Higham. "The Global Scale, Distribution and Growth of Aviation: Implications for Climate Change." *Global Environmental Change* (2020).

<sup>21</sup> Bows-Larkin, A. "All Aboard: Aviation, Shipping, and Climate Change Policy." *Climate Policy* (2015).



countries on the environment today are from Asia, notably China and India<sup>22</sup>. These nations, with their burgeoning middle class and expanding economies, have seen a spike in air travel demand, further exacerbating the environmental challenges.

The United Nations, recognizing the severity of the issue, redacted the 2030 Agenda, offering a blueprint for countries to combat the effects of climate change and reduce global warming. The European Union, in its bid to be at the forefront of this battle, introduced the Green Deal. Based on the EU's accomplishments, there's a potential scenario where if major polluting countries, including the USA, India, and China, were to adopt similar targets, the world could witness a significant reduction in emissions. Utilizing the Kaya Identity, it's projected that such measures could lead to reduced energy consumption, increased uptake of renewable energy, and a substantial decrease in CO<sub>2</sub> emissions, potentially bringing the world back to the environmental state it was in around 1990<sup>23</sup>.

However, while the EU's Green Deal serves as an exemplary model, its implementation on a global scale, especially in countries with diverse economic and social challenges like India and the USA, requires meticulous planning and collaboration. The USA, historically one of the largest carbon emitters due to its industrial activities and extensive air travel network, has recently taken steps towards sustainable aviation, but the journey is long. India, on the other hand, is at a crucial juncture. With its aviation sector poised for exponential growth, the decisions it makes now will have long-term environmental implications.

The challenges are multifaceted. For countries like the USA, transitioning to sustainable aviation requires not just technological innovations but also policy overhauls, given the entrenched interests of fossil fuel industries. India, with its dual challenge of catering to a growing demand for air travel

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<sup>22</sup> Rovinaru, M. et al. "Where Are We Heading? Tackling the Climate Change in a Globalized World." 2022. <https://doi.org/10.3390/su15010565>.

<sup>23</sup> Ibid.

while ensuring environmental sustainability, needs both technological solutions and robust policy frameworks. Collaborative efforts, both within the country among various stakeholders and internationally with other nations, will be pivotal.

Moreover, the global nature of the aviation industry necessitates international cooperation. No country can tackle the challenges of aviation emissions in isolation. International bodies, agreements, and conventions play a crucial role in setting the agenda and ensuring compliance. However, the effectiveness of such global governance mechanisms is often a subject of debate. While they set the direction, the onus of implementation lies with individual countries, each grappling with its unique set of challenges.

In conclusion, the path to reducing aviation's carbon footprint is laden with challenges but is not insurmountable. The EU's Green Deal, the UN's 2030 Agenda, and other such initiatives provide a roadmap. Countries like the USA and India, given their significant roles in the global aviation landscape, have a responsibility not just to their citizens but to the world at large. Through collaborative efforts, technological innovations, and robust policy frameworks, a sustainable future for aviation is achievable. The journey will require concerted efforts, sacrifices, and, most importantly, the will to prioritize the planet over short-term gains.

# REALIGNING GLOBAL GOVERNANCE AND STATE CSR POLICIES: A STUDY

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Karan Shaileshkumar Modi\*\*

## ABSTRACT

*Corporate Social Responsibility (CSR) in India has gained significance as companies have recognised their role to improve society as well as to comply with the legal mandate, that is, under the Companies Act, 2013. CSR is considered to be one of the strategies for the development of local communities. It is observed that some companies execute CSR activities mainly to evade taxes and gain the trust of the people; some NGOs use CSR to scam the local community and the company. In the Companies Act, 2013 there is no authority to check whether the companies are doing CSR activities or not. Nowadays, companies cannot use the resources taken by nature, they must maintain the environment/nature and use technologies that do not harm the environment/nature and local community. This research paper employs the frameworks of global governance and corporate governance, to discuss establishing a suitable, responsible, and accountable business environment globally under CSR.*

**Keywords:** *Companies, Corporate Social Responsibility, Global governance, corporate governance, Sustainable Development, Responsiveness.*

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## I. INTRODUCTION

Corporate Social Responsibility (CSR) has developed as an important part of modern corporate operations. Companies are increasingly required to solve social and environmental issues in addition to making a profit. In the context of CSR, this paper explores the complicated link between global governance and corporate governance. It examines how international organizations, national governments, and non-governmental organizations influence corporate governance practice, and how this affects a company's CSR operation. The global governance concept and corporate governance framework together are critical to establishing a suitable, responsible, and accountable business environment. Many issues have become part of our daily life such as environmental, social, political, economic, and cultural. Nowadays gaining more and more profit is no longer a sole business indicator but companies have to play the role of responsible corporate citizens and they owe this much to society as they use resources from society. If a company wants to build trust with its stakeholders, then with the medium of CSR activity the company may use it as an effective outreach tool and may deter activist shareholders. For a country like India, corporate social responsibility is nothing new. Mahatma Gandhi pushed for the idea of trusteeship. India is the first country to set up a legal framework for CSR activities and to require CSR spending for the benefit of society as a whole. Corporate Social Responsibility has gotten a lot of attention in recent decades since the introduction of the regulations of CSR in the year 2013.

This paper explores the link between global governance and state-adopted public policies to promote and regulate CSR. It emphasises the significance of collaborative efforts among government, international organizations, and corporations in furthering sustainable development and ethical corporate behaviour. Moreover, this paper explores the problems and possibilities in developing CSR, as well as ideas for enhancing global governance to improve CSR globally. CSR is the willingness of a company to contribute to a sustainable future by incorporating social and environmental issues into its

business operations and connecting with stakeholders. Because of the growth of globalization and the growing influence of multinational companies, governments, and international organizations must handle CSR on a worldwide scale.

## **II. RESEARCH OBJECTIVES**

- To examine the efficiency of the global governance framework in encouraging states and multinational companies to practice corporate social responsibility.
- To explore the issues and challenges those states may face while adopting and monitoring CSR efforts, as well as to suggest best practices and viable solutions for addressing these challenges.
- To analyse the relationship between CSR practice and companies' behaviour, environmental sustainability, labour standards, and community participation, as well as how they correspond with state public policy.

## **III. RESEARCH QUESTIONS**

- How do global governance systems impact multinational companies and nations' adoption of corporate social responsibility practices?
- What are the primary factors of state public policies that support or obstruct the incorporation of CSR efforts within their jurisdiction?
- What is the connection between CSR practice and corporate behaviour in terms of ethics, environment, labour standards, and community participation?

## **IV. RESEARCH METHODOLOGY**

The researcher has adopted purely doctrinal research and secondary data study. The study utilizes a combination of quantitative data and qualitative data analysis. The study includes books, reports, circulars, regulatory

systems, various websites, Articles, and published national and international Journals.

## **V. MEANING AND CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY**

### **V (1) State Public Policies and Activities and CSR**

The International organizations, agreements, and conventions that lead and control global affairs are referred to as global governance. It is crucial in developing CSR because it establishes the platform for state participation and cooperation in encouraging responsible business behaviour. Organizations like the United Nations, the International Labour Organization, and the World Trade Organization help to produce CSR concepts and recommendations.

The state plays a vital role in developing CSR Through law, regulation, and incentives. Government must strike a balance between encouraging good corporate practice and fostering economic development.

- a) **Legal Structures:** Many states have enacted legislation requiring companies to declare their CSR operations and their impact on society and the environment. These measures enhance openness and assist in holding businesses responsible for their activities.
- b) **Benefit and Taxation:** Some governments offer reductions in taxes or financial incentives to companies that practice CSR, encouraging them to invest in environmentally friendly practices and social activities.

The Ministry of Corporate Affairs (MCA) established the National Corporate Social Responsibility Awards to honour companies for their creative and long-lasting CSR activities that have improved society. The first National CSR Awards event took place on October 29, 2019.

### **V. (2) The Role of Global Governance in CSR**

Global governance bodies like the United Nations, the World Trade Organization, and regional trade agreements have a variety of effects on CSR.

- 1. Rules Establishment:** International organizations create rules and standards that influence company conduct. Agreements such as the United Nations Global Compact encourage ethical corporate practices such as human rights, labour, environment, and anti-corruption principles. These standards serve as a reference for companies developing CSR strategies.
- 2. Regulatory Influence:** Through international agreements and accords, global governance organizations can apply regulatory scrutiny on companies. International convention compliance frequently involves particular CSR initiatives, such as lowering carbon emissions in line with the Paris Agreement.
- 3. Transparency and disclosure:** Companies are urged to disclose their CSR activities publicly through initiatives such as the Global Reporting Initiative (GRI) and the Sustainable Development Goals (SDGs). Corporations seeking to line with global governance ideals have increasingly embraced these reporting structures.

#### **V. (3) Global Governance in other states:**

- 1) United States of America:** No statute in the United States requires CSR. However, numerous initiatives and rules, such as the Global Reporting Initiative (GRI) and the United Nations Global Compact, urge businesses to engage in Corporate Social Responsibility activities. However, certain laws address CSR indirectly. The Security and Exchange Commission (SEC) mandates corporations to report relevant information, which may include CSR-related issues. Several states have passed legislation governing corporate governance.

- 2) **United Kingdom:** The Companies Regulations 2018 in the United Kingdom require corporations to report on their governance structures, including social and environmental issues. While there is no particular legislation mandating CSR in the UK, it does support responsible business practices. Directors are obligated by the Companies Act, 2006 to consider the interests of employees, consumers, suppliers, the environment, and the community. However, this does not imply that CSR has been reformed into a legal obligation.
- 3) **Denmark:** Large corporations are required to include a CSR statement in their annual reports as a result of the Danish Financial Statement Act in Denmark. The company's CSR activities, the steps it took during the fiscal year, and its projected activities should all be laid out in the statement.
- 4) **Brazil:** Brazil has a National Policy on social responsibility and sustainable development that encourages corporations to adopt sustainable voluntary practices. It promotes responsibility, transparency, and the incorporation of environmental and social considerations into company operations. However, certain sector-specific rules mandate companies to conduct CSR activities, such as the Brazilian Forest Code for forestry enterprises. The Brazilian CSR Law governs state-owned and mixed-capital corporations, which design and implement a CSR strategy.
- 5) **South Africa:** The Board-Based Black Economic Empowerment Act was implemented in South Africa to address historical injustice by encouraging economic change and social responsibility. The Companies Act, 2008 in South Africa has included CSR into its regulatory structure. This law mandates that eligible corporations are required to create an integrated report that provides their social and environmental performance in their annual reports.



## VI. CORPORATE GOVERNANCE INFLUENCE ON CSR

Individual companies' corporate governance systems are essential in defying their commitment to CSR. Effective corporate governance improves an organization's CSR activities accountability and transparency:

- A. Board Supervision:** The board of directors is responsible for determining a company's strategic direction, including its CSR agenda. A strong board with a varied set of skills and experience is more likely to place a premium on CSR and long-term sustainability.
- B. Shareholder Influence:** Through shareholder resolution, engagement, and divestment plans, shareholders may put pressure on companies to embrace CSR practices. This impact is especially strong in publicly listed companies.
- C. Management Responsibility:** A company's leadership and management play a critical role in integrating CSR into the corporate culture. Strong CSR management may drive the adoption of responsible practices throughout the organization.

**Application of CSR Provisions in India:** According to section 135 of the Companies Act 2013<sup>1</sup>, the provisions of corporate social responsibility apply to companies that have a turnover of <sup>1</sup> 1000 crores or more, a net worth of <sup>1</sup> 500 crores or more, or a net profit of <sup>1</sup> 5 crores or more. Companies in the aforementioned class must spend at least 2% of their average net profit over the previous three financial years on CSR activities. These regulations also apply to any company, including its parent or subsidiary, and any foreign company that has a branch office in India during any financial year.

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<sup>1</sup> Ministry Of Corporate Affairs, <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>, (Last visited April. 10, 2023).

## **VII. CORPORATE SOCIAL RESPONSIBILITY COMMITTEE OF INDIA**

According to section 135 of the Companies Act 2013, establishing a Corporate Social Responsibility Committee is mandatory for companies that comply with CSR regulations to design and supervise the company's CSR policy. The CSR committee must consist of at least three directors, including one independent director. The company must establish a CSR committee with two or more directors if it is exempt from the appointment of an independent director as per section 149(4) of the Companies Act, 2013.

### **VII. (1) Functions of CSR Committee**

The CSR committee shall present a CSR policy and recommend it to the Board of Directors of the company. The committee will also suggest the amount to be spent on CSR initiatives. Moreover, it will review periodically the company's CSR policy.

<b>Type of Company</b>	<b>Requirement of Director in CSR Committee</b>
Private Company	CSR committee can comprise 2 directors.
Foreign Company	At least 2 directors make up the CSR committee; one of whom must be an Indian resident and another who must be appointed by the foreign company.

### **VII. (2) Cessation of CSR Provisions**

Firstly, If the company does not meet parameters for three consecutive fiscal years is not required to comply with CSR regulations. Secondly, If the company meets any of the criteria throughout three consecutive fiscal years, then it must engage in CSR activities unless it does not meet parameters for a continuous period of three years.

## VII. (3) Corporate Social Responsibility Activities

The activities are carried out by the company as per its CSR policy; except the activities carried out as part of its normal course of business. Schedule VII<sup>2</sup> of section 135 of the Companies Act 2013 provides a comprehensive overview of the areas that are prioritized for socio-economic development. These areas include eradicating poverty, hunger, and malnutrition. The focus is on preventive healthcare and sanitation to ensure the well-being of the community. Such projects include rural development projects and growth of slum areas; “Any area recognized as a slum area by the Central Government, State Government, or other competent body under relevant legislation is considered a slum”. Additionally, efforts are being made to promote education and employment opportunities, particularly improving skills among children, women, the elderly, and individuals with disabilities, thereby enabling them to lead better lives.

**Infosys**<sup>3</sup>: Infosys conducts its Corporate Social Responsibility activities through the Infosys Foundation. Following are the CSR activities done by the Infosys Foundation.

- In health cases, assisting COVID-19 relief operations and delivering critical medical equipment and infrastructure to hospitals across India.
- In Karnataka, construction of a 100-bed maternity and child care facility.
- Infosys Foundation has spent a total of <sup>1</sup> 396.70 cores for CSR activities in the fiscal year 2022.

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<sup>2</sup> Ministry of Corporate Affairs, <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>, (Last visited April. 10, 2023).

<sup>3</sup> Infosys, <https://www.infosys.com/investors/corporate-governance/documents/corporate-social-responsibility-policy.pdf>, Last visited April.15, 2023).

**Tata Motors**<sup>4</sup>: The mission of CSR policy is “Being responsible corporate citizen driving inclusive growth, social equity, sustainable development, and national building”

- Tata Motors have established different programs for different CSR projects i.e. for health purposes they have ‘AAROGYA’
- With the ‘VIDYADHANAM’ project the company facilitates special coaching classes for standard 9 and 10 students and coaching for medical and engineering entrance examinations.
- For the development of skills in the youth of India, Tata Motors established the ‘KAUSHALYA’ project and provided employability skills and training to youth who dropped out of school which included auto and technical trades, non-auto training, and agriculture training.
- To protect the environment, establish the ‘VASUNDHARA’ and for drinking water ‘AMRUTDHARA’ projects.
- For all these projects Tata Motors has spent a total <sup>1</sup> 23.7 core and this program reached more than 7, 91,292 lives and made their lives better.
- In IPL 2023, Tata Motors has launched CSR initiatives that if a batsman hits a boundary and if the ball hits their car, they will donate <sup>1</sup> 5 lakhs towards enhancing the biodiversity of coffee plantations in Karnataka.

**Mahindra Home Finance**<sup>5</sup>: Its CSR policy for the year 2021-22 comprised education, gender equality, women empowerment, disaster aid, preventive healthcare and sanitation, environmental sustainability, and so on.

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<sup>4</sup> Tata Motors, <https://www.tatamotors.com>, (Last visited April. 15, 2023).

<sup>5</sup> Mahindra Finance, <https://www.mahindrafinance.com/rise-for-good/csr-overview>, (Last visited April. 15, 2023).

i) Education, Gender Equality, and Economic Empowerment:

Providing training to women in agriculture, business, animal husbandry, digital and financial literacy, computer training, and many other aspects in Haryana, Madhya Pradesh, Rajasthan, Bihar, Jharkhand, and Gujarat.

ii) Healthcare:

The combating COVID project includes the establishment of COVID care centers in Rajasthan, Gujarat, Maharashtra, Bihar, Andhra Pradesh, Tamil Nadu, and Kerala, as well as the construction of Individual household latrines in villages across the country where open defecation is a major concern.

iii) Environment:

The watershed development project aims to increase groundwater levels by repairing various types of watersheds and increasing the water storage capacity to enhance the livelihood of people living in the rural areas of Maharashtra.

## VIII. BENEFITS OF CORPORATE SOCIAL RESPONSIBILITY

The following are all aspects that businesses must consider if they are to be successful in the future. The benefits of CSR to companies may be larger than you'd anticipate.

- a. **Increase in Brand Recognition:** Doing socially aware CSR activity might bring your business to the attention that may never be heard about your brand. People like positive stories and if you can do a socially aware activity, you might get the media attention that you cannot get with paid advertisement.
- b. **Improve Business Image:** If your business is recognized that does not mean anything if your reputation is damaged. Your company's

reputation improves once you implement CSR activity and reflect a positive image in society.

- c. **Gain of Public Trust:** You cannot take it easy when your CSR activity has gained the public's trust and it is not an easy task to gain somebody's trust. Many people have mistrust in businesses and believe that they are "just doing for just to gain reputation". You may maintain the trust that you gained by establishing yourself as a responsible corporate citizen by providing aid in local community programs and what are you going to do with your CSR activity that benefits the local community.
- d. **Boost in Capital Growth:** Your business may receive new investments or capital from venture capital firms and even from the government if you build your brand, improve your reputation, and gain public trust. Your business has the opportunity to reach a larger audience and benefit more local communities with new capital and financial aid.
- e. **Gain in Customer Loyalty:** Customers will be more likely to use your goods and services if your business can establish that you are giving back to society and local communities. According to a Statista report<sup>6</sup>, companies that promote their CSR initiative have about 70% more loyal consumers.
- f. **High Employee Retention:** Your employees put effort into the company's activities because you want to help society through CSR programs. Working for a socially responsible company brings happiness to today's worker, and according to a Forbs article<sup>7</sup>, "the majority of U.S. companies now include CSR in their business models, and 90% of the employee who works for organizations with a good cause says they are

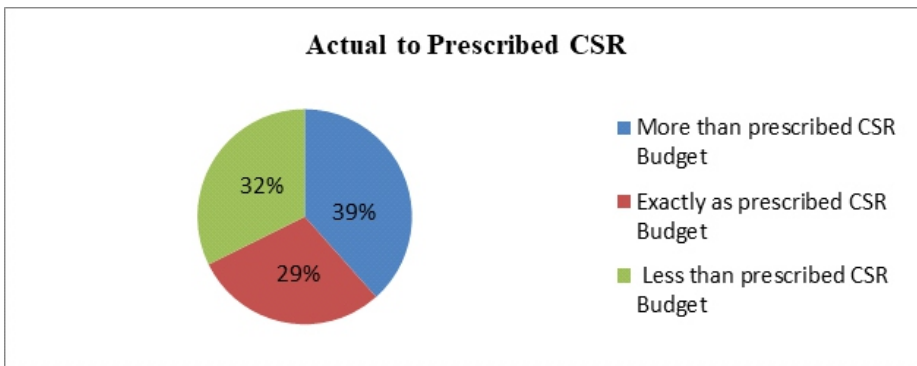
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<sup>6</sup> Statista, <https://r.statista.com/en/csr/>, (Last visited April. 23, 2023).

<sup>7</sup> Autumn Strier, Want Loyal Customers and Employees? Build The Right CSR Program, The Forbes, (April.22,2023, 7:00PM), <https://www.forbes.com/sites/forbesnonprofitcouncil/2021/09/02/want-loyal-customers-and-employees-build-the-right-csr-program/?sh=5af18081620e>.

more loyal to their employers.” There is a considerable likelihood that excellent CSR initiatives will increase employee retention rates.

**Data on Corporate Social Responsibility in India in the Financial Year 2021-2022<sup>8</sup>:** As per the below chart, the data state roughly 37.8% of companies exceeded their allowed CSR expenditure for the fiscal year 2021-22. Reliance Industries, HDFC Bank, Tata Steel, Tata Consultancy Services, and ONGC are among the top five corporations in terms of actual CSR expenditure in India, accounting for more than a quarter of overall CSR spending. Public sector companies accounted for 26.23% of overall CSR expenditure. Maharashtra, Odisha, and Delhi got approximately a quarter of the overall CSR funds in India.



If we compare this data with the data for the financial year 2020-2021:

- In FY 20-21, 65% of companies devoted more than their assigned CSR budget which decreased by 26% in FY 21-22.
- In FY 20-21, 10.6% of companies devoted the same amount as their assigned CSR budget which increased by 18.4% in FY 21-22.
- In FY 20-21, 24.3% of companies devoted less than their assigned CSR budget which increased by 7.7% in FY 21-22.

<sup>8</sup> Available on [https://csrbox.org/India\\_CSR\\_report\\_2022-India-CSR-Outlook-Report—CSR-Analysis-of-Large-301-Listed-Companies-FY-2021-22](https://csrbox.org/India_CSR_report_2022-India-CSR-Outlook-Report—CSR-Analysis-of-Large-301-Listed-Companies-FY-2021-22), 113, (Last visited April. 25, 2023).

## **IX. ACTIVITIES THAT ARE NOT PART OF CORPORATE SOCIAL RESPONSIBILITY**

The following activities will not be part of CSR activity:

- a. If any CSR activities are undertaken outside India, then they will not be considered CSR activities as per Section 135 of the Companies Act 2013.
- b. CSR activities or initiatives that benefit solely the company's employees and their families are not considered CSR activities.
- c. Any contribution made to a political party made directly or indirectly under section 182 of the Companies Act 2013 does not count as CSR activity.

**Corporate Social Responsibility Expenditure:** Every company's board of directors is required to make sure that the company spends at least 2% of the company's average net profit over the previous three fiscal years under its CSR policy. The funds received will be utilized for CSR activities.

- If, the corporation fail to spend such an amount, the board must disclose why the funds were not spent during the fiscal year in its report and take necessary action.
- The company will prioritize the local geographical area and surrounding places for its CSR activities.
- Only spending incurred on activities that occurred in India will qualify as CSR expenditure; expenditure incurred in the course of business will not qualify as CSR expenditure.
- Any surplus generated by the CSR initiatives will not be deemed business profit for the company.



## **The Government's Role in the Approval and Implementation of Corporate Social Responsibility:**

According to Section 135 of the companies act 2013, along with “Schedule VII” of the Act and the Enterprises (CSR Policy) Rules (ER), 2014; establishes a board framework within which eligible companies must develop their CSR policies, including the activities to be carried out. The government has no direct influence over the approval and implementation of a company's CSR activities. The government oversees compliance with CSR guidelines by reviewing the disclosures provided by corporations in the MCA 21 portal. After thoroughly examining all relevant documents and information, the government may take action against not complying with companies for any violation of the Companies Act, 2013.

Corporate Social Responsibility Disclosure<sup>9</sup>: The framework of corporate Social Responsibility relies on disclosure, and companies are expected to disclose information on CSR activities in the MCA21 portal on a yearly basis. Companies must provide CSR disclosure including non-compliance, in their financial statement. As of 22<sup>nd</sup> January 2021, any violation of CSR regulations has constituted a civil wrong. The board's report for any financial year for a CSR-eligible company should include an annual report on CSR which consists of particulars mentioned in Annexure I or Annexure II as per rule 8(1) of the Companies (CSR Policy) Rules, 2014. According to rule 9, the company's Board of Directors must declare the following on their website, if any, for public access:

1. Composition of the CSR Committee
2. Corporate Social Responsibility Policy
3. CSR activities approved by the Board of Director

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<sup>9</sup> Available on [https://www.mca.gov.in/Ministry/pdf/FAQ\\_CSR.pdf](https://www.mca.gov.in/Ministry/pdf/FAQ_CSR.pdf) (Last visited April. 25, 2023).

Unethical Practices: As every coin has two sides, not every company complies with CSR regulations even if they meet the criteria of Section 135 of the Companies Act, 2013. Some companies merely send their required CSR expenditure to NGOs without conducting any due diligence, which results in unethical behavior. In the year 2017, the CBI filed a charge against an NGO, Advantage India, in Delhi for abusing the company's CSR contributions.<sup>10</sup> In the year 2019, Mumbai police discovered a CSR scam in which the accused forged Hexaware Technology's documents and charitable contributions around the country with the promise of providing CSR funding totaling 1 100 cores.<sup>11</sup> The Ministry of Corporate Affairs fined Kony India Private Limited (IT company) a substantial sum of Rs.92 lakhs for violating CSR rules as per the Companies Act, 2013. On February 22, 2023, the Registrar of Companies of Hyderabad issued an order stating that Kony India failed to transfer an unspent sum of Rs. 42, 09,263 to an account known as the 'Unspent Corporate Social Responsibility Account' within 30 days of the end of the financial year 2019-20, which is a violation of Section 135(6) of the Companies Act, 2013.<sup>12</sup>

Punishment: If a company fails to comply with the provisions relating to CSR expenditure, the company will be punishable with a minimum fine of 1 50,000 which may increase to 1 25 lakhs. Every official of such corporation who fails to comply shall face a punishment of imprisonment for a time that may extend to 3 years, a minimum fine of 1 50,000 which may increase to 1 25 lakhs or both. Situation Before and After the Provision of CSR in India: Companies satisfying the requirement must spend at least 2% of their average net profit over the previous 3 years on Corporate Social

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<sup>10</sup> Rajesh Ahuja, CBI files FIR against corporate lobbyist, NGO over misuse of CSR funds, Hindustan Times, (April.19,2023,3:00PM), <https://www.hindustantimes.com/india-news/cbi-files-fir-against-corporate-lobbyist-ngo-over-misuse-of-csr-funds/story.html>.

<sup>11</sup> Raina Assainar, Police uncover CSR funding scam, The Hindu, (April.19,2023, 3:00PM), <https://www.thehindu.com/news/cities/mumbai/police-uncover-csr-funding-scam/article27006141.ece>

<sup>12</sup> Available on <https://indiacr.in/mca-csr-violations-kony-india> (accessed 08/11/2023).

Responsibility (CSR) initiatives, according to the Companies Act, 2013. Hence are some possible distinctions.

**Before CSR Provisions:**

- a. Companies were not required to spend any specific amount on CSR activities.
- b. Many companies focused solely on profit and did not prioritize social and environmental concerns.
- c. There was a lack of transparency and accountability in terms of how companies used their resources.

**After CSR Provisions:**

- a. Companies are now required to allocate a specific amount of profit towards CSR activities, which can have a positive impact on society.
- b. Companies are incentivized to engage in CSR initiatives, which can improve their reputation and brand image.
- c. There is transparency and accountability, as companies are required to report on their CSR activities and expenditures.

Overall, the provisions of CSR in India have led to increased attention and involvement in social and Environmental causes by companies, which can have a positive impact on local communities and the nation.

**X. ISSUES AND CHALLENGES OF CSR IN INDIA**

The Companies Act, 2013 has provided provisions for Corporate Social Responsibility, but how these rules are implemented is another matter. The concerns and obstacles connected to the implementation of corporate social responsibility are as follows:<sup>13</sup>

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<sup>13</sup> Sangeeta Waldron, <https://indiacr.in/corporate-social-responsibility-challenges-in-india/>, by INDIA CSR, November 23, 2022. (Last visited April. 25, 2023).

- (1) **Lack of involvement of Government:** As we have seen before the framework of the CSR provision is based on a discloser basis. There is no authority to check whether the company is following the provisions or not and spending the necessary amount prescribed by the Act. The government only takes the step when it feels like the company not following the provisions, and doubts that the company is not disclosing some records or cheating with the local community. In some way, the government does not have a direct role to play in CSR provision.
- (2) **Not enough Well-Organized Non-Governmental Organizations:** India is a very large country and in every rural area, there are some problems. According to the report in the year 2021, almost 66% of people live in rural areas and because of this, some NGOs cannot reach for aid. NGOs must also identify the true needs of the community and collaborate with companies to enable the successful execution of CSR initiatives. As a result of this problem, some NGOs engage in corporate fraud, and there have been several cases of it.
- (3) **Lack of Disclosures:** One of the major issues for companies is a lack of disclosure, as the CSR framework relies on disclosure and companies must publish their CSR activities annually in the MCA21 portal. However, some companies do not make adequate efforts to disclose information on their CSR initiatives, audit issues, unspent funds, and many others. Which harms the company in the trust-building process with local communities, if companies do not disclose their records, then how can people trust the company?
- (4) **Lack of Public Awareness:** Because India is a vast country with a largely agricultural population, numerous companies focus their CSR initiatives there. Due to a lack of information about CSR activities or a lack of communication between companies involved in CSR activities and the general public. So, there is little interest in the general public in engaging in the CSR activities of companies.

- (5) **Diminished Sense of Duty to CSR:** Some companies are only concerned with profit and have no sense of responsibility to local communities, whereas others only work for the advancement of local communities and have integrated CSR activities into the core of their brand; as a result, CSR is not included in the company's strategic plan and is viewed as a separate concept. Furthermore, CSR efforts are not given the attention they require and are still used as a marketing tool, which is rarely accepted by consumers, who typically define CSR initiatives as volunteer action.

## XI. CONCLUSION AND SUGGESTIONS

As the phrase goes "Everything you put out will come back to you" and I believe this is how companies are approaching their CSR initiatives. Like when a person does a good thing, it comes back to him in the future in a positive way. Likewise, a company's good deeds come back to it in the form of loyal customers, goodwill, public trust, and many other things. These things take a lot of time to come around but companies can gain all of those things through CSR activities. The interaction of global governance, public policies, and CSR activities is vital for promoting ethical corporate behaviour and accomplishing sustainable development goals. Government and international organizations must collaborate to develop a more harmonized, and transparent global framework for CSR. By tackling obstacles and exploiting opportunities, the international community may assist in promoting a more socially and environmentally responsible business, which will benefit society and the world as a whole.

According to the Companies Act 2013, companies must meet certain criteria for mandatory CSR activities. However, some companies perform CSR activities whether they meet the criteria or not for providing benefit to society, which is a good thing that every company should consider. As a result, every local community will grow as our country does.

The following are the suggestions for the successful implementation of Corporate Social Responsibility.

- a. Implement mandatory CSR audits conducted by independent bodies to ensure companies are meeting their corporate responsibility.
- b. Introduce stricter fines or penalties for companies who fail to comply with CSR compliance, or avoid provisions.
- c. Establishment of an independent government body to monitor CSR activity regularly and ensure immediate actions.
- d. Provide tax incentives or other benefits to companies and NGOs that focus on CSR initiatives in rural and underserved communities.
- e. Use technology for remote monitoring and communication to bridge the gap between NGOs, and rural communities.
- f. Invest in training to enhance the capabilities of NGOs and solve community needs effectively.
- g. To increase transparency, create a publicly accessible database containing CSR reports and compliance records.
- h. Propose collaboration between educational institutions and companies to develop internship programs or realistic CSR activities that provide students with hands-on experience.
- i. Start educational initiatives in schools and communities to promote awareness of the value of CSR and its influence on local development, and convey information about CSR activities, via social media, local influencers, and community leaders.
- j. Encourage companies to include CSR in their corporate culture, and principles, and highlight the social and environmental effects of their business.

k. Actively include stakeholders, workers, and the local community in decision-making progress for CSR activities to ensure relevance and authenticity.

Implementing these Suggestions would need coordination between the government, companies, and NGOs.

