Principle of 'Common but Differentiated' Responsibility under Global Climate Change Legal Regime: Mapping Future Pathways from the Lens of Redistributive Justice

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Abstract

The global climate change legal regime has witnessed satisfactory progress in reducing greenhouse gasses in environment. Since the Copenhagen Accord, there has been a substantial shift in global climate commitment and governance, particularly in application of the principle of Common but Differentiated Responsibility (CBDR). Differentiation of duties and responsibilities among sovereign States has been a key aspect of global climate governance, reflecting socio-economic conditions and concerns about fairness. Instead of adopting more ambitious and time-bound emission reduction targets, developed nations have increasingly contested this established principle of CBDR under the global climate change legal regime. Recent commitments under the Paris Agreement clearly show that binding targets and deadlines for emission reductions have become asymmetrical in climate negotiations between developed and developing nations, especially with respect to the new post-2020 climate legal regime. Tensions among these nations have arisen due to assertion of 'Redistributive Justice' for global climate change commitment and governance. Against this background, the principle of CBDR has been explored under the concept of 'redistributive justice' as potential pathway for future GHG emission reductions. The paper argues that the concept of 'redistributive justice' is crucial for ensuring the proper implementation of the CBDR principle among member nations for GHG emission reductions in the post-2020 global climate legal regime. In view of this, the central part of this paper examine the principle of CBDR within global climate change regime, its progressive development in post-Copenhagen Accord climate negotiations, theoretical analysis of the concept of redistributive justice

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and its application for climate actions; concept of redistributive justice as future pathways for proper implementation of the principle of CBDR.

Keywords: Global Climate Change Governance, Principle of Common but Differentiated Responsibility, Redistributive Justice, Redistributive Multilateralism.

I. Introduction

The principle of 'Common but Differentiated Responsibilities' (CBDR) has been a cornerstone of global climate change legal regime shaping the commitments for sovereign nations based on their historical contributions in emissions of 'greenhouse gases' (GHGs) and their varying capacities to mitigate and adapt to its ill-effects.[2] With the adoption of major international legal instruments such as 'United Nations Framework Convention on Climate Change, 1992 (UNFCCC), its Kyoto Protocol, 1997 and Paris Agreement, 2015'[3]; its member nations have agreed to protect global environment on the principles of CBDR, equity and justice. However, the implementation of CBDR has been increasingly contested, with developed countries challenging long-established principle of CBDR, while developing nations continue to demand its application for fair and just climate governance framework that accounts for historical emissions and economic disparities.

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[2]IPCC, Climate Change Synthesis Report 2023; p.4; https://www.ipcc.ch/report/ ar6/syr/downloads/report/ IPCC_AR6_SYR_SPM.pdf (last visited 2 Sept., 2024).

[3]UN Framework Convention on Climate Change, 1992; *UN Treaties Series*, Vol. 1771; http://www/unfccc.int/essential_ background/convention/6026.php (last visited 5 Aug, 2024).; Kyoto Protocol to the UN Framework Convention on Climate Change, 1997, *ILM*, Vol. 37 (1998): http://www/.unfccc.int/key_ documents/kyoto_protocol/items/6445.php (last visited 5 Aug., 2024).; The Paris Agreement under UN Framework Convention on Climate Change, UNFCCC/CP/2015/10/Add.1 (2015): https://unfccc.int/sites/default/files/resource/parisagreement_publication.pdf (last visited 5 Aug., 2024).

The post-2009 global climate governance landscape, particularly after the Copenhagen Accord, has witnessed a significant shift in the interpretation and application of the principle of CBDR.[4] Initially, it was designed to ensure that developed nations undertake greater commitments due to their historical role in climate change, now has been progressively diluted through a growing emphasis on voluntary national commitments rather than legally binding obligations.[5] The Paris Agreement, while heralded as a landmark in international climate cooperation, introduced a more flexible, country-driven approach that, critics argue, 'disproportionately burdens developing countries without ensuring adequate financial and technological support from industrialized nations.'[6] This evolving position has led to increased tensions in recent global climate negotiations with developing nations emphasizing the need for a redistributive approach to global climate governance.

In this context, redistributive justice has emerged as 'a viable concept under international law'[7] which may be useful for reinterpreting and reinforcing CBDR in the changing landscape of global climate change legal regime. Unlike neoliberal approaches that prioritize market efficiency and competitive carbon markets, a redistributive justice approach seeks to address climate justice by ensuring a fair allocation of mitigation and adaptation responsibilities.[8] This concept or approach advocates for structured financial and technological transfers from developed to developing nations, 'recognizing the latter's

[4] Jeffrey McGee and Jens Steffek, *The Copenhagen Turn in Global Climate Governance and the Contentious History of Differentiation in International Law*, 28, J. OF ENV. LAW, 37 (2016).

[5] Usha Tandon & Amrendra Kumar, *Principle of Common but Differentiated Responsibility: Assessing its Legal Status and Implementation after thirty Years of UNFCCC*, III HPNLU J. ENV. AND DIS. MGT.; 1-15; https://hpnlu.ac.in/PDF/02c1d7b6-63a5-4b00-a670-43f2ac40d96f.pdf (last visited 2 Sept., 2024).

[6] *Ibid* at 14.

[7] This approach has been followed in the negotiations relating to trade, transportation, sea and environment at international and regional level such UNCTAD, UNCLOS and UNFCCC. PATRICIA BIRNIE, ALAN BOYLE AND CARTHERINE REDGWELL, INTERNATIONAL LAW AND THE ENVIRONMENT, 190 (OUP: London, 2009)

[8] M. Gupta, *Global Climate Politics: Contestations between Neoliberal and Redistributive Agendas*, 19(4), CLIMATE POLICY JOURNAL 345-360 (2019); also see, S. Patel, *Divergent Approaches to Climate Governance: The Developed vs. Developing World*, 28(3) INT. ENV. GOV. REVIEW, 67-82 (2020).

constrained economic capacities and greater vulnerability to climate-induced disasters.'[9] Besides, redistributive multilateralism has also gained momentum as a response to inequities in international climate law, 'proposing mechanism that enhance global cooperation through differentiated obligations while maintaining the integrity of international legal commitments.'[10]

Against this background, the paper traces the evolution of the principle of CBDR analyzing its shifting role in climate negotiations and its implications for developing nations. It evaluates the potential role of the concept of redistributive justice as a pathway for future global climate governance, arguing that without a clear or firm commitment to the principle of CBDR, the international legal framework risks deepening global inequalities among nations. The paper further explores application of redistributive approach aligned with redistributive multilateralism, while examining prevalent legal instruments under UNFCCC regime to strengthen effectiveness of CBDR in achieving equitable and sustainable climate action. The paper proposes that the principle of CBDR rooted on redistributive principle is essentially required to be applied for a just and effective global response to climate change in the coming decades. For its inquiry, it has been structured in three central parts besides introduction and conclusion as: evolution of the principle of CBDR under global climate change legal regime; theoretical analysis of the concept of redistributive justice and its application for climate actions; concept of redistributive justice for the principle of CBDR as future pathways. Reviewing existing literature and legal instruments, there has been pursued doctrinal research with descriptive and inductive method in arriving on final observations and conclusions.

II. Principle of 'Common but Differentiated' Responsibility: Foundation of Global Climate Change Legal Regime

This principle has been a foundational pillar of global climate change legal regime since its formal inception in year 1992. Rooted in the recognition of historical inequities and varying capacities among member nations, the principle

[9] *Supra* note 4, at 14.

[10] LAVANAYA RAJAMANI, *DIFFERENTIAL TREATMENT IN INTERNATIONAL ENVIRONMENTAL LAW*, 8 (OUP London 2006); Lavanaya Rajamani, *Differentiation in the Emerging Climate Regime*, 14 THEORETICAL INQUIRIES IN LAW, 160 (2013).

of CBDR seeks to balance the shared obligations to address climate crisis with 'the need for fairness and equity in the distribution of responsibilities.'[11] Analysis of its origin, evolution and application becomes essential for examining its role in shaping global climate governance. By tracing its integration into key legal instruments such as the 'United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and Paris Agreement', this part of paper highlights significance of principle of CBDR for addressing the 'complex interplay between environmental sustainability and socio-economic justice.'[12] Furthermore, it explores the challenges and tensions that have emerged in its implementation from last two decades, particularly in the context of shifting geopolitical power dynamics and the growing urgency of climate crisis.

a) The Origin and Conceptual Foundation of CBDR

The principle of CBDR finds its roots in broader notions of equity and justice in international environmental law.[13] It draws inspiration from the recognition that while all States share a common responsibility to protect the global environment, their contributions to environmental degradation and their capacity to address it are mostly unequal.[14] The conceptual basis of this principle may be traced in the '1972 Stockholm Declaration on the Human Environment'[15] which emphasized the need for international cooperation to address global environmental challenges while acknowledging the differing circumstances of developed and developing nations. The formal incorporation of CBDR into the global climate change legal regime takes place with adoption of the UNFCCC during 'Rio Conference on Environment and Development, 1992.'[16] UNFCCC explicitly enshrines this principle, stating that "*the Parties should protect the climate system for the*

[11] Danial Bodansky, *The Paris Climate Change Agreement: A New Hope?* 110(2), AMERICAN JOUR. OF INT'L LAW, 288-319(2016).
[12] *Id.*
[13] Phillip Cullet, *Differential Treatment in International Environmental Law*, 11(1), JOUR. OF ENV'L LAW, 31-52 (1999).
[14] LAVANAYA RAJAMANI, *Supra note* 9 at10.
[15] Stockholm Declaration on Human Environment, 1972; UN Doc. A/CONF.48/14. https://www.un.org/en/ conferences/environment/stockholm1972.eng.pdf (last visited 2 Sept., 2024).
[16] Rio Declaration on Environment and Development, 1992; UN Doc. A/CONF. 151/26, 12 August 1992; https://www.un.org/en/conferences/environment/rio1992.eng.pdf (last visited 2 Sept., 2024).

benefit of present and future generations of humankind, based on equity and in accordance with their common but differentiated responsibilities and respective capabilities."[17] This formulation underscores the dual dimensions of CBDR: the common responsibility of all nations to address climate change and the differentiated obligations based on historical contributions and socio-economic capacities, with the sole objective to protect the present and future human generations from the adverse effects of climate change.

This framework convention marked a significant milestone in the application of the principle of CBDR, establishing a framework for international cooperation on climate change that recognized the distinct roles of developed and developing nations.[18] It is Annex I and Annex II countries, comprising primarily industrialised nations, that are assigned specific obligations to reduce GHG emissions as well as to provide financial and technological support to developing countries. It has been mandated that 'the developed country Parties should take the lead in combating climate change and the adverse effects thereof.'[19] This Convention obligates all developed nations and other nations as listed in Annex I to commit themselves 'to adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gasses and protecting and enhancing its greenhouse gas sinks and reservoirs.'[20] In contrast, non-Annex I nations consisting of mostly developing nations, are granted greater flexibility in meeting their commitments reflecting their limited historical contributions to climate change and their developmental needs.[21] For its constant and consistent compliance, Conference of Parties (COP) was also constituted under this convention as supreme decision-making body for overseeing its implementation across the nations.[22] It convenes its meeting every two years to review the implementation of the Convention, to adopt decisions, and to negotiate new commitments accordingly. It has played a pivotal role in institutionalizing the principle of CBDR with several landmark

[17] UNFCCC, 1992; *Supra note* 2; art. 3 (1).
[18] *Id.* art. 3 (2).
[19] *Id.* Art. 3 (1).
[20] *Id*. Art. 4 (2).
[21] *Id.* Art. 4 (3)
[22] *Id*. Art. 7

meetings and decisions shaping the evolution of this principle in future course of action.

The Kyoto Protocol, adopted at COP III meeting (Kyoto, Japan) in 1997[23], marked another significant milestone in the implementation of principle of CBDR. It operationalized the principle by assigning legally binding emission reduction targets to Annex I countries (developed nations) while allowing non-Annex I countries (developing nations) to pursue voluntary actions. One of its article states that: 'The Parties included in Annex I shall individually or jointly ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gasses listed in Annex A do not exceed their assigned amount, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gas by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.'[24] This differentiation was based on the recognition of historical responsibility and the greater capacity of developed nations to mitigate emissions. The Clean Development Mechanism (CDM) established under Article 12 of the Kyoto Protocol, further exemplified the application of CBDR. It enabled developed countries to meet their emission reduction targets by investing in sustainable development projects in developing countries, thereby promoting technology transfer and capacity-building. This mechanism not only facilitated cost-effective mitigation but also promoted technology transfer and capacity-building in the Global South.[25] However, the Kyoto Protocol's reliance on binding targets for developed countries and voluntary actions for developing nations also highlighted the inherent tensions on the principle of CBDR, particularly as emerging economies such as China and India experienced rapid economic growth and rising emissions.[26] This development could also be witnessed under global climate governance in the Post-Kyoto Era.

[23] Kyoto Protocol, 1997; *Supra note* 2.
[24] *Ibid,* Art. 3 (1).
[25] J. GUPTA, THE HISTORY OF GLOBAL CLIMATE GOVERNANCE, 2 (Cambridge University Press, 2014).
[26] N. STERN, THE ECONOMICS OF CLIMATE CHANGE: THE STERN REVIEW, 5 (Cambridge University Press, 2007).

b) Evolution of the Principle of CBDR in Post-Kyoto Era

The post-Kyoto era witnessed significant shifts in the global climate governance landscape, challenging the traditional application of the principle of CBDR and shaping the distribution of obligations among nations based on their historical contributions to climate change and their socio-economic capacities. Over the years, the institutionalization of principle of CBDR has evolved through a series of landmark decisions and agreements under UNFCCC regime under its COP meetings. This necessitates to examine progressive evolution of the principle of CBDR tracing its trajectory from the Kyoto COP meeting to the Paris COP meeting and beyond outlining the significant outcomes affecting it. For instance, UNFCCC COP-XIII meeting held in year 2007 (Bali, Indonesia) concluded with adoption of the Bali Action Plan, which reinforced the principle of CBDR while setting the stage for future negotiations.[27] This Plan has called for "measurable, reportable, and verifiable (MRV)" mitigation actions by all parties, 'with differentiated obligations for developed and developing countries.'[28] It firmly stressed the use of MRV mechanism by prescribing that developed countries shall undertake "quantified emission limitation and reduction objectives,"[29] while developing countries shall implement "nationally appropriate mitigation actions (NAMAs)"[30] in the context of sustainable development, supported by technology, finance and capacity-building. It introduced the concept of "Bali Firewall" which maintained a clear distinction between the obligations of developed and developing countries preserving the equity and fairness on the basis of principle of CBDR.

Further, COP-XV meeting held in year 2009 (Copenhagen, Denmark) marked a significant shift in the global climate governance thorough its outcome document known as "Copenhagen Accord."[31] Though not legally binding, it introduced a pledge-and-review system that allowed countries to set their own emission reduction targets. In other words, it marked a departure from the Kyoto

[27] Bali Action Plan, UNFCCC COP Decision 1/CP.13 (2007) https://unfccc.int/process-and-meetings/confernce/past-confernece/bali-climate-confernce-december-200.html (last visited 8 Aug., 2024).
[28] *Ibid.*
[29] *Id.* Para 1(b) (i).
[30] *Id.* Para 1(b) (ii).
[31] Copenhagen Accord, 2009; UNFCCC Decision 2/FCCC/CP/2009/CP.15; *See*, https://unfccc.int/resource/ docs/2009/cop15/eng/l07.pdf (last visited 8 Aug., 2024).

Protocol's top-down approach, introducing a more flexible, pledge-based system that blurred the distinction between developed and developing countries.[32] This approach represented a departure from the binding targets and timetables of the Kyoto Protocol, leading to concerns about dilution of the principle of CBDR. While this Accord reaffirmed the principle of CBDR, but it also emphasized the need for all nations to take action based on *'their respective capabilities*.' This shift reflected the growing recognition of the changing global economic order, with emerging economies playing an increasingly significant role in GHGs emissions. The Accord emphasized the need for "deep cuts in global emissions" to limit temperature rise to 2°C above pre-industrial levels. However, it allowed Annex I parties to submit "quantified economy-wide emissions targets for 2020", while non-Annex I parties were encouraged to implement "nationally appropriate mitigation actions." This shift reflected a move towards greater flexibility, but also raised questions about the effectiveness of voluntary commitments in achieving global climate goals. It has really changed the upward trajectory of the effectiveness and implementation of principle of CBDR under UNFCCC regime.

In next UNFCCC COP-XVI meeting held in 2010 (Cancun, Mexico) resulted in adoption of 'Cancun Agreement' among the member nations, which sought to restore faith in the multilateral climate negotiations based on mutual cooperation.[33] It reaffirmed the principles of equity and CBDR emphasizing the urgent need for "deep cuts in global greenhouse gas emissions"[34] based on best available evidences. It specifically mentioned that parties shall act "on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities."[35] It also established the 'Green Climate Fund (GCF)' to support mitigation and adaptation efforts in developing countries. This financial mechanism is considered as a critical component of CBDR, addressing the need for developed countries to provide financial and technological support to developing nations. Cancun Agreement specifically urged developed country

[32] S. Caney, *Cosmopolitan Justice, Responsibility, and Global Climate Change*, 18(4), *LEIDEN JOUR. OF INT'L LAW,* 747-775 (2005).
[33] Cancun Agreements, 2010; UNFCCC Decision 1/CP.16/2010; *See,* https://unfccc.int/conference/ cancun-climate-change-conference-november-2010.html (last visited 8 Aug., 2024).
[34] *Ibid.*
[35] *Id.* Para 4.

to ‘‘increase the ambition of their economy-wide emission reduction targets, with a view to reducing their aggregate anthropogenic emissions of carbon dioxide and other greenhouse gasses not controlled by Montreal Protocol to a level consistent with that recommended by the Fourth Assessment Report of the Intergovernmental Panel on Climate Change.”[36] The legal developments held under this Agreement reinforced faith on the principle of CBDR for future climate commitments and negotiations.

Another important UNFCCC COP-XXI meeting held in 2015 (Paris, France) ended with adoption of ‘Paris Agreement’ as a legally binding international agreement that represents a new paradigm for the principle of CBDR.[37] Because, it reaffirms the faith on the principle of CBDR, but also introduces the concept of “nationally determined contributions (NDCs)” allowing member nations to set their own emission reduction targets based on their national circumstances. It states that it will be implemented ‘to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.’[38] Unlike the Kyoto Protocol, the Paris Agreement adopts a bottom-up approach allowing countries to set their own NDCs based on their national circumstances and capabilities. It also includes provisions for transparency and accountability requiring parties to regularly report on their emissions and progress towards their NDCs. While the Agreement reaffirms the principle of CBDR, it also introduces the concept of “progression” requiring all parties to progressively enhance their commitments over time.[39] This approach seeks to balance the need for universal participation with the recognition of ‘*differing responsibilities’* and ‘*respective capabilities*.’ However, the absence of binding targets and the reliance on voluntary commitments have raised serious concerns about the effectiveness of this Agreement in achieving its long-term goals.

The recent UNFCCC COP-XVI meeting held year in 2021 (Glasgow, Scotland) focused on the agenda of enhancing commitment and implementation of the Paris

[36] *Id.* Para 37.
[37] Paris Agreement, 2015; UN Doc. FCCC/CP/2015/10/Add.1/2015;, https://unfccc.int/sites/default/ files/resource/parisagreement_publication.pdf (last visited 8 Aug., 2024).
[38] *Ibid*, art. 2.
[39] *Id.*

Agreement.[40] Its outcome document 'Glasgow Climate Pact' called for "accelerated action" to limit global warming to 1.5°C and emphasized the importance of the principles of equity and CBDR. On this account, the Pact urges developed countries to "at least double their collective provision of climate finance for adaptation to developing country Parties from 2019 levels by 2025."[41] This has been another progressive approach towards the principle of CBDR asking for the collective climate finance from developed countries for developing nations for climate adaptation in their jurisdiction. Besides, the previous UNFCCC COP-XVII meeting held in year 2022 (Sharm *El*-Sheikh, Egypt) marked a significant step forward in addressing loss and damage liability caused due to climate crises or disasters.[42] Establishment of a dedicated fund for loss and damage has been considered as a victory for developing or vulnerable countries on the basis of principles of equity and CBDR. However, challenges remain in operationalizing this fund and ensuring adequate financial support for vulnerable nations in recent times.

With the above mentioned uneven trajectory of the application of principle of CBDR, there has been witnessed different challenges and contestations under the UNFCCC regime, particularly in context of shifting geopolitical dynamics and growing urgency of climate crisis. One of the key challenges lies in defining and operationalizing the concept of "differentiation" under the principle of CBDR.[43] While the UNFCCC and its Kyoto Protocol provided clear criteria for differentiating between developed and developing countries, the Paris Agreement's more flexible approach has led to ambiguity in the allocation of responsibilities. This has resulted into continued contestations over the appropriate balance between historical responsibility and current capabilities, particularly as emerging economies such as China and India have become major

[40] Glasgow Climate Pact, 2021; UN Doc. FCCC Decision 1/CP.26/2021; https://unfccc.int/sites/ default/files/resource/cop26_auv_2f_cover_decision.pdf (last visited 8 Aug., 2024).
[41] *Id*, para 22.
[42] Sharm El-Sheikh Implementation Plan, 2022, FCCC/Decision 1/CP.27/2022; https://unfccc.int/sites/default/files/resource/cop27_av_2_cover%20decision.pdf (last visited 8 Aug., 2024).
[43] J.T. ROBERTS, AND B.C. PARKS, A CLIMATE OF INJUSTICE: GLOBAL INEQUALITY, NORTH-SOUTH POLITICS, AND CLIMATE POLICY, 1 (MIT Press, 2007).

emitters of GHGs in recent times. The shift from binding targets to voluntary commitments under the Paris Agreement has raised concerns about the adequacy of NDCs in achieving global climate goals. The lack of ambition among developed countries and insufficient provisions of financial and technological support to developing nations continue to undermine the principles of equity and fairness along with CBDR.

Another significant challenge is the reluctance of developed countries to fulfill their commitments under the principle of CBDR. Despite their historical responsibility for the majority of cumulative emissions, many developed nations have been criticized for failing to adopt ambitious emission reduction targets and for reneging on their commitments to provide financial and technological support to developing countries. This has exacerbated the trust deficit between developed and developing nations undermining the spirit of principle of CBDR. The tension between neo-liberal and redistributive approaches to climate governance has further complicated the application of the principle of CBDR in recent times. Developed countries, particularly those with strong neo-liberal orientations, have advocated for market-based mechanisms and universal commitments, arguing that these approaches are more efficient and equitable. In contrast, developing countries have emphasized the need for a redistributive justice approach that prioritizes historical accountability and socio-economic equity.[44] This divergence in perspectives has led to protracted negotiations and has hindered the achievement of meaningful progress in global climate governance.

c) The Role of CBDR in Addressing Redistributive Justice

At its core, the principle of CBDR is rooted in the concept of redistributive justice, which seeks to address historical inequities and ensure a fair distribution of the burdens and benefits of climate action. By recognizing the differing responsibilities and capabilities of nations, the principle of CBDR provides a framework for addressing structural inequalities that underpin the global climate crisis. This includes not only the disproportionate historical contributions of developed countries to GHG emissions, but also the unequal impacts of climate

[44] H. Shue, *Global Environment and International Inequality*, 75(3), INT'L AFFAIRS, 531-545 (1999).

change on vulnerable communities in the Global South.[45] The principle of CBDR in the context of redistributive justice requires a holistic approach that goes beyond emission reductions to address the broader socio-economic dimensions of climate change. This includes ensuring adequate financial and technological support for developing countries to enable their transition to low-carbon development pathways as well as addressing the loss and damage associated with the adverse impacts of climate change. The establishment of the Green Climate Fund (GCF) and the Warsaw International Mechanism for Loss and Damage under the UNFCCC regime represents important steps in this direction.[46] However, the effectiveness of these mechanisms has been limited by inadequate funding and implementation challenges in preceding period.

Overall, the principle of common but differentiated responsibilities has been a cornerstone of the global climate change legal regime, providing a framework for addressing the complex interplay between environmental sustainability and socio-economic justice. From its origins in the UNFCCC to its evolution in the Kyoto Protocol and the Paris Agreement, the principle of CBDR has played a critical role in shaping global climate governance. However, its application has been marked by significant challenges and tensions, particularly in the context of shifting geopolitical dynamics and the growing urgency of the climate crisis. Despite the progress made in institutionalizing the principle of CBDR, significant challenges remain in present scenario. Hence, there is a need for renewed commitment to the principle of CBDR with a focus on enhancing ambition, transparency, and accountability. The global stock take process as established under Article 14 of the Paris Agreement, provides an opportunity to assess collective progress and identify areas for improvement. By addressing the core challenges and building on the achievements of the past, international community can strengthen the foundation of principle of CBDR and advance the goals of the global climate change legal regime. As the global community grapples with the escalating impacts of climate change, the need for a renewed commitment on the principle of CBDR form redistributive justice approach has become more relevant today. This requires strict adherence to the climate commitments for not

[45] M. Burkett, *Climate Reparations*, 10(2), MELBOURNE JOUR. OF INT'L LAW, 509-542 (2009).
[46] Green Climate Fund (GCF) (2020), *See,* https://www.greenclimate.fund/areas.html (last visited 10 Aug., 2024).

only ambitious emission reduction targets, but also a holistic redistributive justice approach that addresses the structural inequalities underpinning the climate crisis. By reaffirming the principles of equity, fairness and redistributive justice, the global climate change legal regime can pave the way for a more just and sustainable future.

III. Concept of 'Redistributive Justice' for Principle of CBDR: Theoretical Analysis under Global Climate Change Legal Regime

In this context, concept of redistributive justice has been considered instrumental for global governance of climate change. Redistributive justice is a philosophical and legal concept concerned with the fair distribution of resources, benefits and burdens within a given society among diverse persons with competing needs and claims. It aims to address systemic and structural inequalities by reallocating and redistributing wealth, opportunities and responsibilities ensuring that disadvantaged and marginalized individuals or groups receive compensatory resources to achieve a more equitable outcome.[47] The foundation of redistributive justice rests on the principle that 'those with greater wealth or power have a moral or legal obligation to help those with fewer resources, particularly when inequalities result from historical injustices or structural imbalances within a given society.'[48] In this context, it requires some theoretical analysis so as to suit its application under the principle of CBDR in UNFCCC regime. For this purpose, this part includes theoretical analysis of the concept of 'redistribute justice', its relationship with climate justice and relevancy in global climate change legal regime.

a) Concept of 'Redistributive Justice': A Theoretical Analysis

The origins of redistributive justice can be traced back to ancient moral philosophies of both the East and the West, but it gained prominence in modern legal and political thought through the works of thinkers like John Rawls, who provided a formalized structure for the concept.[49] John Rawls in his book *'A Theory of Justice' (1971)* revolutionized modern legal philosophy by proposing

[47] Stanford Encyclopedia of Philosophy, *Concept of Redistribution*, https://plato.stanford.edu/ Entries/redistribution/eng.html (last visited 2 Sept., 2024).
[48] *Ibid.*
[49] *Id.*

the idea of a "just" society where inequalities can be permissible only if they benefit the least advantaged members of the society.[50] He introduced the difference principle, which posits that any socio-economic inequalities must be arranged to provide the greatest benefit to the least privileged members of society.[51] In the context of climate change, this principle could support the argument that wealthier and high-emission countries must provide resources to those nations disproportionately affected by climate impacts, thus advocating for redistributive mechanisms in global governance.[52] Further, Amartya Sen expanded the theory of justice by focusing on capabilities rather than mere distribution of wealth. In his book '*The Idea of Justice'* (2009), Sen argues that justice should be evaluated by people's actual ability to achieve well-being, rather than by the distribution of goods alone.[53] His capabilities approach underscores the importance of empowering individuals to live the lives they value which directly relates to addressing global climate inequities. In terms of redistributive justice, Sen's work suggests that the global climate change legal regime should prioritize enhancing the capabilities of vulnerable populations to adapt and mitigate climate impacts, rather than simply providing monetary assistance.[54] Building on Sen's capabilities approach, Martha Nussbaum offers a more specific articulation of how societies should be structured to promote human dignity and capabilities. While Sen's approach is founded on enhancing individual freedom, Nussbaum's theory is premised on respecting human dignity. In her book, *'Creating Capabilities'* (2011), Nussbaum argues that a just society must ensure that individuals have access to a range of basic and fundamental capabilities, such as health, education, and environmental sustainability.[55] Her work is significantly relevant to environmental justice, as it emphasizes the moral imperative to provide vulnerable populations with the resources necessary to live dignified lives, especially in the face of climate-related challenges. In this way, the given theoretical justifications and explanations on the application of

[50] JOHN RAWLS, A THEORY OF JUSTICE, 12 (Harvard University Press, 1971).
[51] *Ibid.*
[52] *Id.*
[53] AMARTYA SEN, THE IDEA OF JUSTICE (Harvard University Press, 2009).
[54] Thierry Demals & Alexandra Hyard, *Is Amartya Sen's sustainable freedom a broader vision of sustainability?* SCIENCE DIRECT, *See*, https://www.sciencedirect.com/science/article/abs/pdf (last visited 2 Sept., 2024).
[55] MARTHA NUSSBAUM, CREATING CAPABILITIES: THE HUMAN DEVELOPMENT APPROACH, 10 (Harvard University Press 2011).

redistributive justice could also be linked with emerging global issues related to combating adverse impacts of climate change and realization of climate justice.

b) Relationship between Redistributive Justice and Climate Justice

The concept of redistributive justice for climate justice is a recent approach or strategy for regulating adverse effect of climate change considering it 'common concerns' for global governance. Redistributive justice also intersects significantly with the concept of environmental justice, which focuses on the fair distribution of environmental benefits and burdens among communities. Environmental justice alike the redistributive justice demands that marginalized and vulnerable communities who often bear the brunt of environmental degradation and climate change, should receive additional protection and compensatory measures under the law. Climate justice, in this context, advocates for shifting resources whether through financial aid, technological assistance, or capacity-building initiatives from wealthier nations or corporations to those who are most affected or vulnerable by adverse impact of climate change. In other words, the concept of climate justice, a subset of environmental justice, directly incorporates the concept of redistributive principles. It recognizes that industrialized nations, having historically contributed the most to global greenhouse gas emissions, bear a greater responsibility to provide mitigation and adaptation support to poorer countries that are disproportionately affected by climate impacts.[56] Redistributive justice provides the moral and legal framework for these obligations, ensuring that climate actions do not exacerbate existing inequalities as well as vulnerable populations receive the support they need. The application of 'redistributive justice' approach is relevant in this context, 'wherein the international reasonability is embedded with the international society by differentiation of obligations and transfer of technology and finance between developed and developing countries.'[57] There has been demand to transfer capital and resources from developed to developing nations to address substantive and historical inequalities between nations either directly through financial assistance, or indirectly through the differentiation of obligations and

[56] MARY ROBINSON, CLIMATE JUSTICE: HOPE, RESILIENCE, AND THE FIGHT FOR A SUSTAINABLE FUTURE, 15 (Bloomsbury Publishing, 2018).
[57] Jeffrey McGee and Jens Steffek, *Supra note* 3.

responsibilities under international law.[58] The 'redistributive approach' is now being adopted for multilateral issues through international institutions for global governance in this era of globalization. This has emerged beyond the 'liberal approach' of global governance that strives to create efficient global markets and leave the ultimate distribution of the benefits and burdens to the contingencies of the international market.'[59] Hence, it becomes necessary to examine the concept of 'redistributive justice' focusing on common but differentiated responsibility under global climate change law addressing the ultimate purpose of climate justice.

c) Relevance of Redistributive Justice in Global Governance of Climate Change

Since the last three decades, 'redistributive approach' has been utilized as an alternative approach in several legal regimes such as trade, oceans and environment. The 'United Nations Conference on Trade and Development (UNCTAD)' is considered the first global institution to exhibit the redistributive approach through a multilateral forum in the background of 'New International Economic Order (NIEO).'[60] Besides, the 'UN Convention on the Law of the Sea (UNCLOS)' in its Part XI provides another example wherein developing nations advocated for the redistributive approach for equitable sharing of financial and other economic benefits from mining of the deep seabed by developed nations.[61] Under multilateral environmental agreements (MEAs), the concept of *'common heritage of mankind'* was also resisted with this redistributive approach by developing nations against unilateral commodification of natural resources by the developed nations.[62] It was in year 1988, when the United Nations General Assembly modified this concept as *'common concerns of mankind'* recognizing the common obligation of all nations to protect the atmosphere by addressing

[58] *Id.* at 47.
[59] *Id.* at 50.
[60] UNO, Declaration on Establishment of a New International Economic Order, UN General Assembly Resolution, *UNGA/RES/S-VI/3201*;, http://www.digitallibrary.un.org/record/218450.pdf (last visited 10 Aug., 2022).
[61] UNO, United Nations Convention on Law of the Sea (1982); 1833 UNTS 397; 21 ILM 1261 (1982).
[62] Karin Mickelson, *Common Heritage of Mankind as a Limit to Exploitation of the Global Commons*, 30/2 *EUR. JOUR. OF INT' 'L LAW, http://www.ejil.org/pdfs/30/2/2968.pdf* (last visited 2 Sept., 2024).

climate crisis.[63] Against this background, this concept has also been considered appropriate and viable to be applied in global governance of climate change.

In the context of global climate change governance, redistributive justice could play a crucial role in achieving equitable outcomes under UNFCCC regime. The principle of CBDR enshrined in key multilateral environment agreements under UNFCCC regime reflects redistributive justice approach by recognizing that different nations have different historical responsibilities for climate change and varying capabilities to address it.[64] Wherein, all the nations shall have 'common' reasonability to take part in joint efforts to protect the climate or combat the climate change, but 'differentiated' responsibility will have on the developed nations 'to take the lead' in those efforts on international and regional levels. However, it is unclear how the developed countries would 'take the lead' in reducing GHGs emissions. It may be interpreted as either exempting or assisting the developing nations in reducing GHGs emissions because of three reasons: 'firstly they are historically the major contributors of such emissions; secondly, they have better capacity to tackle this problem; and thirdly, they will remotely suffer the immediate effects of the climate change.'[65] These have considered valid reasons for advocating the redistributive justice approach by developing nations for compensation or assistance in lieu of using the global atmosphere as sink for anthropogenic GHGs emissions of developed nations.

In view of this, the Kyoto Protocol was adopted for binding GHGs emission reduction targets by all the nations specifically by developed nations to comply in the first commitment period of 2008-12.[66] Developing nations were exempted from this GHGs emission targets for the first commitment period of this Kyoto Protocol despite resistance by some developed nations. The counter argument against redistributive approach was given by several groups of developed nations afterwards. As a result, the redistributive approach as shown in different

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[63] UNO, UNGA Resolution A/43/251/L.17, 26 Oct. 1988; http://www.digitallibrary.un.org/record/un.pdf (last visited 10 Aug., 2022).
[64] Lavanya Rajamani, *'The Principle of Common but Differentiated Responsibility and the Balance of Commitments under the Climate Regime,* 9(2), *RECIEL* (2000).
[65] Godwell Nhamo and Senia Nhamo, *One Global Deal from Paris 2015: Convergence and Contestations on the Future Climate Mitigation Agenda*, 23(3) SOUTH AFRICAN JOUR. OF INT'L AFFAIRS, 323 (2016).
[66] UNFCCC, *Supra note* 2.

mechanisms of Kyoto Protocol such as: differentiated targets and timeframes, common baseline of year 1990, and flexible mechanism for international cooperation were replaced by individual, voluntary, non-binding pledge under Copenhagen Accord to reduce the emissions of GHGs.[67] It has been observed that 'By allowing Parties, developed and developing alike, to self-select and list mitigation commitments and actions, the Accord effectively substitutes a regime of differentiation in favor of developing countries with a regime of differentiation for all countries, providing flexibility for all. This, through architectural sleight of hand, recasts the contours of CBDR-RC principle.'[68] In other words, the 'Copenhagen Accord' completely changed the nature of the obligations and commitments made by developed countries about reducing greenhouse gas emissions. Instead of requiring developed countries to adopt more ambitious and legally binding emission reduction targets, the Copenhagen Accord invited all countries to simply make non-binding pledges for the period 2013–20.[69] The non-binding pledges under this Accord still include a significant level of differentiation in the emission reductions commitments between developed and developing nations.

However, the Paris Agreement has, from the perspective of redistributive approach, maintained the distributive and differentiated obligations in implementation of principle of CBDR. The differentiation between developed and developing nations was retained in the several provisions on the demand of developing nations. They have defended successfully the application of common but differentiated responsibility to a large extent, though with addition of respective national capabilities. For example, the developed nations still have to 'take the lead' in mitigation measures and financial assistance to developing nations. Their technology transfer or assistance along with promoting the capacity building would also help the developing nations in complying with the climate commitments. Instead, they are putting the pressure on developing

[67] Shirley V. Scott, *Does the UNFCCC Fulfill the Functions Required of a Framework Convention? Why Abandoning the United Nations Framework Convention on Climate Change Might Constitute a Long Overdue Step Forward?* 27 *JOUR. OF ENV'AL LAW*, 69 (2015).

[68] 'Lavanaya Rajamani, *Differentiation in the Emerging Climate Regime*, 14 *THEORETICAL INQUIRIES IN LAW*, 160 (2013); Lavanya Rajamani, *The Making and Unmaking of the Copenhagen Accord,* 59 *ICLQ*, 824 (2010).

[69] *Copenhagen Accord, Supra note* 30.

nations to have 'differentiation for all' or 'common responsibility' in future mitigation actions and pathways keeping aside the concept of redistributive justice. However, the redistributive justice approach justifies the differential obligations placed on developed and developing countries, arguing that wealthier, higher-emitting nations should bear a larger share of the burden in mitigating the emissions and financing climate efforts and actions.

IV. Application of the Concept of 'Redistributive Justice' under Principle of CBDR: Some Reflections in Contemporary Age

An equitable global climate framework is essential for effectively addressing the multifaceted challenges posed by climate change. Such a framework must recognize both historical responsibilities and present capabilities of different nations. Historically, industrialized countries have been the primary contributors to greenhouse gas emissions, accumulating significant wealth and development at the expense of the environment and the well-being of developing nations.[70] This historical context becomes crucial for understanding the current inequities in climate impacts and responsibilities. Redistributive justice provides the ethical basis for establishing a climate framework that compensates developing nations for the historical emissions of developed countries, thus addressing what is often termed "climate debt."[71] This concept asserts that wealthier nations owe a moral and, in some cases, legal obligation to assist less developed countries, not only in mitigating climate change but also in adapting to its effects. The Paris Agreement implicitly incorporates this need for equity by emphasizing that all countries must act in accordance with their respective capacities, thereby aligning with the principles of redistributive justice. Redistributive justice addresses climate debt by advocating for actions that hold developed countries accountable for their historical emissions.[72] This approach is not merely about providing financial aid; it involves acknowledging the structural inequalities that exist in international relations and ensuring that global climate policies actively work to

[70] IPCC, *Supra note* 1.
[71] UNFCCC, Climate Debt: The basis of a fair and effective solution to climate change https://unfccc.int/files/meetings/ad_hoc_working_groups/lca/application/pdf/4_bolivia.pdf (last visited 2 Sept., 2024).
[72] S. M. Ali, *Climate Justice and Historical Responsibility* (2018); https://climatejustice.org.html (last visited 2 Sept., 2024).

rectify these imbalances.[73] It is argued that such comparison is essential not only for ethical reasons, but also for fostering global cooperation and commitment to climate action. By addressing historical injustices, redistributive justice fosters a sense of trust and partnership in international climate negotiations, thus enhancing their effectiveness.[74]

The application of redistributive justice to the CBDR principle also rests on the moral arguments for differentiated obligations. It asserts that countries should not have the same responsibilities in addressing climate change, as their contributions to the problem and their capacities to respond vary significantly. Wealthier nations possess greater financial resources, technological capabilities, and institutional frameworks to combat climate change. Accordingly, they should bear a larger share of the burden in mitigating climate impacts and supporting adaptation efforts in developing nations. Countries with high historical emissions have a moral obligation to lead the way in reducing their carbon footprint. This notion is encapsulated in the principle of "polluter pays," which suggests that those who have contributed more to environmental degradation should be responsible for rectifying the situation.[75] Developing nations are often more vulnerable to the effects of climate change, facing greater risks due to their geographical location, economic constraint and limited adaptive capacity. Redistributive justice advocates for the allocation of resources to enhance resilience and adaptation for their vulnerable populations, recognizing their unique needs and circumstances.

a) Application of the Concept of 'Redistributive Justice': Through Finance, Technology Transfer and Capacity Building

To operationalize redistributive justice in the context of climate change, several mechanisms are proposed such as climate finance, technology transfer, strengthening the institutional and human capacities of developing nations. The application of redistributive justice in climate change adaptation requires

[73] *Id*.
[74] *Id*.
[75] IISD, *How to enforce the Polluter Pays Principle? See*, https://www.iisd.org/system/files/2022-02/still-one-earth-polluter-pays-principle.pdf (last visited 27 Sept., 2024).

mechanisms to assist countries that lack the resources to protect their populations from adverse impacts of climate change. This includes climate specific financial mechanisms, such as the '*Green Climate Fund', 'Climate Adaptation Fund'* and *'Loss and Damage Fund'* which aim to provide financial resources from developed to developing nations, enabling them to build resilience and reduce vulnerability to climate change.[76] Moreover, redistributive justice supports the idea that vulnerable communities within countries such as indigenous peoples, women, and low-income populations should receive targeted support to address the unique challenges posed by climate change. In this way, these funds enshrine the principles of redistributive justice by facilitating the transfer of resources from wealthier to poorer nations or communities to address historical inequalities and climate debts maintained over the years.

In recent times, there has been several evidences showing the successful application of redistributive justice through creating and administrating the global funds under global climate governance. For instances, the Green Climate Fund has committed billions of dollars to support climate projects in developing countries.[77] It provides funding for initiatives that enhance resilience and reduce greenhouse gas emissions, embodying the principles of redistributive justice by prioritizing the needs of the most vulnerable populations.[78] Besides, the Adaptation Fund was also created to finance adaptation projects in developing countries that are particularly vulnerable to climate change.[79] By providing direct access to funding for local communities, the adaptation fund promotes equity and justice by ensuring that resources reach those who need them most.[80] Apart from these, the Loss and Damage Fund has been also created recently as a pivotal

[76] Green Climate Fund, *About GCF: Mandate and Governance* (2023); https://www.greenclimate.fund/about (last visited 26 Sept., 2024).

[77] EW Smith et al., *Defining and Conceptualizing equity and Justice in Climate Adaptation, 87, GLOBAL ENV'L CHANGE*, 2 (2024); *See,* https://www.sciencedirect.com/science/article/pii/ S095937802400089X; *See also,* M.M. Islam*, Redistributive Justice in Global Climate Finance: Recipient's Climate Vulnerability and the Allocation of Climate Funds, 73,* GLOBAL ENV'L CHANGE*,*10 (2022); https://pdf.sciencedirectassets.com/ 271866/1-s2.0-S0959378022X00022/main.pdf

[78] *Ibid.*

[79] MO Huq, *The Adaptation Fund: A New Tool for Global Climate Adaptation,* 14, *CLIMATE POLICY* (2014).

[80] *Ibid.*

example of redistributive justice mechanisms in the context of environmental justice.[81] This fund is designed to provide financial support to vulnerable nations disproportionately affected by climate change, particularly those with limited resources to cope with its impacts. By recognizing the historical responsibility of developed countries who have historically contributed the most to greenhouse gas emissions the fund seeks to redress inequities by allocating resources to those most in need.[82] This aligns with the principles of redistributive justice by ensuring that wealthier nations contribute to mitigating the adverse effects of climate change on developing countries, thereby fostering global equity and cooperation in climate action through climate finance.

One notable and unique example is the *Amazon Fund* created in Brazil which recognizes indigenous land rights and aims to protect the Amazon rainforest by empowering indigenous communities to manage their territories sustainably. This initiative addresses historical injustices by recognizing indigenous sovereignty over their land, while also contributing to global climate goals by conserving vital carbon sinks.[83] The *Indigenous REDD+* initiative is another notable project that recognizes land rights of indigenous peoples by involving them in sustainable forest management.[84] By ensuring that these communities have control over their ancestral lands, the initiative addresses historical injustices and empowers them to manage resources sustainably, aligning with both climate justice and redistributive justice principle.[85] Above initiatives and actions demonstrate that recognizing indigenous land rights is not only vital for justice, but also for effective climate action. These initiatives reflect

[81]UNFCCC, Sharm el-Sheikh Implementation Plan, 2024; https://unfccc.int/sites/default/files/resource/ cop27_auv_2_cover%20decision.pdf (last visited 2 Sept., 2024).
[82] *Ibid.*
[83] A. Bebbington, et al., *Indigenous Peoples and the Amazon Fund: Redistributive Justice in Climate Policy,* 20(3), GLOBAL ENV'L POLITICS, 98-120 (2020).
[84] Equator Initiative, REDD+ project of the indigenous peoples of Vaupés YUTUCU and others, https://www.equatorinitiative.org/2024/07/04/redd-project-of-the-indigenous-peoples-of-vaupes-yutucu-and-others/ (last visited 2 Sept., 2024).
[85] UNFCCC Indigenous Peoples Platform*, Initial Two-year Work plan with LLCIP, 2020-21,* https://unfccc.int/sites/default/files/resource/Initial%20two-year%20workplan%20of%20the%20LCIPP% 20%282020-2021%29.pdf (last visited 2 Sept., 2024).

redistributive justice by correcting past inequalities and enabling indigenous peoples to contribute meaningfully to global climate governance.

The sharing of technology is another mechanism based on the promises of redistribution justice to effectively combat adverse impact of climate change. Several mechanisms have been proposed in this regard that facilitate technology transfer such as providing access to renewable energy technologies, climate-resilient agricultural practices, and efficient water management systems to significantly enhance the capacity of developing nations to mitigate and adapt to adverse impacts of climate change. This approach not only promotes equity but also fosters innovation and sustainable development in the Global South. Strengthening the institutional and human capacities of developing countries is also equally crucial for effective climate governance. Capacity-building initiatives can involve training, education, and development of infrastructure that enables countries to implement climate commitments effectively. The concept of redistributive justice emphasizes the importance of equipping vulnerable populations with the necessary tools and knowledge to respond to climate challenges, thereby fostering resilience and adaptive capacity.

Above examples demonstrate the encouraging potential for redistributive justice to create equitable solutions in the context of climate change, ensuring that the most vulnerable populations receive the support they need to adapt and thrive. Overall, redistributive justice provides a robust ethical and legal foundation for addressing global climate inequities. It not only aligns with the CBDR principle but also offers a roadmap for ensuring that climate policies are fair, equitable, and inclusive, ultimately fostering greater global cooperation and sustainable development.

b) Potential Challenges and Future Pathways

The application of redistributive justice to the common but differentiated responsibilities presents several political, legal, and practical challenges for global climate change legal regime. One of the key obstacles is the resistance from developed nations, which often cite concerns over national sovereignty and economic competitiveness when asked to shoulder a larger burden of climate action. For instance, the United States America in July 2023, categorically refused to provide reparations to developing countries affected by climate

change-induced disasters "under any circumstances".[86] These countries may be reluctant to accept binding commitments that require substantial financial contributions or policy changes, especially if they perceive such obligations as infringing upon their national interests or economic growth. Moreover, criticisms of redistributive justice often highlight potential unintended consequences. For instance, there is a concern that the redistributive mechanisms, such as financial aid and technology transfer, could foster dependency among developing nations, undermining their incentive to pursue independent climate initiatives.[87] There are also fears about inefficiencies in resource allocation, where funds might be misused or misallocated, reducing the overall effectiveness of climate mitigation and adaptation efforts.[88] Additionally, emerging economies like China, Brazil, India, and Nigeria pose a unique challenge within a redistributive justice-based CBDR regime. As these countries are growing as economic and industrial power; their increasing GHGs emissions make them key players in the global climate equation.[89] However, many emerging economies argue that their development needs should not be constrained by the same responsibilities borne by historically high-emitting countries.[90] Balancing the concerns of both developing and emerging economies while ensuring an equitable and effective climate framework remains a central challenge to the application of redistributive justice under the principle of CBDR.

Overall, the principle of CBDR could be strengthened through a redistributive justice approach by enforcing climate commitments reflecting both historical responsibility and current capacities of different nations. Proposals include scaling up financial contributions from high-emitting countries and enhancing technology transfer mechanisms, especially under frameworks like the Paris

[86]BBC, US refuses climate reparations for developing nations, *BBC News*; https://www.bbc.com/news/world-us-canada-66197366 (last visited 27 Sept., 2024).
[87] B. Harris*, Redistributive Justice and Climate Change: Challenges and Solutions* 19(3). Global Environmental Politics 45-60 (2019); *See also*, L. Gonzalez, *Foreign Aid and Dependency in Climate Policy* 33(4) *JOUR. OF INT'L DEV*., 233-250 (2021).
[88] *Ibid.*
[89] EDGAR - Emissions Database for Global Atmospheric Research, CO2 emissions of all world countries, https://edgar.jrc.ec.europa.eu/report_2022 (last visited 2 Sept., 2024).
[90] M. Roberts and S. Parks, *Emerging Economies and the Burden of Climate Change Responsibility: A Fairness Dilemma*, 32(2) *INT'L ENV'TAL LAW JOUR*., 112-128 (2020).; See also, D. K. Murthy, *Balancing Development and Climate Action: The Stance of Emerging Economies*, 21(3) JOUR. OF GLOBAL POLICY, 65-78 (2018).

Agreement and Sharm el Sheikh Implementation Plan framework.[91] Strengthening international climate agreements could involve mandating clearer commitments to climate finance and ensuring the equitable distribution of adaptation resources.[92] Legal and institutional innovations like creating a more robust enforcement mechanism within the UNFCCC are essential to operationalizing these redistributive principles. Non-state actors, including civil societies, non-governmental organizations, academicians and the private entities representing weaker or poor nations can play a vital role in promoting and advocating the concept of redistributive justice and equity for influencing climate negotiations and decisions.

In this context, the author proposes the future pathways to be adopted through 'redistributive justice' for the proper implementation of the principle of CBDR among member nations in the post-2020 global climate legal regime. A redistributive justice approach to global climate change governance would be appropriate for balancing future obligations and commitments between developed and developing nations. The author recommends that developing nations should take serious initiatives and leadership roles in global climate change negotiations to reinforce the concept of 'redistributive justice' for climate commitments and actions. By setting examples for other nations through compliance with ambitious emission targets within set timeframes, developing nations too can show future pathways to other member nations. Furthermore, they should firmly emphasize the integration of state interests into climate commitments due to socio-economic concerns and continuously demand cooperation and assistance from developed nations in the form of finance and technology in consist to the concept of ‘redistributive justice’ to take efficient and consistent mitigation actions to combat the adverse effects of climate change.

V. Conclusion

The global climate change legal regime has achieved several milestones in the implementation and enforcement of the principle of CBDR for combating the adverse effects of climate change. The journey to these milestones has been uneven, with several twists and turns during the climate related negotiations

[91] *Ibid.*
[92] *Id.*

under UNFCCC regime among the member nations regarding the attachment of legal and environmental responsibility under the principle of CBDR. First of all, the UNFCCC incorporated the principle of CBDR for member nations to protect the climate system for the benefit of present and future generations. Subsequently, the Kyoto Protocol concretized this principle with legally binding obligations to reduce GHG emissions, setting specific targets and timeframes. Afterwards, there has been a significant shift in existing climate commitments as reflected in COP decisions and negotiations. Since the Copenhagen Accord and up to the Paris Agreement, the binding targets and time limits for GHG emission reductions, set on the basis of redistributive justice, have become misaligned in global climate change negotiations between developed and developing nations.

The principle of CBDR still remains a key and viable component of global climate governance, reflecting prevalent socio-economic conditions and fairness concerns among member nations. Rather than adopting more ambitious, time-bound GHG emission reduction targets in light of the worsening state of the global commons, developed nations are challenging the established norms and principles of CBDR in the global climate change regime. As a result, new debates have emerged between developed and developing nations about adopting a forward-looking approach under the concept of redistributive justice for the implementation of the principle of CBDR in the post-2020 global climate legal regime. In view of ongoing debates, author herein proposes consistent application of the concept of 'redistributive justice' for the implementation and enforcement of principle of CBDR under the UNFCCC regime especially in the post-2020 global climate change negotiations. At the end, it may be firmly recommended that redistributive justice approach to global climate change governance would also be appropriate for balancing future obligations and commitments based on principle of CBDR between developed and developing nations.