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# Unveiling the Invisible Anguish: The Victims of Climate Change

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## ABSTRACT

Climate change is undoubtedly an issue involving many spheres having a dire impact upon the future. All these have given rise to much quoted environmental law principles and balancing the interest and liability of the first and the third world. We do not talk about climate change victims so much as we do about climate change migrants. Victims of climate change have seldom been seen as a subject of victimology rather than a subject of refugee or migrant studies, or the concepts of beneficiaries of compensation. But if one takes a deeper view, one shall find that the notion of virtualization due to climate change itself is a diverse and wide concept, due to its distinctiveness. People are generally victims of fellow human beings- perpetrators of crimes. But people can also suffer from climate change when nature is changed by the activities of human beings. Various activities of humans such as excessive industrial waste, spills, emissions etc. are taking environmental pollution to such an extent that at present climate change has become causal factor to human sufferings. We need to dissect the concept of virtualization and scrutinize its dimensions in the context of climate change. This paper would discuss the notion of climate change virtualization along with its various dimensions, the linkage between climate justice and climate change victims, the efficacy of compensation scheme for restorative justice, state obligation under national and international legal regime

Index Terms: Climate change • Victimology • Environmental justice • Human rights • Restorative justice • Migration

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## RESEARCH ARTICLE

# Unveiling the Invisible Anguish: The Victims of Climate Change

Nguyen The Manh\*

## Abstract

Climate change is undoubtedly an issue involving many spheres having a dire impact upon the future. All these have given rise to much quoted environmental law principles and balancing the interest and liability of the first and the third world. We do not talk about climate change victims so much as we do about climate change migrants. Victims of climate change have seldom been seen as a subject of victimology rather than a subject of refugee or migrant studies, or the concepts of beneficiaries of compensation. But if one takes a deeper view, one shall find that the notion of virtualization due to climate change itself is a diverse and wide concept, due to its distinctiveness. People are generally victims of fellow human beings- perpetrators of crimes. But people can also suffer from climate change when nature is changed by the activities of human beings. Various activities of humans such as excessive industrial waste, spills, emissions etc. are taking environmental pollution to such an extent that at present climate change has become causal factor to human sufferings. We need to dissect the concept of virtualization and scrutinize its dimensions in the context of climate change. This paper would discuss the notion of climate change virtualization along with its various dimensions, the linkage between climate justice and climate change victims, the efficacy of compensation scheme for restorative justice, state obligation under national and international legal regime

**Keywords:** *Climate change, Victimology, Environmental justice, Human rights, Restorative justice, Migration*

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## 1 Introduction

The weight of history would tolerate so much, that we as humans would one day have to answer only to ourselves as to what we did, and let happen, to our fellow beings. Whilst the society always came to be known by diverse classes, divergent from many aspects, the world today faces a novel threat where all the distinctions converge on a zenith: that when the glaciers melt, all are to submerge; when the coals burn, all are to suffocate; when soil turns barren, all are to famish. Well, some would face it later, but all would follow the same fate no doubt. Therefore, we are moved to recognize a hitherto unrecognized entity who were just the neighbor nearby: the victims of global catastrophe known as Climate Change. Human rights today will remain with no meaning if these people are left outside the periscope, for the very existence is at risk under the wrath of nature.

With this aim in mind, this Paper would discuss the notion of Climate Change Victimization along with its various dimensions, the linkage between Climate Justice and Climate Change victims, the efficacy of Compensation Scheme for Restorative Justice, State Obligation under National and International legal regime.

## 2 Discourse on climate change victimhood: Why is it important?

While describing to Scott how Boo Radley might feel about the world, Atticus told his children to walk in a man's shoes to understand how he feels.<sup>1</sup> Surely an effective way to arouse empathy and sympathy for those different from us, but, time and again one cannot but ponder, whether it is always necessary to stand in another's shoes, to find out the likes

of his sufferings and adrenaline rushes to make up a mind for helping them out?

The notion of victimization has always been a one-sided idea in our part of the society; where victims were always clearly distinguished as a separate social and economic class, and more often than not, looked upon with pity rather than with a realization that at any moment we might share the same fate. This has become a way of our social behaviour, which has distinguished the concept of victimization as a sense of detachment, disempowerment and as charity. Nevertheless, with the changing notions of Human Rights, obligation and line of demarcation in cases of transboundary criminal activities, it is high time that we look at the concept of victims a bit differently.

Change is the only constant phenomenon in the human society, and this change affects human activities, thereby giving new dimensions to imputations and liabilities. In the present world order, two words seem to have caught public attention particularly: neo-colonialism and transboundary hazardous activities. Both these two concepts are intricately linked with economic development (as opposed to human development) and thus entails activities directed towards securing national interest, with a stark disregard to common welfare. The discourse on Climate Change, environmental degradation and its possible fatalities are one of the many branches of this newly emerged yet already much talked about issue.

Climate Change is undoubtedly an issue involving many spheres having a dire impact upon the future and development of human race: the indomitable spirit for development directed at a Machiavellian goal, the unquenchable thirst for prosperity at the cost of mere mortals, securing what's convenient for a few by directing a stopper at what is necessary for many etc. All these have given rise to much quoted

environmental law principles, and hot cake topics on balancing the interest and liability of the first and the third world. We do not talk about the Climate Change victims so much as we do about Climate Change migrants. Victims of Climate Change have seldom been looked like a subject of Victimology rather than a subject of refugee or migrant studies, or the concepts of beneficiaries of compensation. But if one takes a deeper view, one shall find that the notion of victimization due to Climate Change itself is a diverse and wide concept, due to its distinctiveness, and maybe due to its un-crystallized character. People are generally victims of fellow human beings- perpetrators of crimes. But people can also suffer from Climate Change when the nature is changed by the activities of human being. Various activities of humans such as excessive industrial wastes, spills, emissions etc. are taking the environmental pollution to such an extent that at present Climate Change has become causal factor to human sufferings. In the passages to come, we are to dissect the concept of victimization and scrutinize its dimensions in the context of Climate Change.

### 3 Victims: Conceptual clarification

The Idea is simple: My rights are violated, so I am a Victim. If Victimization means deprivation of one's entitlement, then when one's rights are denied, that is a very crucial and serious dimension of victimization, and this is the perspective from which the victimization in the context of Climate Change must be ascertained. However, before scrutinizing the specific characteristics of victimhood in relation to Climate Change, a general discussion on the concept of victim and victimization is necessary.

The Oxford Dictionary defines 'victim' in a number of ways: a person harmed, injured, or killed as a result of a crime, accident, or other event or action, a person who has come to feel helpless and passive in the face of misfortune or ill-treatment, a living creature killed as a religious sacrifice etc.<sup>2</sup> These expressions uphold the notion of defenselessness and disempowerment: by way of victimization a person is dragged to a position much disadvantageous to the one he habitually occupied in his normal life; a consequence to which he had nothing to contribute. However, the last expression used by the Dictionary helps us unfold yet another side that would be more pertinent to understand the victimization by Climate Change. Although metaphorically, nonetheless, it would not be incorrect to say that in this age of consumerism, capitalism and industrial- imperialism, the big powers are actually offering the interest of the small, poor and agro-based nations as sacrifices. But whatever way we may look at the term, the bottom line remains the same: victims are those who are unduly harmed.

### 4 Defining climate justice: What it means for the victims?

At the Very beginning, let us commence with scrutinizing two conventional definitions propounded and point out how climate justice as an idea for the Victims differs from the conventional definitions. According to the Group 'Climate Justice Movements', "Climate Justice is a vision to dissolve and alleviate the unequal burdens created by Climate Change. As a form of environmental justice, climate justice is the fair treatment of all".<sup>3</sup>

The authors maintain that justice is not a vision, it is an inherent virtue attached to every human soul. This abovementioned definition fails to distinguish 'Climate Change -per se' from "Climate Change perpetrated by 'human activities' resulting in 'unequal burdens". This definition deals with the idea of justice from a passive perspective like 'dissolution and alleviation', whereas, in the present scenario, ensuring justice requires some direct and active approach like 'ensuring equality'.

The passive nature of the approach keeps the distinction between the rich perpetrating countries as opposed to poor suffering countries in that 'justice has to be done', not that Justice will 'BE'.

As per Prof. Dr. Christoph Stueckelberger<sup>4</sup> "Climate Justice means just and fair instruments, decisions, actions, burden sharing and accountability for the prevention, mitigation and adaptation related to Climate Change"<sup>5</sup>. This particular definition in effect describes the tools for combating Climate Change ignoring the existence of Victimhood, which makes Climate Change so serious an issue. Policies, projects and other measures in the form of definitions are not realistic against the unavoidable nature of Climate Change. The effects of Climate Change fragmentize a particular community from socio-economic and psychological points of view where people often ought to live devoid of habitual normalcy of life accompanied by a sense of insecurity.

We submit that these two definitions starkly show the difference of philosophy between the West and the East. The West emphasizes the technicalities: plans, policies etc. whilst leaving the prime subject: the People behind. West wants to combat Climate Change, whilst East believes that the sole reason behind Climate Change is man's desire to control nature. Climate Change is not something to combat, rather today man has to submit to nature and let it breath. And for that, we must return to the sanctity of life, we must return to those lives at peril: the Victims. The western definition of Climate justice continuously ignores the victims. In order to effectively construe Climate Justice, we must first construe what Climate Change means for the victims.

A 2012 Study by the Asia Foundation on the Victim's Perception<sup>6</sup> shows that for the victims, climate change has a simple meaning: 42% respondents think it is flood, 37% think it means cyclone or storm, 22% connect it with drought. This means, for victims, climate change is the sufferings brought by the force of nature against which man is helpless, and so climate justice for these people would mean addressing the harm that is humanly facilitated.

As Such, the paper tries to define Climate Justice from a victim's perspective as:

"Sharing the benefits of instrumentalities, the exploitation of which will ensure justice along with equality and sense of security with a view to end perpetual sufferings of victims who undergo the misfortunes without indulging in the luxuries of technologies contributing to Climate Change."

#### **Inculcating the Dimensions: The Theories of Victimization in the Climate Change Context**

In the early days of legal science, the jurists mainly focused on criminals to discuss victims. For a long time, victims have been treated as passive elements; they have been placed at the other end of the spectrum, as embodying only the result of a long process of harmful activities or perpetration.<sup>7</sup>

However, over years many new theories of victimization have been developed, where not only the perpetrator but also the victims are considered an active element. Victimization is now characterized by agent- provocateur, situational context, spatial characteristics etc.<sup>8</sup> so the study of Victims has gained momentum.

In this broad spectrum, the victims of natural calamities and climatic disasters are often left alone, for the term 'victim' still is associated with crimes. However, the prevalent theories of victimization, if seen through the light of objectivity, appear applicable to contexts other than crimes.

One of the theories is the 'Deviant Place Theory'. From the Criminal law perspective, this theory holds that victims do not motivate crime but rather are prone to becoming victims simply because they live in social areas that are disorganized and contain high-crime rates and therefore have the highest risk of coming into contact with criminals regardless of their lifestyle or behavior. The more someone visits a

high-crime area, the more chances they will have at becoming a victim.<sup>9</sup> By drawing analogy, we see that with the rapidly increasing effects of Climate Change, inhabitants of certain regions are more likely to be victimized, e.g., peoples living in coastal States, areas undergoing desertification, arctic region, tropical areas etc. Such people qualify as victims because they are harmed by the disastrous effects of changing climatic conditions having a bearing, both directly and indirectly, upon their livelihoods, way of life, agriculture, commerce, culture, knowledge, tradition, beliefs, ethos and modality.

The important thing here is that the Climate Change today is victimizing people because today's changes are brought about and facilitated by humans. People have always been compelled to put up with the changes in Mother Nature: the great Ice Age following the Mesolithic Age bears testimony. The Distinguishing factor is that whilst those changes were brought naturally by mother earth as a phase of natural processes, the Climate Change today is a result of the polluting activities of man himself. Climate Change can intensify otherwise natural disasters, bringing a human-induced element in them, and accordingly, such natural disasters become less 'natural', expanding humankind's responsibility.<sup>10</sup>

Another point is that the victims of Climate Change are different from the victims of environmental pollution, taking pollution by brick fields as an example, the first group to be victimized by the brick field will invariably be the local people: suffering from air pollution, heat, land razing etc. The victimizer is very clear, and the impacts of victimization are also immediate, thus liability is also solid. Most importantly, in environmental pollution, the victimizer is NEVER the victim, for he would not be residing in the locality victimized. However, when considered on a larger canvas, in case of Climate Change facilitated by numerous isolated incidents of environmental pollution including this brick field, the owner himself will ultimately become victimized by the impacts of global warming and sea level rise. But when the effects become prominent, the impacts would be too remote to clearly identify the victimizers.

## 5 Intermingling climate justice with the theories of justice

For ensuring Climate Justice for victims, the preemptive elaboration of Theories of Justice demands attention. Amongst all the theories of Justice, e.g. Distributive, Retributive, Egalitarian etc., Restorative justice takes the front row for Climate Change Victims, because it does not focus on the abstract principles of punishing the offenders, rather emphasizes the practical aspect. In case of countries like Bangladesh, for the empowerment of victims, this would be more utilitarian and cost-effective for that would contribute to human development and capacity building. On the other hand, penalizing the victimizer would not be much fruitful save giving perhaps a vague sense of justice by way of retribution.

The notion of Restorative Justice focuses on the principle of reestablishing the victims in their precalamity habitual way of life by addressing the harm suffered. This idea of justice focuses on the needs of the victims and the victimizers, as well as the involved community, instead of satisfying abstract legal principles or punishing the victimizer. Victims take an active role in the process, while victimizers are expected to take responsibility for their actions.<sup>11</sup>

Restorative Justice can be defined as *"...a process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm."*<sup>12</sup>

Restorative justice encourages outcomes that promote responsibility, reparation, and healing for all. The goals are to put key decisions into

the hands of those most affected by crime, make justice more healing and more transformative, and reduce the likelihood of future offences.<sup>13</sup>

However, the Climate Change victims appear to be exclusive in this respect also; because, while they might be the most eligible class entitled to Restorative justice, they also are the hardest class to be fitted into the process, and for the obvious reasons: the passivity of the victimizer impedes the process of addressing the victimization there is no scope for arranging the encounter between the victimizer and the victims. The victims cannot control the victimization, they have nothing to do with Climate Change, no decision power, no likelihood of reducing future victimization, for mitigation does not prevent the inevitability of Climate Change. Although victims can take measures to address the grievances in the sense that they can cooperate in restoring normal ways of life, they can do nothing to address the cessation of the victimizing factor: the climate. And in case of the human elements responsible for the Climate Change in the guise of Multi-National Corporations (MNCs), Industrialist countries etc., there is no recognized mechanism till date whereby they can be brought to justice. The measures of restorative justice being decisive and courageous can act as a safeguard to end climate injustice where the sufferer is taking the negative effect of Climate Change though they are not the victimizers of Climate Change.

This is the main lacking in case of Climate Change victims: whilst they may be consoled by receiving reliefs (NOT reparation by due compensation), they are left bereft of any sense of Justice. they see that they are victimized, and that's the end of the Story: no follows where they see that someone is paying for the misfortune caused to them, someone is being held responsible, someone is obliged to turn up with some answers: victims have nothing, and not only justice is not done, but also not perceived/seen to be done. And the nature of the Climate Change leaves the victims as dire fatalists: they don't even feel like holding someone accountable.

## 6 Understanding victimization through ecological justice

If we emphasize upon the term "Ecological Justice" in relation to Climate Change issues, instead of 'environmental justice' in the broad sense, we can elaborately study the acceleration of victimization process.

Ecological justice is a small constituent of the broader idea of Environmental justice. The whole scheme of addressing Climate Change is an abstract notion, and thus, commencing with the smaller and nearer sphere (the ecosystem surrounding us) appears an easier way instead of emphasizing upon the wider evil of Environmental as well as climate justice. It portrays the diverse nature; Ecological justice mainly consists of two factors: Social and Natural.<sup>14</sup> Alongside any treatment of the distributional and procedural aspects of environmental justice, due consideration must also be given to ecological justice — in the form of relationships between the social and natural worlds.<sup>15</sup> Social Factors are inherently attached with the people of any given society that cannot be ignored under any circumstances thus making natural factors more important. To protect a society from environmental hazards, whether manmade or natural, the harmonization of these two factors is vital. Taking the example of river erosion in Bangladesh, these two factors together make the victimization process more vulnerable in relation to river erosion elsewhere: the environmental factor of the geographical characteristic of Bangladeshi sedimentary landscape makes river erosion a way of life, and river erosion per se does not make the people victims. What takes the front row is the social factor: why do people settle down in areas prone to river erosion; why do they make establishments near the banks; why is there an insufficient protection measure; why even after years of experience of river erosion and available knowledge of its prevention, people keep becoming victims. These are some aspects

which put some questions relating to Human Rights protection very critical when discussing the vulnerability of the people. But if the ecological balance is made part of the people's way of living, for example, by creating dikes to safeguard the people as well as preserving the river ecosystem by preventing undue soil removal for construction or other purposes, preserving the sediment, adapting capability measures etc., ecological justice will be ensured by way of original environment.

## 7 Climate justice and climate change victims: An interrelation

The notion of Victimization relates to the notion of rights. It is when our rights are denied or encroached upon that we feel ourselves victimized by situation. Victim is also one whose right to security has been tampered with.

When it comes to Climate Change, a peculiar relation between incidence and victimhood seems apparent. In case of other victimization, one cannot consider such victimization to be inevitable as in the case of Climate Change: Climate Change for the present world has become inevitable, and the rise of the sea level is considered by many Experts as unavoidable. If that be so, then, logical deduction says that victimization by Climate Change is also "unavoidable": no matter what we do, the people throughout the world have no choice but to suffer. This inevitability of Climate Change victimhood distinguishes it from others. Climate Change is a trans-boundary incident, and all the consequences it entails, including its victimhood, is also sans frontiers. The world is today talking about mitigation and adaptation, but the truth is stark: whatever mitigation measures are adapted, a significant degree of Climate Change seems unavoidable. The best current estimate is that a doubling of CO<sub>2</sub> from pre-industrial levels would result in a temperature increase between 1.5°C and 4.5°C (2.7°F to 8.1°F) by the end of this century. For this reason, even in the best-case scenario, we will face a number of adverse impacts from Climate Change.<sup>16</sup> Even the International Policy dealt with by the IPCC does not appear to be feasible against the inescapability of Climate Change.

## 8 Notions of climate change victimhood

The notion of victimhood by Climate Change can be divided into two dimensions: individual and Collective. Individual perspective includes those aspects where a person suffers from the consequences of Climate Change on a personal basis. Climate Change by nature snatches away one's right of self-defense. In case of ordinary crimes/offences, the victim has the right to exercise self-defense, whether he can avail of it is a separate question. But the wrath of the nature facilitated by Climate Change is overwhelming, giving man no time to prepare himself. It is undeniable that the natural disasters today are deeply aggravated by long term Climate Changes: the frequency of Aila, Sidr Katrina etc. is evidence enough. These incidents affect a person at the individual level by destroying all that he has: his homestead, his earthly possessions, his livelihood, his family members, his health, his capacity for sustainability. These are certain factors which can never be overcome no matter how much government relief or compensation may be awarded to the victims. Government reliefs are given based on project orientation where the actual addressing of the vulnerability of the victims remains untouched. By virtue of their dependence on specific project mechanism, these measures lack longevity, follow the 'need-based' approach and do not treat the Victims as right-holders. They are thus unable to provide any long-term settlement. With the termination of short-lived projects, the victims become insecure again. In addition, the measures undertaken by the government in affiliation with donor agencies are often inadequate and culture of accountability is absent.

These influence the Fundamental Rights of a man enshrined in the Constitution. But ironically, these deprivations of fundamental rights are not addressable before any Court of Law whatsoever. Natural consequences of Climate Change by itself deprives a person from the Natural Law right of being heard (*audi alterem partem*). He has to suffer without any remedy from any avenue.

The International Human Rights law till date has not developed any effective mechanism for individuals to avail of remedy for violations of such rights. While the ICCPR has an optional protocol enabling individuals to complain directly against States, the ICESCR does not have any such options, and the Right to safe Environment is not still considered a concrete Human right internationally. The International watchdog institutions on Human rights e.g. OHCHR have not reached the level wherefrom they can compel States to address such reparation of individual vulnerability. One cannot avail of justice because there is no option.

### Regional, Social and Infrastructural factors affecting Victimization.

Regional impact upon victimhood is specifically noticeable in Climate Change. Although Climate Change is a trans-boundary phenomenon, nonetheless certain areas are more vulnerable and prone to being victimized in comparison to others. This is manifested by particular traits of Climate Change as the increasing temperature within the different layers of water takes place in different stages and results into sea level rise: countries like Bangladesh, Myanmar, and Maldives are more vulnerable than Bolivia, the country with the highest altitude from this incident.

Regional consequences not only depend on the environmental conditions in a specific region, but also on the economic and social situation as well as the available options to respond to the new challenges. This means that especially developing countries like Bangladesh, which until now have hardly contributed to the anthropogenic Climate Change, will usually be the most affected by the consequences.<sup>17</sup>

Climate Change vulnerability deserves more attention than general vulnerability where socio-economic factors and human development indicators require more attention.<sup>18</sup> Addressing socio-economic factors, which aggravate the victimization of the people, responds to the impact of Climate Change, but unfortunately, this is one indicator which is grossly wanting in the bulk of research. Even though the United Nations Framework Convention on Climate Change UNFCCC, the global framework dealing with Climate Justice underscores the importance of the operation of socioeconomic systems, human health and welfare,<sup>19</sup> social indicators till date have not been duly recognized nor understood.

The diversified impact of Climate Change affects public health, life and livelihood by the varying levels of vulnerability. The comparison between the fatality of victimhood between Cuba and Myanmar proves the fact: in 2008, cyclone Nargis killed 14000 people in Myanmar, whereas, four most devastating storms in last fifty years in Cuba claimed only 25 lives.<sup>20</sup> The IPCC recognizes that vulnerability and the potential impacts of Climate Change are determined by the exposure to sensitivity and adaptive capacity of peoples and societies.<sup>21</sup> If vulnerability is analogized with victimization, then to address social vulnerability going beyond traditional definition of vulnerability, human development can work as an essential mediator of Climate Change victimhood. Adaptive capacity, exposure and sensitivity are shaped by many non-climatic socio-economic factors such as access to and control over economic, social and institutional resources.<sup>22</sup>

These factors are the key reason why the devastating effects of Climate Change are perceived so differently by Bangladesh and Netherlands.<sup>23</sup> Taking the Sea level rise as a common factor, the difference in economic development differentiates degree of victimization: the Netherlands will

experience potential impacts by rising sea level, but the presently existing infrastructure of dams and dykes (without which a part of the country would have been permanently inundated) provide a high protection level and can be further enhanced to meet future demands. Due to successful constructions and a strong sense of safety, at present there is hardly any discussion about the rising sea level in the Netherlands<sup>24</sup>

On the other hand, wide regions of Bangladesh are situated just above sea level but there exists hardly any protection such as modern dikes like the ones in the Netherlands. For the Bangladeshis, a flood is worth considering only when 50% of the country is submerged.<sup>25</sup> In addition to the lack of financial and technical capacities, loss of valuable agricultural land is a core impediment to realizing a feasible dike system. Moreover, the donor aid acquired by virtue of these hurdles is misappropriated on several occasions due to negligent and inefficient Executive.

The sea level rise in Bangladesh is estimated to result in huge economic, agricultural, infrastructural damage and enormous developmental problems affecting a substantial percentage of the GDP.<sup>26</sup> All this victimization is to be rampant when Bangladesh's contribution to global CO<sub>2</sub> emission since 1972 is only 0.06%, as opposed to the Netherlands, liable for 0.61% in 2012.<sup>27</sup>

## 9 Dimensions of victimization

The effect of Climate Change is delivered from various dimensions that include individual and collective. Individuals undoubtedly take the immediate consequences of the Climate Change where the community and the State are affected by various instincts such as cultural heritage, identity and State integrity. The following paragraphs shall focus on enumerating the dimensions:

### 9.1 Individual victimization

The individual aspects of victimization are quite simple. Every calamity, whether affected by nature itself or accelerated by human activities, affects every person at a personal level. The fire in the Australian Prairies, for example, affect the nearby localities by burning down homesteads. While there is a collective approach in the sense that the whole neighborhood is affected, we can assume that from a different point of view, every person's suffering cannot be similarised to any other person. Everyone is victimized by a psychological, economic, financial, emotional, family level. The trauma one faces when ripped off all earthly possessions, and worst with the loss of near and dear ones is the optimum level of individual suffering. This also has a Human Rights implication: he is deprived of several fundamental rights such as right to life, right to safe environment, right to property, right to employment, right to health etc. Each of these rights are enshrined in the ICCPR, ICESCR, UDHR and in the national Constitutions of all States.

### 9.2 Collective victimization

Though it is no longer possible to predict the immediate and long-term planetary impacts of Climate Change, many people will be forced to adapt and build resilience to the impacts of Climate Change whether or not they have the economic, social and personal resources to do so.<sup>28</sup>

The existing notion of Justice and the regime of human rights are not tenable to provide justice to the Climate Change Victims, and this fact induces us to look beyond the traditional notion of justice. People already affected by underdevelopment, poor governance, lack of know-how or the latest technology or information may be multi-victimized with additional suffering from repeated extreme weather conditions.<sup>29</sup> A large number of people, such as refugees, internally displaced persons IDPs, migrants, Stateless people, war torn-people etc., already victimized by geo-political-economic factors, will be further victimized

by consequences of Climate Change, and the lack of resilience will add to their sufferings.<sup>30</sup>

## 10 Mitigating victimization: Responses to climate change

The science of Climate Change along with its impact on natural ecosystem results in unavoidable disasters where many individuals, groups and societies are taking the curse of unequivocal changes of nature. Such changes could lead to the displacement of human populations, substantial property damage, economic loss, and an interference with the livelihood of those dependent upon the adversely impacted resources.<sup>31</sup> To address these changes mitigation and adaptation approaches are followed traditionally where financing the victims is an emerging concept.

'Mitigation is a response to the broad issue of Climate Change and involves reducing or stabilizing greenhouse gas emissions or levels, to mitigate changes in climate. While 'Adaptation refers to adjustments in ecological-social-economic systems in response to actual or expected climatic stimuli, their effects or impacts.'<sup>32</sup>

Adaptation measures involve use of resources, scientific technology, technical knowledge and skills, information, infrastructure, policy and management institutions and equity.<sup>33</sup> In Bangladesh, the ability to cope with the adaptation measures is not tenable due to lack of policy and infrastructural facilities. In consequence of the diverse impacts of Climate Change the necessity of identifying present vulnerabilities and future opportunities and to adjust priorities accordingly is vital which is yet to be achieved in Bangladesh due to lack of impact assessment process in this area.

Coming to the point of Climate Change Mitigation, It is found that Mitigation can mean using new technologies and renewable energies, making older equipment more energy efficient, or changing management practices or consumer behaviour.<sup>34</sup> In Bangladesh, mitigation measures are adopted mainly based on foreign aid where the infrastructural facilities lack permanent structure. In addition, the large population and hunger crisis also hampers the process of afforestation that is conducive to mitigation measures to Climate Change. As this paper focuses on the growing significance of compensation to the victims along with mitigation and adaptation measures due emphasis is portrayed in the following issues.

## 11 Compensation for complementing climate justice

The inherent unavoidable impact of Climate Change propels the conscience of humanity to provide impetus for compensation as right to the innocent victims of Climate Change. The liability regime dealing with Climate Change also calls for compensating injured parties for the harm arising from

Climate Change. In the present world, human activities are causing serious and far-reaching harms, which are largely borne by people who have contributed little to the problem — including future generations and populations in the least developed countries.<sup>35</sup> So here we find two aspects One is liability to reduce environmental hazards and other is to compensate the victims of Climate Change. Although it is apparently not feasible to determine the actual damage of Climate Change and compensation accordingly, but the disaster caused by human activities can be measured and there might be some feasibility to provide compensation to the affected people. So, State's commitment to discharge liability by considering their respective contribution to Climate Change needs to be addressed. The assigned liability incurred by States involves many factors such as compensation funds, proper authority to adjudicate compensation claims, identifying and determining the responsibility of each State for causing Climate Change, damage sustained by each State

because of Climate Change etc. Overwhelming practical difficulties, namely political will, fraud, expense, limits to knowledge and capability along with other factors hamper any kind of dealing with these issues.

Addressing these difficulties with collective effort along with utmost commitment of states can weaken the factors of hampering progress and can contribute to sensitizing the importance of undertaking the responsibility for causing climate havoc. In this process an appropriate authority would consider compensation for all conceivable harm, including damaged property, injuries and lost lives, opportunity costs, and non-physical and non-monetary loss such as grief and bereavement and the responsible State would represent the losses of its citizens and claim compensation accordingly. Here the aim is to ensure that the full, real cost of a State's contribution to Climate Change is paid (or "internalized") by the State itself, and not borne by the injured parties, and for that the amounts of compensation required must be sufficient to genuinely repair the harms caused.<sup>36</sup>

Though it is not desirable, it is to be noted that, the State sponsored framework to assign and undertake each state's responsibility for causing climate change and provide compensation accordingly also suffer from objections. Proponents argued that States are not unitary actors, and their populations change over time. In respect of Climate Change, the time of occurrence of Climate Change and their damaging effects is varied and it will go against the "Polluter Pays" principle if the individuals paying compensation for the damage from Climate Change are different from those who contribute to the occurrence of Climate Change. These varying complexities can be mitigated if arrangement is made by Beneficiary Pays principle.<sup>37</sup>

Moreover, in the absence of accountability provisions compensation exchanged by the States may never reach those individuals who have been harmed. However, institutional framework along with the instrument of accountability can act as a guard in this regard.

## 12 States' obligation for compensation

Despite States' commitment to reducing the effect of Climate Change, scientific evidence continues to suggest the mountainous impact of Climate Change. In this backdrop, the possibility of successful international legal claims for Climate Change damage has drawn increasing attention. Now the question is what could a Victim State achieve through a successful international legal claim?

The basic rule of international law is that States shall not inflict damage on or violate the rights of other States and by virtue of "no harm rule" and other<sup>38</sup> environmental principles, States are obliged not to cause damage to the environment of other States. States are also obliged to compensate the indirectly or directly affected States for the damage caused.<sup>39</sup> Reparation to Climate Change in the form of restitution and compensation is underscored as an effective method of redressing wrongful acts of States in relation to Climate Change.<sup>40</sup> The glaring example of the litigation over transboundary air pollution between Canada and the United States also proves the fact where Canada was forced to compensate the US for damage caused by sulfur dioxide emissions.<sup>41</sup>

### Analyzing the Position of Victims in the Legal Periphery of Bangladesh

Over the years, the Climate Change issues have seen the GoB drawing up numbers of strategies and Plan of Actions with a prospective target, with complete disregard for the existing victims of Climate Change e.g. Aila, Sidr etc. To address Climate Change issues and its impacts, the Government of Bangladesh adopted The National Adaptation Program of Action (NAPA) in 2005. Then following the NAPA, the Bangladesh Climate Change Strategy and Action Plan (BCCSAP) was prepared

in 2009. To frame the policy, laws and regulation and selection of fund recipients or overall management of the fund Bangladesh Climate Change Trust Fund (BCCTF) was established in 2010. Bangladesh Climate Change Resilience Fund (BCCRF) has started its operation in May 2010, and Pilot Project for Climate Resilience (PPCR) is in operation at its second phase to finance in the Climate Change related projects.<sup>42</sup>

Unfortunately, but not surprisingly, and as if with an intention to maintain the legacy of producing flawed legislations, these projects, powered by the philosophy of the Bangladesh Climate Change Trust Fund Act 2010, appear to be largely formal, with no substantial efficacy in addressing the victimization process tangling Bangladesh's vulnerable population.

To discuss the issues in a nutshell, the Act is immensely Executive-dependent. A substantial number of Executives including the Ministers of the GoB from a variety of Ministries are entrusted to coordinate the activities and projects designed for utilizing the Fund. The Ministers are already assigned with huge workloads, and the further activity under this Act is hampered by gross bureaucratic complexities. Clear understanding and mechanism needed for smooth and effective functioning is completely wanting, since so many Ministers (who are equal; in designation) are involved with no supervising or coordinating entity.

The Act describes several aims and purposes for combating Climate Change:

1. Using funds for facing the risk consequent upon Climate Change
2. Implementing special programmes relating to Climate Change and Sustainable Development
3. Designing Grass root level programmes for human development and Institutional and Social empowerment of the local Population
4. Drawing Pilot Projects for Adaptation, Mitigation, Technology Transfer, Finance and Investment, Action Research and its Dissemination
5. Taking long term plans for coping up with and facing the damage caused by Climate Change
6. Assisting the Climate Change Unit under the Ministry of Environment and Forest, and the Climate Change Cell (Focal Point) under the DoE
7. Creating Public awareness as to the possible disasters resulting from Climate Change and designing programmes for Poverty Reduction by Infrastructural, Social or Local Population empowerment for fighting natural calamities
8. Finally, assisting in emergency post natural disaster activities due to Climate Change.<sup>43</sup>

However, there is no clear-cut Risk Assessment Procedure, no design to identify the vulnerable population eligible for assistance offered under the Act. The Act propounds for implementing special programmes, but it is completely silent as to what those programmes are, how they are to be implemented or designed. There is no option for popular participation, no address made of social and economic factors active in target areas; an absence which can very well vitiate the purpose of social empowerment.

Nonetheless, the greatest weakness of the Act, according to this Paper, lies in the total absence and overlooking of the issue of Victimhood. The Act is based upon the Preventive or Precautionary philosophy aiming to curb potential future victimization, it says nothing about the victims already aggrieved. There is no mention of the Claimants,

no Right-Holders. The Act follows need-based Model approach, when what we need is a Right-Based Approach.

When we analyze the projects undertaken, the common evils are found yet once again: No participatory mechanism, discrepancies between Government agencies and NGOs in terms of allocation of projects without any eligibility assessment<sup>44</sup>, absence of transparency and equity/equality considerations.<sup>45</sup> The Right to Information is vehemently ignored with no transparency or accountability of the implementers. The projects conducted by the government often fail to underscore/ balance between the right to Environment and the Right to Development. The excessive dependence on the Foreign Donors has resulted in hegemonic control over management of resources.<sup>46</sup>

### 13 Cyclic victimization: When cure becomes the cause

In a sense, development projects designed to reduce victimization by poverty is accelerating Climate Change victimization. In the name of development activities, particular projects are done disregarding environmental protection considerations.

The Act focuses on the preventive or precautionary measures to deal with Climate Change issues and completely ignores the compensation scheme for the victims who have already suffered. It is already clear that despite the existence of preventive measures Climate Change is bound to happen, then the prospective victims or sufferers of Climate Change would also be deprived by virtue of the present Act.

#### Climate Change Victimhood and Human Rights Implications

Victims of Climate Change are entitled not only to avail Civil and Political rights but also ESC rights where State's proactive approach by taking positive and preventative measures can reduce the victimization process. The cumulative consequences of Climate Change is exacerbating poverty and inequality, posing an additional constraint on the capacity of many countries to ensure their people's social, economic and cultural rights.<sup>47</sup> In this backdrop, the guarantee of basic human rights rooted in respect for the dignity of the person actuates the societies towards internationally agreed- upon values that are indispensable for an action on climate justice.<sup>48</sup> These agreed values find difficulties to integrate in the absence of human rights based approach that calls for coordinated action among different actors of International community going beyond borders of their respective countries to ensure justice for the helpless victims of the climate shocks.

Because of Climate Change, the risk of hunger and food insecurity in the poorer regions of the world is increasing due to large reduction in annual harvest and desertification.<sup>49</sup> According to one estimate, an additional 600 million people will face malnutrition due to Climate Change,<sup>50</sup> with a particularly negative effect on sub-Saharan Africa.<sup>51</sup> The developing countries are particularly vulnerable given their dependency on climate-sensitive resources for food.

Weather extremes such as drought and flooding will have impact on water supplies, seriously affecting the Right to Water. Global warming may affect the spread of malaria and other vector borne diseases in some parts of the world, and Anxiety and depression is accelerated by Climate Change victimization putting right health under threat.<sup>52</sup>

Speaking of ESC rights, the right to adequate housing enshrined in several core international human rights instruments<sup>53</sup> is an element of the right to an adequate standard of living, which includes the "right to live somewhere in security, peace and dignity".<sup>54</sup> Core elements of this right include security of tenure, protection against forced evictions, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.<sup>55</sup> This aspect is seriously jeopardized which is evidenced by immense river erosion and increased tidal surges in Bangladesh.

Focus on reducing carbon emission today results in controlling the excavation activities. Thus, despite having huge natural resources, Bangladesh might be deprived of the own means of subsistence, ensuing a denial of the right to self-determination. This is more relevant for various cultural communities like the Mowalis (honey collectors) in the Sundarbans, the Indigenous in the CHT etc. who face cultural extinction due to the loss of biodiversity, livelihood and traditional territories by Climate Change.

### 14 Implications for women's rights

The women especially exposed to Climate Change-related risks due to existing gender discrimination, inequality and inhibiting gender roles due to lack of risk preparedness, warning communication and response, social and economic impacts, recovery and reconstruction, exclusion from decision making power, difficulties in accessing information and financial services.<sup>56</sup>

### 15 Emerging HR questions

Disappearance of a State for Climate Change-related reasons would give rise to a range of legal questions, including concerning the status of people inhabiting such disappearing territories and the protection afforded to them under international law. This would be relevant for victims of States like the Maldives and Bangladesh.

### 16 Judicial implications for climate change victims

The Courts in *Guerra and Ors. v. Italy*<sup>57</sup>, *Oneryildiz v. Turkey*<sup>58</sup> and *Ogoniland*<sup>59</sup> held the absence of vital environmental information as violation Human rights and a key factor in accelerating the victimhood. These two cases together can frame a duty of States to inform citizens (potential victims) about hazards that may cause risks to their life and wellbeing.<sup>60</sup> In Bangladesh, the only well-known access is available by means of the Danger Signals in the coastal area, while ignoring other regions. Recognizing the possibilities of future Climate Change victimization, the European Court of Human Rights (ECtHR) further identified State's obligation to mitigate the risks, facilitate evacuation and warn the victims of repeated natural disasters in *Murillo Saldias*<sup>61</sup> and *Budayeva*<sup>62</sup>. This decision can serve as a precedent to Climate Change victimization because of the repeated character of the State's failure to investigate negligence. Judgments by IACHR<sup>63</sup> and the US Supreme Court<sup>64</sup> reveal the potential for developing supranational human rights legal systems to impose a duty on States to prevent further climate change and protect individuals from its negative impacts. Besides domestic legal remedies, where they exist, regional human rights systems may offer the best forum for individuals to confront States that fail to come to consensus or otherwise take steps to combat climate change.<sup>65</sup> Here we find the simultaneous action of domestic legal remedies as well as the endeavours of regional human rights body to ensure compensation to the victims of climate change. Last but not the least, the definition of "Aggrieved Person" provided by the Apex Court in the famous case of *Mohiuddin Farooq v. Bangladesh*<sup>66</sup> can also pave way for widening the jurisprudence on Climate Change victimhood. Just as the notion of aggrieved person was broadened because the cause espoused in the case was a "cause of an indeterminate number of people in respect of a subject matter of great public concern", analogically, the potential and existing victimization by Climate change stands as a stark reality for the development of Bangladesh.

### 17 Conclusion by way of recommendation

It is high time that the ever-yearning voices of the victims were heard. If human rights are realized, then the invisible must be made visible and the voiceless must be vested with a voice, the unheard must be made audible. This is the society Tagore always dreamed of. However, Bangladesh as State has a long way to cover before the victims get their human dignity. With that end in mind, we submit the following recommendations for consideration:

1. An autonomous body in pursuance of strong legislation entrusted with authority to identify the potential victims and rightful beneficiaries of climate change is necessary. This body should be responsible for assessing the extent of vulnerability in consequence of climate shocks.
2. Potential victims of climate change should be supported by strong facilitating measures to enhance their capability in the form of Climate fitness vis-à-vis diminishing their Climate weakness.
3. Addressing Exhaustive Risk Assessment procedures, identification of special implementing programmes running special training and educational curriculum on Disaster management, risk mitigation, evaluating level of environmental degradation in the surrounding, the initial measures to be taken post-disaster, increasing accessibility in terms of information, transport, infrastructural measures etc. should be seriously considered.
4. Decentralizing the management of the Climate Change Trust Fund is mandatory. Compensation must reach the victims, and that should be conducted at the local level. There should be a Trust Fund Management Office at every vulnerable site that in turn must be identified. There should be a Vulnerable Site Assessment Team for monthly assessment. A Specific scale must be prepared to assess the level of vulnerability in units of Psychological, physical, material and health factors. Particularly, the economic factors e.g. income, crop harvest, loss of schooling etc. must be accounted.
5. Experience shows that lack of transparency leads to corruption in exhausting the assistance available, resulting in loss of foreign fund disbursement. The “Climate financing in Bangladesh: Challenge of good governance and way forward” survey by TIB carried within 2011-2013 shows the NGOs appointed for different climate adaptation projects had to give nearly 20 % of project money as bribe to government officials to have their funds released from Bangladesh Climate Change Trust Fund (BCCTF). Right to Information must be utilized to its fullest possibility as a tool for ensuring transparency. The right holders as well as the public in general must enjoy full availability of the information on the govt. run programs.
6. Procedural and legislative loopholes should be eliminated to realize the due compensation from the Victimizers. For example, the climate fund project managed by World Bank should be dealt with right based approach where comprehensive recognition of human rights framework, accountability, and participation would be the key governing principles to run the project.
7. There must be a clear line of demarcation between various preventive and reparatory measures. Compensation and Mitigation/Adaptation measures are not to be interfered with by compensation scheme, rather these measures are to be cumulatively enforced.

For a better world, the tireless striving must stretch its arms towards perfection, knowing fully well that deliverance might be found at the

end of the voyage, when one reaches the last limit of power. And so, to give a new turn to a phrase from Aubrey Meyer, one cannot but realize:

*“Compensate for the damages we cannot prevent and Prevent the damages for which we cannot afford to compensate.”*

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