INDIA'S STAND AT THE INTERNATIONAL CLIMATE SUMMITS: COPENHAGEN, CANCUN, DURBAN

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ABSTRACT

Environmental issues and climate change have become a huge threat in the present world. Treaties have been signed, summits have been organised, but to no avail. The crack between the developed and the developing world on the issue of "per capita emission" cap only seems to grow deeper. India, on this issue, is one country which is under everyone's watchful eye. The stand of India at the recent international climate summits has proven to be an achievement as well as a failure. The paper gives a brief background of the past summits and the accountability of the Kyoto protocol. The paper further deals with the three recent climate summits held in Copenhagen, Cancun and Durban respectively. The whole argument revolves around the stand which India took in these summits and also the extent to which it has proved beneficial for it. This analysis is further narrowed down to two major principles which are the "per capita" approach and the "common but differentiated responsibility" principle. The paper concludes with recommendations and measures which should be adopted keeping in mind the present scenario. It brings to light a mechanism which can ensure proper emission distribution. Emission distribution has been the bone of contention in all the summits, with Kyoto protocol even failing to realise its gravity. Hence, its critical evaluation is the need of the hour. Overall, the paper examines the feasibility of India's stand and its repercussions in today's world.

I. INTRODUCTION

The world today is starkly different from what it was a few centuries ago- a change which need not be celebrated. The earth, however, hasn't quite adapted itself to such a rapid change. Mankind, in his quest for rapid development, has constantly ignored the earth and the environment around him, leading to disastrous results.

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The problems related to environmental issues were dealt with for the first time in 1972 when Stockholm, Sweden hosted the first United Nations conference on the human environment.[1] A total of 113 delegates and two Heads of State (Olaf Palme of Sweden and Indira Gandhi of India) attended the conference.[2] It also led to the establishment of United Nations environment program (UNEP).[3] This was one of the first of its kind. A lot of conferences and meetings have been held since the Stockholm conference with a number of countries joining the UN program, but to no avail. At this point, as one of the leading developing economies of the world and one of the key international players, one would want to shift focus to India and question its role in this debate.

It all started with the summits which took place in Copenhagen,[4] Cancun[5] and Durban[6] where a clear rift between the developed countries and the developing countries was visible. The developed countries, with their pro-development stance, went on to dominate the summit in spite of the urgent need to tackle the problem

1 Stephanie Meakin, *The Rio Earth Summit: Summary of the United Nations Conference and Environment, available at* http://publications.gc.ca/collections/CollectionR/LoPBdP/BP/bp317-e.htm (Last visited November 16, 2012).

2 *Id.*

3 *See* United Nations Environment Programme, *Organization Profile,* http://www.unep.org/PDF/UNEPOrganizationProfile.pdf (Last visited November 16, 2012) (It is an international organization that coordinates United Nations environmental activities, assisting developing countries in implementing environmentally sound policies and practices. It was founded as a result of the United Nations Conference on the Human Environment in June 1972 and has its headquarters in the Gigiri neighbourhood of Nairobi, Kenya. UNEP also has six regional offices and various country offices).

4 *See* United Nations Framework Convention on Climate Change (UNFCCC), *Copenhagen Climate Change Conference- December 2009, available a*thttp://unfccc.int/meetings/copenhagen_dec_2009/meeting/6295.php (Last visited November 16, 2012)(The summit was held from December 7-18, 2009 and it dealt with various important aspects of climate change, such as the Clean Development Mechanism of the Kyoto Protocol, the Copenhagen Accord and the Green Climate Fund).

5 *See* UNFCCC, *Doha Climate Change Conference- November 2012,available at* http://unfccc.int/meetings/items/6240.php (Last visited November 16, 2012)(The summit took place from November 29- December 10, 2010. The meeting produced the basis for the most comprehensive and far-reaching international response to climate change the world had ever seen to reduce carbon emissions and build a system which made all countries accountable to each other for those reductions).

6 *See* UNFCCC, *Durban Climate Change Conference- November/December 2011*, *available at* http://unfccc.int/meetings/durban_nov_2011/meeting/6245.php (Last visited November 16, 2012)(The summit took place from November 28 - December 9, 2011. It delivered a breakthrough on the international community's response to climate change. In the second largest meeting of its kind, the negotiations advanced, in a balanced fashion, the implementation of the Convention and the Kyoto Protocol, the Bali Action Plan, and the Cancun Agreements. The outcomes included a decision by Parties to adopt a universal legal agreement on climate change as soon as possible, and no later than 2015.).

of climate change.[7] The debate revolved around the need for countries to take on a legally binding treaty for the reduction of carbon emissions, a main component of greenhouse gases[8] (GHG), which are highly detrimental to the environment. India was always opposed to a legally binding treaty in the face of refusal by the developed countries to accept similar norms. However, it is interesting to note a change in India's stance in recent events, an aspect which would be dealt with subsequently in the paper.

India, at the international level, has a key role to play with respect to environmental issues. BASIC[9], which consists of Brazil, South Africa, India and China, has been in the middle of a number of conflicts on the issue of adoption of a legally binding treaty.[10]Neither the Copenhagen summit nor the Durban summit could reach a consensus regarding the issue. The lack of a proper legal framework was felt in all the summits, a concern which the developed countries, most notably, failed to appreciate.[11]Today the USA stands second in terms of its carbon emissions.[12] With a nominal population and a disproportionate rate of emission, USA's carbon emissions are a serious concern. However, the UN summits and conferences have failed to impose any legal obligation on it; and the USA is only one such example among several other countries.[13]India, on the other hand, does

7 Praful Bidwai, *Durban Green wash*, Frontline, December 31, 2011-January 13, 2011, Volume 28-Issue 27,*available at* http://www.hindu.com/fline/fl2827/stories/20120113282709400.htm (Last visited November 16, 2012).

8 what are the main man-made greenhouse gases?, the guardian, February 21, 2011, available at http://www.guardian.co.uk/environment/2011/feb/04/man-made-greenhouse-gases (last visited November 16, 2012).

9 see we are not 'spoilers' of climate talks: India, December 2, 2011, *available at* http://www.dnaindia.com/india/report_we-are-not-spoilers-of-climate-talks-india_1620493 (last visited November 11, 2012) (the basic countries are a bloc of four large developing countries – brazil, south Africa, India and china which was formed by an agreement on November 28, 2009).

10 N.R. Krishnan, *the climate turned against India at Durban*, the Hindu-business line, December 12, 2011,*available at* http://www.thehindubusinessline.com/opinion/article2709519.ece? Homepage=true (last visited November 15, 2012).

11 time gore, *the Durban climate deal failed to meet the needs of the developing world*, the guardian, December 12, 2011, *available at* http://www.guardian.co.uk/global-development/poverty-matters/2011/dec/12/durban-climate-deal-developing-world (last visited November 11, 2012).

12 Simon Rogers & Lisa Evans, *World Carbon Dioxide Emissions Data by Country: China Speeds Ahead of the Rest*, The Guardian, January 31, 2011, *available at* http://www.guardian.co.uk/news/datablog/2011/jan/31/world-carbon-dioxide-emissions-country-data-co2#data (Last visited October 6, 2012).

13 *See,* Jos G.J. Olivier et al., Trends in global CO2 emissions 2012 Report, EDGAR, 2012, *available at* http://edgar.jrc.ec.europa.eu/news_docs/C02%20Mondiaal_%20webdef_19sept.pdf. (Last visited

realize the importance of a legal framework but has an objection to the inequitable distribution of legal obligations among nations.[14]India was always backed by the BASIC on this issue. However, cracks within the BASIC began to appear in the later summits.[15]

India has always been proactive in regulating activities affecting the environment at the domestic level, and it is equally important for it to pursue these matters internationally. The climate change summits, charged with the seemingly impossible task of making the developed and developing countries see eye to eye with each other, have proven to be a failure so far, with an agreement nowhere in sight. The importance of such an agreement cannot be stressed more and the approach of India towards the same is being closely watched in the international sphere. Therefore, a critical analysis of India's role in the recent summits becomes crucial at this point.

II. BACKGROUND OF CLIMATE DEALINGS

An analysis of the background of the various international summits and treaties would set the stage for further discussion. The landmark conference which is credited for a paradigm shift in the world's approach towards environmental issues was the Rio Summit or the United Nations Earth Summit which took place in Brazil in 1992.[16] This marked the beginning of the process of formulation of various deals and agreements to address the growing environmental concerns. The response to the summit was overwhelming with 108 nations represented by Heads of States in attendance.[17] The message of the summit was transmitted by different modes and heard by millions across the globe.[18] The three main agreements that were adopted in the summit were:[19]

December 6, 2012)(There are other countries too such as Russia, Japan, EU 27 etc. who are top emitters of the world and still have to go a long way in reducing their emissions.)

14 Ministry Of External Affairs Government Of India, Public Diplomacy Division, *The Road to Copenhagen-India's Position on Climate Change Issues*, *available at* http://pmindia.nic.in/Climate%20Change_16.03.09.pdf (Last visited November 11, 2012).

15 Krishnan, *supra* note 10.

16 The World Conferences, *Developing Priorities for the 21st Century*, The Earth Summit, May 23, 1997,*available at* http://www.un.org/geninfo/bp/enviro.html (Last visited November 20, 2012).

17 *Id.*at 2.

18 *Id.*

19 *Id.* at 2.

- Agenda 21 — a comprehensive programme of action for global action in all areas of sustainable development;
- The Rio Declaration on Environment and Development — a series of principles defining the rights and responsibilities of States;
- The Statement of Forest Principles — a set of principles to underlie the sustainable management of forests worldwide.

However, many of them have been weakened due to subsequent negotiations and compromises.

One of the main enforcing protocols which laid down strict principles on GHG emissions was the Kyoto Protocol. The Kyoto Protocol was adopted in Kyoto, Japan, on 11th December 1997 and it entered into force on 16th February 2005.[20] It identified 37 industrialised developed countries and laid down rules regarding regulation of their GHG emissions.[21]Its history can be traced back to the time when the United Nations Framework Convention on Climate Change (UNFCC) came into force on 21 March 1994.[22]However, it did not provide for any specific target or plan of action; nor was it legally binding.[23]A lot of agreements had come up in the interim period but none as clear and forceful as the Kyoto Protocol.

Now the uproar over the protocol was regarding the exemptions given to the developing nations.[24]The protocol divided the nations into two parts- the developed, like the USA and the developing, like India and China.[25] This distinction was based on the observation that developed nations contributed more to the increasing GHG than the developing nations and that developing nations

20 UNFCCC, *Kyoto Protocol*, *available at* http://unfccc.int/kyoto_protocol/items/2830.php(Last visited November 20, 2012).

21 *Id.*

22 UNFCCC, First Steps to a Safer Future: Introducing the United Nations Framework Convention on Climate Change, available at http://unfccc.int/essential_background/convention/ items/6036.php (Last visited October 18, 2012).

23 Jay Makarenko, *The Kyoto Protocol on Climate Change: History & Highlights*, February 1, 2007, *available at* http://www.mapleleafweb.com/features/kyoto-protocol-climate-change-history-highlights (Last visited November 20, 2012).

24 *Id.*

25 UNFCCC, *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 1998, Annex B *available at*http://unfccc.int/resource/docs/convkp/kpeng.pdf (Last visited November 20, 2012) [hereinafter Kyoto Protocol]. .

would take on the legal obligations in the future.[26]However, the proposition suffered a major blow when countries like the USA and Australia, which are major contributors to GHG emissions, began to drop out of the Protocol.[27] The main objection that these countries had to the protocol was that countries like China, which was the second highest emitter of GHG, were exempted from the emission reduction targets on the ground of being developing nations.[28]It was essential for the Protocol to get ratification by at least 55 members of the UNFCC, representing a minimum of 55 per cent of global GHG emissions in 1990.[29]However, the withdrawal of USA, responsible for almost 36% of the emissions, threw a spanner in the works.[30]Despite the odds, by 2004 a sufficient number of countries had already ratified the Protocol for it to formally come into effect on February 16, 2005.[31]At that time, the member countries in support represented 44% of the global GHG as of 1990, the Protocol falling 11% short of the required target.[32] The second term of the Kyoto protocol is expected to start in January 2013.

Another historical meet was that of the UNFCC held in Bali, Indonesia in December, 2007.[33] It was attended by almost 10,000 participants from more than 180 countries.[34] The Bali road map includes the Bali action plan which aimed at a "new, comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action, now, up to and beyond 2012", with the overall objective of reaching an agreed outcome and adopting a decision at the Conference of Parties (COP) 15 in Copenhagen.[35] The plan was divided into 5 main subjects, namely shared vision, mitigation, adaptation, technology and financing.[36]

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26 Makarenko, *supra* note 23.
27 Makarenko, *supra* note 23.
28 Makarenko, *supra* note 23.
29 Kyoto Protocol,*supra* note 25, Article 25.
30 Makarenko, *supra* note 23.
31 Makarenko, *supra* note 23.
32 Makarenko, *supra* note 23.
33 UNFCCC, ***Bali Climate Change Conference 3-14 December 2007****-Bali Road Map*, *available at* http://unfccc.int/meetings/bali_dec_2007/meeting/6319.php (Last visited November 20, 2012).
34 Id.
35 *Id.*
36 *Id.*

III. THE RECENT SCENARIO: COPENHAGEN SUMMIT

The fragile state of the environment is now common knowledge. The rising temperatures of the earth, the growing population, have all been sources of concern for some time now.[37]The Intergovernmental Panel on Climate Change (IPCC) had also urged the developing countries to join forces with the developed countries in order to tackle the ongoing climate change problem.[38] The same principles were kept in mind in the COP[39] 15 Copenhagen summit which had high hopes of dealing with these issues with a strong, binding legal framework.[40] However, this conference suffered the same fate as its predecessors. In the midst of all this, India's stand had been clear from the very beginning, that the 'right' and the resulting consequences of polluting the atmosphere should be apportioned to all the countries.[41] This per capita approach had been India's strong argument; the logic being that the responsibility for the pollution levels should be distributed person wise or per capita.[42] The reliance is on the assertion that a per capita based emission system would uphold fairness without giving an undue edge to the developed countries, while not obstructing development at the same time.[43]

Following is a table ranking different countries based on their per capita and overall emissions.

37 Makarenko, *supra* note 23.

38 David Freestone, *From Copenhagen to Cancun: Train Wreck or Paradigm Shift?*,Env. L. Rev. 2010, 12(2), 87-93, 89 (2010).

39 *See* UNFCCC, *Background on the UNFCCC: The International Response to Climate Change,available at* http://unfccc.int/essential_background/items/6031.php (Last visited November 20, 2012) (COP i.e. Conference of the Parties is the governing body of the Convention which advances implementation of the Convention through the decisions it takes at its periodic meetings. With the UNFCCC entering into force, the parties have been meeting annually to assess progress in dealing with climate change.COP 1 was held in Berlin in April, 1995); *See alsoIssues In The Negotiating Process- A Brief History of The Climate Change Process,available at* http://unfccc.int/cop7/issues/briefhistory.html (Last visited November 20,2012).

40 Ministry of External Affairs Government of India, *supra*note 14.

41 AutriSaha&Karan Talwar, *India's Response to Climate Change: The 2009 CopenhagenSummit andBeyond*, 3 Nujs L .Rev.159, 162-163 (2010).

42 *Id.* at 174.

43 *Id.* at176.

TABLE ID	RANK 2009	COUNTRY OR REGION	2008 MIL TONNES	2009 TOTAL MIL TONNES	2009 PER CAPITA TONNES	% CHANGE 2008 TO 2009
225		World	30,493.23	30,398.42	4.49	-0.3
179		Asia & Oceania	12,338.41	13,264.09	3.53	7.5
188	1	China	6,803.92	7,710.50	5.83	13.3
1		North America	6,885.07	6,410.54	14.19	-6.9
7	2	United States	5,833.13	5,424.53	17.67	-7
54		Europe	4,628.98	4,310.30	7.14	-6.9
91		Eurasia	2,595.86	2,358.03	8.32	-9.2
107		Middle East	1,658.55	1,714.09	8.22	3.3
194	3	India	1,473.73	1,602.12	1.38	8.7
102	4	Russia	1,698.38	1,572.07	11.23	-7.4
8		Central & South America	1,228.65	1,219.78	2.57	0.7
122		Africa	1,157.71	1,121.59	1.13	-3.1
196	5	Japan	1,215.48	1,097.96	8.64	-9.7
67	6	Germany	823.07	765.56	9.30	-7
3	7	Canada	598.46	540.97	16.15	-9.6
199	8	Korea, South	521.77	528.13	10.89	1.2
109	9	Iran	510.61	527.18	6.94	3.2
90	10	United Kingdom	563.88	519.94	8.35	-7.8
118	11	Saudi Arabia	455.62	470.00	18.56	3.2
169	12	South Africa	482.88	450.44	9.18	-6.7
5	13	Mexico	452.05	443.61	3.99	-1.9
17	14	Brazil	421.60	420.16	2.11	-0.3
182	15	Australia	425.34	417.68	19.64	-1.8
195	16	Indonesia	403.74	413.29	1.72	2.4
73	17	Italy	449.75	407.87	7.01	-9.3
66	18	France	428.54	396.65	6.30	-7.4
86	19	Spain	360.13	329.86	7.13	-8.4
217	20	Taiwan	301.94	290.88	12.66	-3.7
80	21	Poland	294.78	285.79	7.43	-3
105	22	Ukraine	355.48	255.07	5.58	-28.2
218	23	Thailand	253.55	253.38	3.80	-0.1
89	24	Turkey	272.90	253.06	3.29	-7.3
78	25	Netherlands	249.50	248.91	14.89	-0.2
120	26	United Arab Emirates	195.85	193.43	40.31	-1.2
138	27	Egypt	185.85	192.38	2.44	3.5
97	28	Kazakhstan	168.48	185.06	12.02	9.8
11	29	Argentina	172.47	166.92	4.08	-3.2
51	30	Venezuela	164.31	161.96	6.04	-1.4
214	31	Singapore	161.23	161.12	34.59	-0.1
202	32	Malaysia	148.30	148.01	5.32	-0.2
210	33	Pakistan	139.71	140.29	0.77	0.4

57	34	Belgium	154.76	137.36	13.19	-11.2
106	35	Uzbekistan	127.10	115.16	4.17	-9.4
123	36	Algeria	107.28	113.92	3.33	6.2
110	37	Iraq	100.00	103.70	3.58	3.7
69	38	Greece	106.04	100.37	9.35	-5.3
223	39	Vietnam	103.86	98.76	1.12	-4.9
62	40	CzechRepublic	99.10	95.32	9.33	-3.8
193	41	Hong Kong	77.92	85.98	12.19	10.3
113	42	Kuwait	79.83	84.87	31.52	6.3
82	43	Romania	96.56	80.52	3.66	-16.6
198	44	Korea, North	69.57	79.55	3.51	14.3
160	45	Nigeria	100.16	77.75	0.52	-22.4
212	46	Philippines	74.57	72.39	0.74	-2.9
111	47	Israel	67.26	70.48	9.74	4.8
20	48	Colombia	64.99	70.15	1.61	7.9
56	49	Austria	71.01	69.24	8.43	-2.5
117	50	Qatar	63.45	66.52	79.82	4.8

Source: The Guardian[44](last updated on October 6, 2012)

The list shows China at the top, followed by USA and then India. If closely observed, although India stands at number three, its per capita emission is much lower than that of its preceding countries China and USA. In fact India stands at the 122nd position in the world with respect to its per capita emission. Therefore, a different and arguably more equitable standard of assessment works more favourably for India.[45]It should be noted that India's emission levels are high due to its overpopulation, unlike that of USA and other high GHG emitters (except China) which record high emissions despite nominal populations; often called 'luxury emissions' as against the 'survival emissions' of developing nations.[46] This is one reason why the per capita emission of India is low when compared to the USA.[47]

44 Rogers & Evans, *supra* note 12.

45 Saha & Talwar, *supra* note 41, at 176.

46 Sebastian Oberthur & Hermann E. Ott, The Kyoto Protocol- International Climate Policy For The 21st Century 27 (1999).

47 *Cut Emissions to Tolerable Levels: PM to Developed Nations,* The Indian Express, October 22, 2009,*available at*http://www.indianexpress.com/news/cut-emissions-to-tolerable-levels-pm-to-developed-nations/531837 (Last visited November 20, 2012).

The whole battle in Copenhagen can be condensed to a blame game. Developed countries asserted that developing countries should take a legally binding treaty and developing countries asserted that developed countries should take the lead and accept the obligations. Many hoped that the Copenhagen conference would be able to seal the deal[48] but it only resulted in a dead deal. There was a huge impasse over the issue of per capita emission with India and other countries sticking to their grounds. India's stand on per capita emission, although logical and seemingly fair, has attracted a lot of criticism.[49]Those critical of its stand, highlight India's problem of over-population.[50] If countries like India and China have the same per capita emissions as that of the advanced nations then it would lead to high over all pollution which would ultimately destroy the earth.[51] This is one of the main arguments of the developed nations. If countries like India follow the concept of per capita emission it would attract a lot of problems due to its population. The World Bank, in its recent study, has concluded that it is impossible for India to keep up its GHG emissions by 2030 without keeping its population in poverty.[52] It arrived at this conclusion after modelling a low carbon growth pathway for the country.[53]. Further, relying on preliminary results of a modelling study, it pointed out that *"power consumption and consequently GHG emissions in India are bound to increase to 3.5 times the 2007-08 levels by 2031-32 due to increasing urbanization, electrification and household incomes. This could be brought down to 2.7 times the 2007-08 levels with stringent energy efficiency measures*."[54]

Though per capita emission gives the developing countries a fair chance to develop, these flaws cannot be underplayed. Hence the outcome of the Copenhagen summit was not unpredictable. Although no legally binding treaty was

48 International Institute for Sustainable Development, *Summary of the Copenhagen Climate Change Conference: 7-19 December 2009*, December 22, 2009, *available at* http://www.iisd.ca/vol12/enb12459e.html (Last visited November 20, 2012).

49 Saha&Talwar, *supra* note 41, at 176.

50 *Climate Change: The Per Capita Debate For India*, December 08, 2009,*available at* http://www.ndtv.com/article/india/climate-change-the-per-capita-debate-for-india-12725(Last visited November 20, 2012).

51 *Id.*

52 NitinSethi, *India's High Emission Level OK: World Bank*, Times of India, May 9, 2009,*available at* http://articles.timesofindia.indiatimes.com/2009-05-09/india/28183026_1_emissions-low-carbon-efficiency (Last visited November 20, 2012).

53 *Id.*

54 *Id.*

adopted, India promised to cut its carbon emissions by 20 to 25 per cent by 2020 over 2005 levels.[55]

3.1 Cancun Summit

The deadlock which was observed in the Copenhagen summit was expected to be resolved in the Cancun summit. It was very important for the Cancun summit to come out with some concrete outcomes. With the Copenhagen fiasco, it was believed that *"a failure to come to any agreement in Cancun would probably spell the end of the UN as a negotiating forum for climate change."*[56] With such successive failures and an evident lack of interest by the member nations to reach an acceptable solution, this day didn't seem too far. Surprisingly, the results in Cancun were to an extent, satisfactory. Though no legally binding outcomes were observed, the initiation of Cancun Agreements and establishment of the Cancun Adaptation Framework made the summit look promising as countries were slowly realising the need for a legal framework.[57] Nonetheless, few countries still refused to budge from their stances. The main source of surprise in the Cancun summit was India when a shift in its stand was noted.[58] The then Union Minister of State for Environment, Jairam Ramesh, in his speech in the summit, called the countries for commitment of "appropriate legal form."[59] This was heatedly debated by the political parties in India which thought that India had changed its position in the Cancun summit.[60] However, the Union Minister clearly defended his stance in the summit by clarifying that it was this stand that enabled him to "walk this thin line effectively."[61] He clearly said that he called for commitments in an "appropriate

55 Saha&Talwar,*supra* note 41, at 170.

56 Andrew Holland, *Climate Agreement in Cancun: Important Progress, but Difficult Questions Remain Unanswered*, *available at* http://www.iiss.org/whats-new/iiss-voices/climate-agreement-in-cancun-important-progress-but-difficult-questions-remain-unanswered/ (Last visited November 20, 2012).

57 *Gateway to the United Nations Systems Work on Climate Change, The Cancun Agreement*, http://www.un.org/wcm/content/site/climatechange/pages/gateway/the-negotiations/cancunagreement (Last visited November 20, 2012).

58 *Jairam Defends Nuancing India's Position at Cancun*, The Hindu, December 25, 2010,*available at* http://www.thehindu.com/news/national/article977270.ece (Last visited November 20, 2012).

59 Krittivas Mukherjee, *Jairam Ramesh says India May Accept Binding CO2 Cuts*, Reuters, December 10, 2010, *available at* http://in.reuters.com/article/2010/12/10/idINIndia-53474720101210 (Last visited December 6, 2012).

60 *Jairam Defends Nuancing India's Position at Cancun,* s*upra* note 58.

61 *Jairam Defends Nuancing India's Position at Cancun,* s*upra* note 58.

legal form" and not a legally binding commitment.[62] He also confirmed that India at this point would not take on any legally binding treaty unless the terms and conditions of the treaty, penalties for non-compliance and the mode of monitoring were not clarified.[63] Thus, according to him the stand of India hadn't changed. However, the minister's comments were appreciated internationally as India's deviation from its hard-line stance.[64]

The main subject of curiosity now was the reason for the dilution of the Indian stand after so many years. The Cancun summit observed a rift created in the BASIC.[65] South Africa and Brazil, which were earlier of the same opinion as that of India and China with regard to voluntary emission cuts by the developing countries, slowly agreed to a legally binding emission.[66] Their stand was further supported by several other countries.[67] This left India isolated in its hard-line stand. Apart from the above mentioned countries, most of the other countries e.g. the Alliance of Small Island States (AOSIS), least developed countries (LDCs), Africa, and four of the SAARC partners (Bangladesh, Maldives, Nepal and Bhutan) also shared the view that it was time for all countries to commit to legally binding emission cuts.[68] The only countries opposing this were the U.S., China, India, Philippines, Bolivia, Cuba, Nicaragua, Saudi Arabia and some others.[69] Thus, it can be saidthat the change in India's stand was more tactical in an attempt to not come across as the lone dissenter, entirely insensitive to the views of a large section of the global community.[70] India is in a critical position in the global scenario. While on one hand it manages, quite successfully, to put its interests on the table against those of the developed nations, on the other it realizes that climate change is a very real threat which can cause colossal damage to its poverty ridden, agrarian

62 Mukherjee, *supra* note 59.
63 *Jairam Defends Nuancing India's Position at Cancun, supra* note 58.
64 *Jairam Defends Nuancing India's Position at Cancun, supra* note 58.
65 meenaMenon, *India's Role in Cancun Appreciated*, The Hindu, December 11, 2010, *available at* http://www.thehindu.com/sci-tech/energy-and-environment/indias-role-in-cancun-appreciated/article945661.ece (Last visited December 6, 2012)
66 *Id.*
67 *Jairam Defends Nuancing India's Position at Cancun, supra* note 58.
68 *Jairam Defends Nuancing India's Position at Cancun, supra* note 58.
69 *Jairam Defends Nuancing India's Position at Cancun, supra* note 58.
70 *Jairam Defends Nuancing India's Position at Cancun, supra* note 58.

economy.[71] It would be difficult to tackle such a problem without the support of the international community, thereby making it imperative for it to not be at absolute loggerheads with them regarding environmental policies.[72]

This was seen when the Union Minister justified his statement in Cancun as a stand that enabled him to "walk this thin line effectively." "This nuancing of India's position will expand negotiating options and give India an all-round advantageous standing," he concluded.[73] This shift has been quite remarkable. Before the summit, both Jairam Ramesh and the Indian Prime Minister, Manmohan Singh, signalled India's desire to be a deal maker and not a deal breaker.[74] The shift not only helped India cope with majority of the nations but also helped the Cancun summit reach a reasonable consensus.[75]

Therefore, to sum up the summit, though it dodged the Kyoto Protocol discussion, it was still able to codify the voluntary emission targets agreed to by the signatories of the Copenhagen accord.[76] This was seen as a milestone as all major economies had pledged to take part actively in emission reduction.[77]

3.1.1 Durban Summit

The COP 17 meeting, the next climate conference, took place in Durban.[78] After the failure observed in the Copenhagen summit followed by a satisfactory result generated in the Cancun summit, the world looked forward to a promising climate change summit. This was viewed as the last chance to deal in depth with the Kyoto Protocol, the term of which was coming to an end in 2012.[79] Though the summit was successful to an extent, India wasineffective in pursuing all its demands

71 ShikhaBhasin, et al., *After Cancún India's New Role as an International Deal Maker*, April, 2011, *available at* http://library.fes.de/pdf-files/iez/08145.pdf(Last visited November 20, 2012).
72 *Id.*
73 *Jairam Defends Nuancing India's Position at Cancun, supra* note 58.
74 Bhasin, et al., *supra* note 71.
75 *Jairam Defends Nuancing India's Position at Cancun, supra* note 58.
76 Holland, *supra* note 56.
77 Arvind Jasrotia, *Justice at Cancun: Twilight or Dawn?*, Dilemata: International Journal of Applied Ethics, Vol. 2, No. 6, 35 (2011).
78 UNFCCC, *supra* note 6.
79 Jon Herskovitz & Agnieszka Flak, *Last Chance to Save Kyoto Deal at Climate Talks*, November 28, 2011, *available at*http://www.reuters.com/article/2011/11/28/us-climate-durban-idUSTRE7AQ0YW20111128 (Last visited November 20, 2012).

at the summit.[80]India had gone to Durban with three main motives. The first one was to seek the continuation of the Kyoto protocol, its term expiring in 2012.[81] The second was to show its concerns related to equity, intellectual property rights and unilateral trade measures which were neglected in the previous summits.[82] The third, which was the main concern for India, was to uphold the differentiation notion between the developing and the developed nations which was nothing but the "common but differentiated responsibility" principle.[83]The principle was adopted in the 1992 Rio Declaration on Environment and Development and also in the United Nations Framework Convention on Climate Change (UNFCCC).[84]

The first motive of India can be said to have been achieved, though not fully. With the support of the EU, the summit decided on the initiation of the second commitment term of the Kyoto protocol which shall begin on 1st January 2013 and will end either on 31st December 2017 or 31st December 2020.[85]The past record of the protocol reveals that its efforts to curtail emissions from the developed countries were quite ineffective. Moreover, with the initiation of its second commitment term, USA had clearly refused to ratify the treaty.[86] Canada, Australia, Japan and Russia also did not consent to the treaty.[87] It was only with the effort of EU that the treaty was still alive.[88]

The issue of equity continued to occupy centre-stage for India's incumbent Environment Minister Jayanthi Natarajan who said that the principles of "equity and common but differentiated responsibilities (CBDR)" should be adhered to.[89] However, the issues of intellectual property and unilateral trade measures were

80 Editorial, *India Lost the Plot at Durban*, The Hindu, December 13, 2011 *available at* http://www.thehindu.com/opinion/editorial/article2709756.ece (Last visited November 20, 2012).

81 Sandeep Sengupta, Opinion, *Lessons from the Durban Conference*, The Hindu, February 14, 2012*, available at* http://www.thehindu.com/opinion/lead/article2890130.ece (Last visited November 20, 2012).

82 *Id.*

83 *Id.*

84 *Id.*

85 Outcome of the Work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at its Sixteenth Session, at ¶ 1, Draft decision -/CMP.7,*available at* http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/awgkp_ outcome.pdf (Last visited December 6, 2012)

86 Sengupta, *supra* note 81.

87 Sengupta, *supra* note 81.

88 Sengupta, *supra* note 81.

89 Sengupta, *supra* note 81.

again neglected in the Durban summit.[90] The most heavily debated issue was the dilution of the differences between developed and developing nations. India always believed in the historical responsibility of the developed countries that have been emitting GHG for a long time and it is the same accumulation that has resulted in climate problems.[91] Therefore, it strongly believed and echoed its opinions about the stronger responsibility for emission cuts which have to be borne by the developed nations when compared to developing nations.[92] This is the main principle behind CBDR. It also speaks about emission cuts by different nations based on their standard of development.[93] This principle was strengthened under the Bali Action Plan in 2007 which started the negotiating process of 'Long-term Cooperative Action' (LCA) that maintained a firewall between the developing and the developed nations.[94] The same was upheld in the Copenhagen accord and the Cancun agreements. But in the Durban summit the LCA was decided to be terminated and the principle of CBDR was diluted by the adoption of the 'Durban Platform for Enhanced Action' (DPEA)[95]. It aims at formulating a protocol which is another legal instrument and is 'applicable to all the parties'.[96] Thus, it failed to take into account the principle of equity or CBDR.[97] However, the DPEA was seen as a historic move as the Parties had effectively approached to strengthen the 'multilateral, rule-based regime under the Convention.'[98] The parties would start working on the agreement from 2012. The agreement has to be ready for adoption by 2015 at the latest, and would come into effect from 2020.[99]

90 Sengupta, *supra* note 81.

91 Dean Nelson, *Manmohan Singh blames West for India's Climate Change Problems*, The Telegraph (U.K.), July 7, 2009, *available at*http://www.telegraph.co.uk/news/worldnews/asia/india/5768824/Manmohan-Singh-blames-West-for-Indias-climate-change-problems.html (Last visited November 11, 2012).

92 Saha&Talwar, *supra* note 41, at 164.

93 UNFCCC, *Climate Change Information Sheet 18*, *available at* http://unfccc.int/essential_background/background_publications_htmlpdf/climate_change_information_kit/items/302.php (Last visited November 20, 2012).

94 Sengupta, *supra* note 81.

95 Sengupta, *supra* note 81.

96 Sengupta, *supra* note 81.

97 Bidwai, *supra* note 7.

98 UNFCCC, *Parties Establish the Durban Platform for Enhanced Action*, *available at* http://unfccc.int/press/news_room/newsletter/items/6681.php(Last visited November 20, 2012).

99 *Id.*

Thus, with the end of the Durban summit, India was again left isolated in its stand. Although most of the countries implicitly consented to the dilution of the CBDR, India held its ground against it. With the failure of the first term of the Kyoto protocol and the second term also looking bleak, it is high time that a middle path is sought. It is highly important for the developed nations to participate in any new legal framework, as it will give the legal framework strength. The whole debate tends to revolve around the concept of per capita emission cap and the principle of CBDR. A mutual consensus on both the issues is the need of the hour to tackle global climate change and if that's not done tactfully, it would end up costing mankind.

IV. ANALYSIS OF INDIA'S OVERALL STAND

4.1. Per Capita Emission Approach

The concept of per capita traces back to the fundamental principle of fairness and equality with respect to emission cuts.[100] The emission cuts are presently based on the overall emissions of the country which tend to stir the debate. Why should a country with a population of two hundred million people be given the same emission rights when compared to a country with a population of one billion or 30 million just because all three have nearly the same emissions?[101]Thus the common notion is that everyone in the planet should have the same entitlement, and hence corresponding responsibility, irrespective of the place where they are born.[102] Hence, emission rights shouldn't be given based on the low or high emission rates of a country. The question which then comes up in light of the present emission norms is, why should a wealthy nation with high population be permitted to emit more while a poor nation with the identical population restricted to its current emission cut? Why should distribution of wealth form the basis for any climate change policies or emission cuts?[103] These are the questions which the per capita emission approach tends to resolve. Many authors also relate the per capita debate to the 'right to development.'[104] This is exactly the

100 Eric A. Posner & Cass R. Sunstein, *Should Greenhouse Gas Permits Be Allocated on a Per Capita Basis?*,97Calif. L. Rev.52, 56-57 (2009).
101 *Id.* at 52.
102 Saha & Talwar, *supra* note 41, at 175.
103 Posner & Sunstein, *supra* note 100, at 53.
104 Posner & Sunstein, *supra* note 100, at 53.

stand which India has adopted and focused on. Many opine that an agreement based on existing national emissions rate would hamper the right to development of the developing countries even if it is both efficient and effective.[105]India's arguments are also based on the same grounds as it believes that the present norms would create more problems. It believes that as a developing economy, it has a long way to go and any legally binding treaty with inappropriate measures would affect its growth.[106] Hence, according to it, a per capita approach would be most fair because it counts every citizen as no less and no more than one in a way that respects the moral irrelevance of national boundaries.[107]

With the formulation of per capita emission the concept of cap and trade has also come into effect. The cap and trade system is an indicator of economic growth as well as environmental growth. It aims at individual companies and helps to control the overall pollution of a country.[108] It curbs the emission pollutants, most notably carbon dioxide, greenhouse gases.Basically, in a cap and trade system a cap is set at a particular level and it's left for the countries to determine how to reach that cap.[109] Ideally, countries buy unused GHG emission allowances from those countries whose emissions are lower than their allowance level.[110]. To put it simply, emission rights would be distributed to the nations, which can be later traded for cash.[111] Thus, cap and trade system is very effective and efficient as it encourages the trade and finance of an industry as well as helps in curbing pollution.[112]. Cap and trade system allows for more flexibility and is easy to administer. It also benefits the markets to a large extent.[113]

Though India has been clinging to the per capita stand, it has not pushed the cap and trade approach so far. The approach has tremendous potential and

105 Posner & Sunstein, *supra* note 100, at 54.
106 Nelson, *supra* note 91.
107 Saha&Talwar, *supra* note 41, at 176.
108 Esther Duflo, et al., *Towards an Emissions Trading Scheme for Air Pollutants in India*, MOEF Discussion Paper, August 2010, *available at* http://moef.nic.in/downloads/public-information/towards-an-emissions-trading-scheme-for-air-pollutants.pdf (Last visited November 20, 2012).
109 *Id.*
110 Jason Scott Johnston, *Problems Of Equity And Efficiency In The Design Of International Greenhouse Gas Cap-And-Trade Schemes*, 33 Harv. Envtl. L. Rev. 405, 418-419 (2009).
111 Posner &Sunstein, *supra* note 100, at 52.
112 Duflo, et al., *supra* note 108, at 7.
113 Duflo, et al., *supra* note 108, at 14.

would be very helpful for India. India always wanted to tackle the climate change problem without hampering the development process and this approach would help India realise this objective.

4.1.1. Critiques of Per Capita Emission Approach

As already mentioned earlier, the per capita emission of India is very low when compared to other countries. Though overall it stands at the third position in the world, it would be worth noticing that its per capita emissions are,"less than a third of those of China, about a sixth of those of France, and about one-fifteenth of those of the United States.[114] Based on 'per-capita' emissions, India is ranked as one hundred and twenty-second in the world."[115] This can be one of the main reasons why India has held this stand for so long. Per capita emission approach may be very helpful for India but it hasn't received the support of the developed nations, the per capita emissions of which are relatively high and would be at a disadvantage.[116]In any global climate change agreement to reduce greenhouse gas emissions, some countries are always at a disadvantage as a few of them bear a greater cost than the others and few end up getting more benefits in comparison to others. In such a situation, per capita emission rights may only give the '*appearance but not the reality of fairness*'.[117]

To bring to light the few criticisms, firstly, there is the big question of its proper distribution. Since per capita approach does not hold current emission levels as the base line, a difficulty arises relating to its distribution at the global level or at least in the most of the countries. The permits would be distributed to both the 'greenhouse gas winners as well as losers.'[118]Climate change would affect different states differently with the levels of exposure and vulnerability varying not just between the rich and poor states but also within the poor states and the rich states themselves. [119]At this point Eric A. Posner and Cass R. Sunstein rightly point out that

114 Posner&Sunstein, *supra* note 100, at 64.
115 Posner&Sunstein, *supra* note 100, at 64.
116 Saha & Talwar, *supra* note 41, at 176.
117 Saha & Talwar, *supra* note 41, at 176.
118 Posner & Sunstein, *supra* note 100, at 74.
119 Posner & Sunstein, *supra* note 100, at 74.

> "if distribution is our concern, why should two highly populated poor nations receive the same number of permits from a program from which one nation would gain a lot and another a little-or from which one would gain a lot and another would actually lose? Ideally, permits should be distributed in light of these consequences but the per capita approach fails to take them into consideration."[120]

Secondly, the per capita approach seems fairer only as long as more populated states tend to be poorer but not all heavily populated states are poor, and consequently not all the scarcely populated states are rich.[121]Hence it can be said that per capita approach seems to be "a crude and even arbitrary way to redistribute wealth, especially compared to the pure redistributive approach, which gives few or no permits to rich states and all or most of the permits to poor states, regardless of population size."[122] Thus, proper distribution is a big question which highlights a major flaw in this approach. There are so many states which are small and rich, so many are large and poor and so many which fall in the middle category.[123] The approach fails to see all these aspects.

Lastly, the debatable issue can be of implementation. In most of the poor countries the permits will be handed over to the government and not to the citizens.[124] This is a problem as there is a greater chance of the wealthy class of the country influencing policy because of their impact on the government.[125] This argument can be detrimental for India too as India is immensely affected by corruption which can result in the misuse of the wealth generated out of the scheme.

Therefore, it can be concluded that the per capita approach may be beneficial for India but the same is not true for other countries. The summit should aim at providing a mechanism which helps the nations at large and not any one country in particular.

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120 Posner & Sunstein, *supra* note 100, at 75.
121 Posner & Sunstein, *supra* note 100, at 73.
122 Posner & Sunstein, *supra* note 100, at 73.
123 Posner & Sunstein, *supra* note 100, at 74.
124 Saha & Talwar, *supra* note 41, at 177.
125 Saha & Talwar, *supra* note 41, at 177.

4.2. Common but Differentiated Responsibility

The next issue for discussion is that of the common but differentiated responsibility (CBDR). As already mentioned, CBDR was diluted to a great extent in the Durban summit which has proven to be a boon as well as a bane. The principle of common responsibility received recognition in as early as 1949 where tuna and other fish were described as a common concern by reason of continuous use by the party.[126] The emergence of common concern can also be attributed to the Biodiversity Convention which stated that "biological diversity is a common concern of humankind."[127] The Differentiated responsibility has been noted in various treaties for example 1972 London Convention which required the parties to adopt the measures "according to their scientific, technical and economic capabilities."[128] Also in the preamble to the UN Convention on the Law of the Sea which takes into consideration the "circumstances and particular requirements,"[129] and few related concepts. However the principle of CBDR, though adopted long back, still existed in a crude form. It was only in the Rio Earth summit that it got global recognition and was finally evolved. Principle 7 of the Rio Declaration which provided the first formulation of the CBDR, states that:

> "In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command."[130]

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126 Centre for International Sustainable Development Law, *The Principle of Common but Differentiated Responsibilities: Origins and Scope*, August 26, 2002,*available at* http://cisdl.org/ public/docs/news/brief_common.pdf(Last visited November 20, 2012).

127 Convention on Biological Diversity, Preamble, December 29, 1993, 1760 UNTS 79, *available at*http://www.cbd.int/doc/legal/cbd-en.pdf(Last visited November 20, 2012).

128 Convention On The Prevention Of Marine Pollution By Dumping Of Wastes And Other Matter, Article II, August 30, 1975, 26 UST 2403,*available at* http://www.gc.noaa.gov/documents/ gcil_lc.pdf (Last visited November 20, 2012).

129 United Nations Convention on the Law of the Sea, December 10, 1982, 1833 U.N.T.S. 3, 397,*available at* http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf (Last visited November 20, 2012).

130 United Nations Economic and Social Council, *Rio Declaration on Environment and Development: Application and Implementation- Report of Secretary-General*, U.N. Doc E/CN.17/1997/8, February 10,

The principle was largely applied in the Kyoto protocol which formed a distinction between the developed and the developing nations.[131] Though the protocol has its own flaws and serious lacunas, the principle has proven to be a remarkable one. To further understand the correct interpretation of the word, it can be broken down into common responsibility and differentiated responsibility.

Common responsibility, as the name suggests, means the common duty which all the countries have towards climate change. It is the duty of the government to formulate policies to tackle the climate change problem.[132] Differentiated responsibility takes into account different social, economic and ecological concerns of the country while tackling the problem.[133] Though the concern of all countries is the same i.e. to tackle the climate problems, the approach has to be taken differently by different countries. To state clearly, the developed countries have to shoulder more responsibility and lead the world from the front since they are the ones who pollute the most.

This is the whole concept of CBDR and India is a great advocate of this principle. There are various reasons for this, but one main reason is the accountability that this principle generates. The principle clearly distinguishes between the developing and the developed world.[134] It burdens the developed countries with more responsibility based on their historical contributions. It is worth noting that carbon dioxide, the primary greenhouse gas, has an atmospheric lifetime of between 50 to 200 years.[135] This means that the developed countries have been the culprits since the evolution of the industrial revolution.[136] Hence, it would be unjust if developed countries aren't made to shoulder a greater responsibility than the others in contributing to solutions to the climate change

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1997, *available at* http://www.un.org/esa/documents/ecosoc/cn17/1997/ecn171997-8.htm (Last visited November 20, 2012).

131 Mary J. Bortscheller, *Equitable But Ineffective: How The Principle Of Common But Differentiated Responsibilities Hobbles The Global Fight Against Climate Change*, Climate Law Reporter, Volume 10 Issue 249-53, 65-68,49-50 (2010).

132 Centre for International Sustainable Development Law *, supra* note 126.

133 Centre for International Sustainable Development Law *, supra* note 126.

134 Bortscheller, *supra* note 131, at 49.

135 UNFCCC, International Maritime Organization, *Study of Greenhouse Gas Emissions from Ships*, Issue No. 2, March 31, 2000, *available at* http://unfccc.int/files/methods_and_science/emissions_from_intl_transport/application/pdf/imoghgmain.pdf (Last visited November 20, 2012).

136 Friedrich Soltau, Fairness In International Climate Change Law And Policy185(2009).

problem..[137] India's stand also has been on the same principles. It strongly believes that the developed countries should be made to adopt a legally binding treaty not because they are polluting today but have been polluting since a long time. Another reason as to why India has been advocating CBDR is because it allows for both a mechanism to tackle the climate problem as well continued development in the developing world.[138] Since it distributes responsibility depending upon the social, economic, ecological, technological situation of a country, it allows for a lot of scope for development.[139] To conclude, it can be said that not only does CBDR foster partnership and cooperation among states but also promotes effective implementation of agreement.[140]

However, the developed countries beg to differ and have failed to uphold the principle. They believe that developing countries like China, which is the highest overall GHG emitter, are not compelled to accept the legally binding treaty.[141] The principle makes developed countries the first actors in reducing emissions, and allows developing countries to follow over time.[142] It can be said that though CBDR diligently distributes the responsibility among the developing and the developed nations, it has, however, not seemed to recognise those developing nations who pollute the most.[143] This is a serious flaw which has stirred a lot of unrest. Although a lot of countries have realised the fact of a legally binding treaty, India is still unmoved from its support for CBDR. Its dilution and withdrawal of support by other countries regarding its effectiveness and fairness can leave India helpless in the near future.

To sum up, it's very important for India to maintain its own stand as well as get the support of other countries. As discussed earlier, India is highly vulnerable to the climate change menace. Its economy is mainly dependant on agriculture and is hence exposed to problems of water supply, irrigation, crop cycle, weather change etc.[144] The problem of climate change is not only a question of global equity but has

137 *Id.*at 186.
138 Centre for International Sustainable Development Law *, supra* note 126.
139 Centre for International Sustainable Development Law *, supra* note 126.
140 SOLTAU, *supra* note 136,at 186.
141 Bortscheller,*supra* note 131, at 49.
142 Bortscheller,*supra* note 131, at 50.
143 Bortscheller,*supra* note 131, at 50.
144 Bhasin.et al., *supra* note 71, at 3.

also become a domestic threat for India. Since these problems can be dealt with most effectively only globally, it is highly important for India to stress the matter at the international level.[145] India should find a way to make the developed countries as well as high emitters like China accept legally binding emissions in order to increase its own carbon space.[146] India, however, hasn't yet agreed upon any legally binding treaty which could prove to be disadvantageous for the country. As long as the emission targets do not demand an overall cap on the absolute emission, it is highly favourable for India it would give it wide scope for its development.[147]

V. CONCLUSION AND RECOMMENDATIONS

To conclude, it all boils down to the question of the most suitable and viable methodology which can be adopted to make countries accept a legal binding treaty. The Kyoto protocol has already proven to be a failure with half of the countries not ratifying it. Its main flaw stems from the exclusion of the developing nations from the protocol which are heavy emitters. Hence, what is needed is a proper method of allocation of GHG which would make amends for all the flaws of the protocol and also convince the developed nations of its fairness. To achieve this, the best proposed measure would be that of dividing the countries on three basic distinctions. "Firstly, those countries which have low historical responsibility and also have low potential for future GHG emissions; secondly those countries which have high historical responsibility for emissions and also have high potential for future GHG emissions; thirdly, those countries which have low historical responsibility for emissions but have high potential for future GHG emissions."[148] Accordingly, the countries which fall in the first category should be given the highest emission rights, the countries falling in the second category should be given low emission rights and countries falling in the third category should be given moderate emission rights.[149]

The above mentioned proposal seems to be apt keeping in mind the present hassle going on between different countries. The proposal covers all the nations by upholding the principle of CBDR as it distributes the emission rights depending

145 Bhasin.et al., *supra* note 71, at 3.
146 Bhasin.et al., *supra* note 71, at 3.
147 Bhasin.et al., *supra* note 71, at 4.
148 Saha & Talwar, *supra* note 41, at 181.
149 Saha & Talwar, *supra* note 41, at 181.

upon the emission capability of a country.[150]It also covers all the countries and accordingly distributes the emission rights unlike the Kyoto protocol which was mostly a reflection of the views of the developed nations without factoring in the views of the developing nations. Thus, the said proposal places all the countries under emission reduction obligation. This would address the primary concern of the developed countries that developing nations are only asked to voluntarily cut their emissions and aren't burdened with any emission reduction obligation.[151]

In the above mentioned proposal India would fall into the third category i.e. low historical responsibility but high potential for future GHG emissions. Meanwhile, India has taken a lot of initiatives at the domestic level to tackle the environmental issues. The foremost is that of the National action plan on climate change which outlines the existing and future policies to tackle the climate change menace.[152] It runs through till 2017. "*The National Action Plan on Climate Change identifies measures that promote development objectives while also yielding co-benefits for addressing climate change effectively. It outlines a number of steps to simultaneously advance India's development and climate change-related objectives of adaptation and mitigation*."[153] Apart from the aforementioned plan there are various legislations and acts enacted by India concerning environmental issues, namely: Air Prevention and Control of Pollution Act 1981, Environment Protection Act, 1986, Ozone Depleting Substances (Regulation and control) Rules, 2000.

In addition, there are many more legislations enacted by the state and the central government to tackle environmental problems. India has domestically taken a lot of initiatives. It is only at the international level that it has to make its stand more firm and persuasive.

150 Saha & Talwar, *supra* note 41, at 181.
151 Saha & Talwar, *supra* note 41, at 181.
152 Centre for Climate and Energy Solutions, *Summary- India's National Action Plan on Climate Change*, *available at* http://www.c2es.org/international/key-country-policies/india/climate-plan-summary (Last visited November 20, 2012).
153 *Id.*

Furthermore, India has officially announced that it would cut its emissions from 20% to 25% by 2020 from 2005 levels.[154] The prime minister has also stated explicitly that India's emissions won't exceed those of the developed nations.[155]

An over view of the stand of India in the recent international COP summits can be condensed to two major issues- per capita emission rights and CBDR. However, it would be helpful for India to adopt a more flexible approach on them in the interest of the greater objective of encouraging the international community to reach a consensus.[156] Putting forth an obstinate front would help neither the process of negotiation, nor any plans of policy framing.

The world has realised India's vital position in dealing with climate change problems. India is at a very crucial stage where it's slowly transforming from a developing country into a developed one. India has to take a firm stand in order to succeed globally with matters related to climate change. For this to happen, all eyes now will be fixed on the 18th session of the Conference of Parties to the UNFCCC and the 8th session of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol.[157] The summit is scheduled to be held in Doha, Qatar. It would be an important summit for the whole world and particularly for India which would be closely watched by everyone. The summit aims at discussing various issues, importantly, the reviewing of the Kyoto protocol.[158]The conference has already laid down the plan to discuss the Kyoto protocol in depth. India and various countries have given proposals for the same.[159]The summit would also look into the Report of the Ad Hoc Working Group on the Durban Platform for

154 Niklashöhne, Et Al., *UNEP Bridging The Emissions Gap 2011, Available At* http://www.unep.org/publications/ebooks/bridgingemissionsgap/portals/24168/appendix2.pdf (Last Visited November 20, 2012).

155 *Cut Emissions to Tolerable Levels: PM to Developed Nations, supra* note 47.

156 Saha & Talwar, *supra* note 41, at 189.

157 UNFCCC, ***Doha Climate Change Conference - November 2012***, *Available At* Http://Unfccc.Int/Meetings/Doha_Nov_2012/Meeting/6815.Php(Last Visited November 20, 2012).

158 UNFCCC, *Conference of the Parties Serving as the Meeting of the Parties to the 'Kyoto Protocol-Eighth Session Doha,* Item 2(a) of the Provisional Agenda, September 14, 2012, FCCC/KP/CMP/2012/1, *available at* http://unfccc.int/resource/docs/2012/cmp8/eng/01.pdf(Last visited November 20, 2012).

159 *Id.* at 8.

Enhanced Action and other committee reports.[160] All hopes are now pinned on this summit which would decide the future course for India.

160 UNFCCC, *Conference of the Parties Eighteenth Session*, Item 2(c) of the Provisional Agenda, September 14, 2012, FCCC/CP/2012/1, *available at* http://unfccc.int/resource/docs/2012/ cop18/eng/01.pdf(Last visited November 20, 2012).