

Climate Justice and Human Environmental Rights

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ABSTRACT

Climate Justice forms a crucial aspect in the realization of human rights. Climate justice refers to the equitable right of all human beings to access a clean, safe and healthy environment. Environmental degradation poses a serious threat to the existence of human rights. Environmental pollution resulting in several health issues such as respiratory, cardiovascular and other problems, impacts the Right to Life guaranteed to all citizens under Article 21 of the Indian Constitution. This can be curtailed by the collective effort of the legislative, executive and judicial organs of the nation in imparting climate justice to every member of society, specifically to the marginalized and vulnerable groups wherein the effects are more severe. This concept depicts the interrelation of human well being and ecological development, thereby emphasizing the lengths to which environmental degradation can severely impact human rights. Refugees are forced to leave their houses because of floods, droughts, rise in sea levels and other climate disasters. They are forced to face challenges for basic needs such as food, clothing, shelter, healthcare, etc. Indigenous rights are important as many of such communities have traditional knowledge and experiences, that can help in informing mitigation strategies and climate adaptation. In the international arena, instruments such as the Stockholm Declaration, Rio Declaration, United Nations Framework Convention on Climate Change and Kyoto Protocol highlight the synthesis between environment and human rights. Thus, there is a necessity to integrate the procedural and substantive law in such a manner which ensures consonance with the international instruments that reflect on climate justice. In this regard the role of citizens is not only limited as to merely being the subjects and entities of the government in the implementation of policies, but they must also engage in active participation to reduce the environmental hazards on an individual level in order to provide for

sustainability. Climatic change due to degradation is a direct consequence of negligent human activities. It is therefore necessary to inculcate self consciousness among citizens to the growing needs of society and contribute to the effective utilization of natural resources, ultimately resulting in climate justice. This paper aims to delve into the concept of climate justice, highlighting the shared responsibilities of governments and citizens in addressing the disproportionate impacts of climate change on vulnerable populations.

Keywords: Sustainable Environment, Constitutional Safeguard, Climate Change, International Protection.

INTRODUCTION

The word ‘environment’, originating from the French word ‘*environ*’ refers to everything that surrounds human life. Climate Justice and Environmental Human Rights are well known issues visible in every surrounding of human life. The drastic impact of climatic change on the human population and vulnerable countries of the world is vast, specifically perceptible in the poorer countries that suffer the most among all. The exhaustion of fossil fuels, misuse of natural resources, excess release of carbon dioxide into the atmosphere are some of the major factors for the increase in degradation of the environment which thereby impacts several countries from achieving a standard of climate justice throughout the world. The cases of climate change and damage caused thereon are constantly on the rise. The change in climate brings about many negative impacts on individuals such as flooding and absence of rain leading to drought, which impacts farmers at the very baseline of a society of ecological balance. Therefore, Environmental Human Rights has become a necessary corollary to the sustenance of human life on this planet. Environmental Human Rights arise by injustices which result in climate change. These rights empower individuals to fight for their basic rights to a clean, healthy and wholesome environment. This is a very serious concept which decides the future of the new generations, that is, whether they will have a healthy environment or be a victim to an increased horizon of climate injustice.

CLIMATE JUSTICE AND ENVIRONMENTAL HUMAN RIGHTS

Human Rights are inclusive of rights contained in varied fields and disciplines such as political, social, civil, economic, etc. Environmental Human Rights form an essential aspect of the social rights of individuals. Some examples of such environmental rights include Right to Clean and Healthy Environment, Pollution Free Air, Clean Drinking Water and Safe and Healthy Ecosystem. Climate Justice refers to the equitable right of all human beings to benefit from the aforementioned rights. This principle basically implies that all individuals regardless of any discrimination with respect to race, language, gender, religion shall have equal access to the natural wealth of the nation. Since environment and nature do not belong to any particular person but the entire community of people and world at large, no specific section of citizens can have a prerogative over it. Just like all other human rights even these are an inherent aspect of nature and are not granted but merely recognized. Therefore, the principles of equity demand that such resources be equally distributed among the members of society. Countries throughout the world are striving to attain a standard of achievement of climate justice at a uniform level. Climate justice is not only a mere objective of the nations at large, but it is a phenomenon to which the nations must be subscribed in order to benefit the current population as well as future generations.

This phenomenon is visible in the prevailing climate injustice that is occurring in society through the degradation of environment. There can be many reasons for such degradation, one such prominent reason is the increase of carbon dioxide in the atmosphere. For example, a survey pointed out that an average human being in Nigeria puts out lesser percentage of carbon in the atmosphere than that of an Indian citizen. Likewise, the emissions of a person in a large state like America collectively would naturally be more than a person in India and Nigeria. Carbon dioxide emissions in atmosphere through the populations of several countries in the world lead to the depletion of effect of greenhouse gases, thereby increasing the temperature of the Earth. The courts around the world are steadily recognizing the importance of this phenomenon.

In a recent case between Milieudefensie, a clan of activists and Royal Dutch Shell (2021), the court highlighted the negative impact of climate change and even posed a penalty on the defaulters for polluting the environment. The decision being recent depicts the fact that environmental pollution

causing climate change is a recurring issue in the current times and the judiciary is playing an active role to curb the same. Moreover, the citizens are also doing their part in bringing cases of deterioration and climate justice to the Courts so that they can take an appropriate action to curtail the influence of environment harming factors in the locality. Thus, there must be a shared responsibility between the citizens and authorities in order to provide for the realization of climate justice in the world at large.

POSITION OF VULNERABLE POPULATIONS

The vulnerable populations such as indigenous people are most likely to be prone to the detrimental consequences of the absence of climate justice. The indigenous populations often rely on the produce of the forests for their sustenance. When such produce is filled with toxins due to the impure environment, it endangers the very existence of such people. Moreover, climate change has led to erratic weather conditions, causing sudden heavy rainfall at any point which results in flooding, and it can also lead to scarcity of rainfall causing drought. These unpredictable weather patterns destroy the shelters and avenues of indigenous persons due to drowning of houses, flooding in river plains, absence of yield for the farmer class, etc. The most impacted population, however, would be the people of poor nations who are barely able to survive and consume a bare minimum. Such environmental injustice impedes their right to basic food and water because the same is contaminated and not fit for survival purposes. Refugees of climate induced displacement have to migrate from their original settlement because of change in climate or disasters caused by climate change. The general notion is that vulnerable sections include the indigenous, scheduled or nomadic tribes. However, it is vital to note that women and children also constitute the vulnerable sections of the society which bear the negative impacts of the absence of climate justice. An environment filled with pollution of every kind can have a deteriorating effect on pregnant women as it can cause disfigurements and abnormalities to an unborn child. Children, breathing the polluted air or consuming stagnating water, face severe health problems at a tender age which result in an unhealthy lifestyle and shorter lifespan. It therefore hinders the energy of the young populations to be in a free creative environment to grow personally and professionally. Thus,

climate injustice caused by pollution proves to have a catastrophic effect on the future prospects and avenues of all vulnerable populations which are destroyed due to health problems such as respiratory diseases, cardiovascular issues and other similar problems.

CONSTITUTIONAL SAFEGUARDS FOR CLIMATE JUSTICE

The Constitution of India does not expressly have any provisions for Climate Justice. However, there are several provisions in the Constitution which impliedly indicate the nation's effort to provide Climate Justice to its citizens. These provisions can be elaborated on three different aspects of the Constitution. Firstly, the Preamble mentions the word '*socialist*' which basically refers to the right of the entire community to benefit from the produce of the environment and nature. Thus, this word in itself is a huge indicator of the phenomenon of granting climate justice wherein every member the society regardless of any discrimination, even in the matter of wealth is entitled to benefit from the environment. There shall not be any discrimination with regard to the benefits in respect of the rich and poor, and both these communities must equally enrich themselves with the bountiful wealth of nature.

Secondly, the Fundamental Rights mentioned in Part III of the Constitution list the various rights available to the citizens which are essential for climate justice. Article 14, being the right guaranteeing equality, ensures to all the citizens equal protection and application of all the laws including environmental laws. This promotes the concept of climate justice where each and every person has the right to breathe clean and fresh air, hygienic surroundings and proper access to sanitation facilities. Next, Article 21, being the most crucial and essential provision not only in case of environmental law but regard to the existence and survival of a human being, guarantees the Right to Life. In a narrow sense it can mean that every individual should be allowed to live freely in the environment. However often the Courts have given a much wider interpretation to this right which can be interpreted to mean not only the right to live freely in the environment but also the right to be entitled to the broad spectrum of rights which are essential for a human being to live in the environment. Out of the several rights few major ones include, Right to a Wholesome

Environment, in the absence of which a person may face severe health problems such as that of respiratory problems caused due to air pollution and Right to Adequate Food and Water, which is practically the basis for existence and without which a person will cease to exist due to extreme hunger. Lastly, the mere enlistment of such rights is not sufficient unless the Constitution provides for an adequate remedy to protect these essential rights in cases of infringement. Thus Article 32 is considered as the edifice upon which the entire mechanism of enforcing these rights vests. With the instrument of Public Interest Litigations, several environmental activists have played a huge role in bringing the environmental issues of every minor area to the cognizance of the judiciary.

M.C Mehta is a renowned activist who championed the cause of working for environmental protection. In his case which revolved around the effect of air pollution on Taj Mahal, the decision of the Supreme Court (1984) marked a historic and landmark point for the environmental laws of India. It recognized the need to maintain the purity of air and also directed the industries polluting the air to be cautious in their approach, keeping in mind the necessity of a clean environment and climate justice to society.

Thirdly, the Directive Principles of State Policy provided in Part IV of the Constitution, though non enforceable by the Courts have been identified as principles which are complementary to the aforementioned Fundamental Rights. The Constitutional Amendment of 1976 added Art. 48- A to the scheme of Directive Principles. This Article recognized the obligations of State to take appropriate measures to conserve the environment, which marks a significant approach in recognizing the need of a protected environment for the development of endeavors of an individual. Besides, Art. 47 also stipulates the necessity of having a decent standard of living which further supplements the ideal of climate justice.

INTERNATIONAL RECOGNITION OF CLIMATE JUSTICE

The concept of Climate Justice has been given international recognition through a number of international treaties and conventions to which several countries are a party of. By virtue of Art. 253 of the Constitution, Parliament is empowered to make laws for the purpose of giving effect to

international treaties. One such international document which has been given effect in the Indian legal framework is the Stockholm Declaration (1972) which constitutes one of the earliest documents which recognized the importance of a clean and pure environment at an international sphere. This declaration recognized the fundamental right of all people to a clean and healthy environment and recognizes the collective efforts of the State enforcement machinery in achieving the objective of climate justice. Secondly, the Rio Declaration (1992) also played a significant role in highlighting the essential role of climate justice by mentioning provisions relating to equality and maintaining a sustainable environment. Likewise, the Kyoto Protocol (1997) contains provisions which draw a presumption that carbon dioxide emission percentage is a threat to achieving climate justice and thus it provides for adequate measures to reduce the same, playing an important role in subscribing to the phenomenon of climate justice. Most importantly, the United Nations Framework Convention on Climate Change (1992) or UNFCCC is one of the main conventions dealing with climate justice as it recognizes the role of climate change in the prevailing environmental degradation and provides measures in the form of its provisions to reduce the disastrous effect of environmental pollutants on the environment.

FACTORS CAUSING CLIMATE INJUSTICE

The most apparent aspect of climate injustice is environmental degradation. While some factors such as cyclones, flooding, torrents, etc. are naturally occurring and beyond the control of any person, there are other human- being induced factors for causing environmental damage. Human beings are prime defaulters in disrupting the harmony of nature. Due to their greedy nature and want for more resources, they often exploit the available natural resources. It is the negligent activities of humans that result in pollution of various kinds, be it dumping of waste in the body causing water pollution, using vehicles exerting harmful gases into the atmosphere causing air pollution, carrying out deforestation at a large scale leading to land pollution, as well as exceeding the permissible noise limits causing noise pollution. Likewise, the use of chlorofluorocarbon in refrigerators and air conditioners increase the temperature of the Earths surface and reduce the greenhouse effect, leading to climate injustice. The rapid urbanization and industrialization under

the ground of creating an environment for sustainable development has also resulted in an imbalance. Further, growth of population has made the scarcity of resources a perpetual issue. The exhaustion of fossil fuels, misuse of natural resources, excess release of carbon dioxide into the atmosphere causing air pollution and diseases caused by air pollutants like respiratory problems, lung infections, loss of eyesight, skin infections. The excess carbon dioxide released by the rich countries from early till date contributes to the growing carbon levels and humidity leading to climate change. These rich countries have overused the carbon dioxide budget, mentioned according to population causing damage to the poorer countries which have to utilize the same budget. The water cycle has also been greatly impacted due to the greenhouse effect, and that is why we see that rainfall quantity has drastically changed and an area which was receiving plenty of rainfall can be suffering from droughts. Together, these factors play a crucial role in changing climate patterns and result in inequality of resources, which need to be rectified through climate justice.

MEASURES TOWARDS CLIMATE JUSTICE

It must be the responsibility of not only the Authorities of the State but also the citizens who must work in unison to promote climate justice in every mere locality. The citizens in particular play a huge role in bringing the environmental problems to the notice of the State agencies which can contribute to combating the same through their legislative, executive and judicial machinery. All citizens, children and adults alike must take active part in understanding the concept of climate justice. At the educational level itself, environmental problems and necessity to conserve nature must be included in the academic curriculums to foster a spirit of devotement to the issue of environment degradation. Youth must be educated on the opportunities and measures to reduce environmental pollution, and they must be involved in the nation building process to have an environment of sustainable development. The citizens must be mindful while conducting their activities in their routine life. They must involve themselves in practices like afforestation, proper disposal of waste, reducing the use of plastics and CFCs. The entire population must be united in

the cause of reducing climate injustice by utilizing the mechanism of PILs to bring cases of degradation to the appropriate Courts and Tribunals.

In the case of Wildfires caused in Portugal (2017), the youth took the matter in their hands and approached the European Court in order to demand for climate justice by reducing the carbon emissions. This approach throws light on the significance of climate justice and depicts the sensitivity of the youth to the matter. Thus, it is essential that every member of society, irrespective of age, can take part in the movement in order to ensure climate justice.

Role of the government also plays a major role in adhering to the ideal of climate justice. The government must adopt suitable legislative and executive measures for the realization of environmental human rights. It must ensure that the existing legislation like the Air Act, 1981 or Water Act, 1974 or Forest Conservation Act, 1980 is being implemented in the proper way and the principles such as precautionary or polluter pays are equally applied to all sections of society. The government must conduct programmes to educate the masses about the effects of environmental pollution and measures to curb it. Moreover, the government must be vigilant in monitoring the activities of citizens and take stringent measures on defaulters who are polluting the land.

CONCLUSION

Climate Justice is a necessity of the world at large. It is essential to maintain equality in the distribution of the resources of nature so that each section of society equally benefited from it. Environmental Human Rights in this scenario are very essential due to wrongful activities of man towards nature and mismanagement of natural resources, causing climate change. This in turn results in violation of environmental human rights and requires action against the same. A cautious approach in utilizing natural resources thus promotes sustainable development and guarantees the future generations access to the rich natural resources as left behind by our ancestors. In attaining the goal of climate justice, the government and its citizens must work in collaboration to ensure climate justice to all individuals. In conclusion, climate justice shall be the norm, and every individual must subscribe to the cause of working towards peace and climate justice in the world.

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