



## A turn to human rights in climate change jurisprudence

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### Abstract

“Climate change threatens our ability to achieve sustainable development, and in some cases, our very survival.”

-Ban Ki-Moon <sup>[1]</sup>

Right to life and equality is an inalienable right and foundation of Human Rights Jurisprudence enmarked in the preamble to UDHR, following the footprint the Supreme Court in a judgment held Right against Climate Change as a part of Right to Clean Environment as one of the limb of Right to Life under Article 21 <sup>[2]</sup>. The impact of Climate Change on life of people raises the concern of climate justice and equity and all those who suffers the harm shall have an access to effective remedy.

This article examines the role that the policy makers, stakeholders, and Indian judiciary has played to address climate change and environmental governance, it further traces contributions landmark judgments to strike a balance with human rights. India's climatic justice movement oscillates between steps towards a green economy, where the human rights of local communities and vulnerable groups are often violated. Though the Indian Judiciary has been a site of progressive climate change jurisprudence, it is very often left to choose between the two competing strains of ecology conservation and addressing the inherent rights of humans.

**Keywords:** Climate justice, existential crisis, green economy, inequities, rights, sustainable development

### Introduction

India stands third <sup>[3]</sup> in the global carbon emission followed by China and United States of America, together with working on its obligation to meet zero emission reduction by 2030 and establish a Green Energy economy, Central Government is diverting the formulation of policy making towards Solar Energy that makes India stand on the ‘Green Economy’ pedestal moving through the fossils of Red List Threatened and later Endangered species. As per the International Union for Conservation of Nature report of 2021 <sup>[4]</sup>, 12% of threatened species are listed as endangered. Stakeholders stand to incorporate Precautionary Principle as an established principle to restore the ecology can effectively reverse the effect of Environment degradation due the loss to ecology but morose in fauna life cannot restore the chirping and it can be seen as a contravention of the Supreme Court's ruling in Rural Litigation and Entitlement Kendre vs. State of Uttar Pradesh, (1983) <sup>[5]</sup> economic growth cannot be achieved at the cost of environment destruction and ‘right to healthy environment’, the court emphasised on ecocentrism approach rather than anthropocentrism.

In the past five years India's global rank in SDG's compliance has slipped to nine places wherein eradication of poverty, quality education, zero hunger, good nutrition and wellbeing, gender inequality forms crucial parameters and facets of Human Rights as reported by Center for Science and Environment in 2023 <sup>[6]</sup> based on data Published by NITI Aayog <sup>[7]</sup>.

### International Recognition and Precedents

The basic Human Right principle of Equality and non-discrimination also calls for just and equitable access to benefits of Development <sup>[8]</sup>. The preamble to the Paris Agreement (COP 21) <sup>[9]</sup> acknowledges that climate change is a common concern of humankind, the said statement regards an obligation on states while taking action to

address climate change, respect, and promote the right to health, the right of local vulnerable communities and indigenous people and intergenerational equity <sup>[10]</sup>. The International Court of Justice in its 2018 judgment Costa Rica vs. Nicaragua <sup>[11]</sup> noted that it is a well-established principle that ‘it is an obligation to make full reparation for damages caused by wrongful acts by way of compensation, particularly in those cases where restitution is materially impossible or duly burdensome’.

Likewise Article 3(1) of the UNFCCC <sup>[12]</sup> states the obligation of the states to safeguard the climate change for the wellbeing of present and future generations linked with equity and is reflective of their differentiated responsibilities and capabilities while ensuring a holistic approach to monitor and implement Sustainable Development Goal 7 <sup>[13]</sup>, to ensure access to affordable and modern energy for all has an intrinsic element of human right component.

### National Aggressive Development Policies

National Action Plan on Climate Change <sup>[14]</sup> based on the outcomes of vulnerability assessment and adaptation studies of climate change covering various areas such as costal zones, forests, energy, health, water and infrastructure outlines the core national strategy incorporating principles of efficient and cost effective strategies, linkage of public-private partnership, new and innovative market and regulatory, mechanism nowhere stressed on the rights that may be violated while its implementation. Moreover, the policy targets to achieve an installation of 20 GW solar power by 2022 <sup>[15]</sup> to establish India as a global leader in solar energy by creating a policy diffusion across the country as quick as possible. The policy although rigorous and strictly monitored by a panel of experts typically ended in unintended consequences and left unforeseen side effects on both large and short scale impacts on human rights. While some negative impacts became apparent in recent times others are not recognized for many years.

### Effects of Climate Change

Climate Change became a nascent and sporadic reason for existential crisis, most of its aftermath effects is often suffered by low-income strata of the communities that are on the frontline of climate effects. Last month of March <sup>[16]</sup> was recorded as the hottest month in human history and it is to be noted that climate change do not affect everyone equally as potentially millions of people will be plummeted into food insecurity-adding to the other millions that already have moderate or severe difficulty in having food, access to clean drinking water and health services. It may lead to worsening situations in Air Quality and may trigger warmer conditions that hike up the risk of existing breathing illness among people. Not only this, the effects of climate change and the yet to come looming threat take a significant toll on mental and psychological health too as it can trigger anxiety to powerlessness to anger.

On most areas the effect of this took a shift that raises the concern of displacement and worsening inequities <sup>[17]</sup> while India established itself at par in terms of facilitating health infrastructure there also exist disease vulnerable groups whom suffers from inequities due to lack of resources to buy basic nutritious food and access treatment for respiratory and pulmonary illness while millions of people can't others are paying the highest price for pollution that they did not produce.

### Judicial Precedents and Legal Framework

India has been historically a place where Environment was seen and worshiped a holy as a deity. While the climate change litigation is still in its budding stage in India. PILs produced a mixture of forward looking and conflicting decision making. The creation of National Green Tribunal in 2010 <sup>[18]</sup> opened a focused and dedicated avenues to resolve green disputes, in its ruling in *Ridhima Pandey vs. Union of India* <sup>[19]</sup> that invoked the concern with specific reference to Climate Change and highlight the link between climate change and human rights on the grounds of air pollution, deforestation, government inaction and its effects on children's health. The applicant a nine year old girl form state of Uttarakhand seek the attention of policy makers by invoking Public Trust Doctrine <sup>[20]</sup> and sustainable development while arguing for the non-implementation Legislations such as Environment (Protection) Act(1986), the Air (Prevention and Control of Pollution) Act, 1981 and the Environment Impact Assessment Notification, 2006 in its order the tribunal dismissed the petition by reason of lack of scientific evidence further taking a presumptive view towards policy making to have incorporated the rules and orders after considering the international protocols and Agreements and there reflection in the policies.

A slight shift in the approach of climate justice can be seen in the highest court ruling that citizens have a 'right against the adverse effects of climate change, <sup>[21]</sup>' where the supreme court has given a consideration to several factors to minimise the aftermath results in laying of overhead transmission cables that put Great Indian Bustard to go extinct. The project tried to draw a balance between Private and public Power companies, supported by the Ministry of New and Renewable Energy (MNRE) and recommendations of the committee constituted to study and analyse the effects and suggest measures, while the committee suggested for the underground electrification of the power developers argued that such a step would hinder India's road to solar

electrification as a result of significant hike in the cost of solar power.

The supreme Court noted that the legislations as well as the mission led programmes such as the Wildlife (Protection) Act1972, the Water (Prevention and Control of Pollution) Act1974, the National Green Tribunal Act2010, the National Solar Mission, the National Mission for Enhanced Energy Efficiency, and the National Mission for Greener India among those mentioned, that address the adverse effects of Climate Change there is no umbrella Legislation to address to the attended concerns. Moreover, the Constitutional guarantees though not explicitly, right to a clean Environment as a part of Right to Life and Personal Liberty and Citizens Right to Equality, as the havoc is increasing year by year there is a need to articulate this as a distinct right <sup>[22]</sup>.

### Steps towards Striking a Balance

Silent protests are taking hue all around the globe. GD Agarwal <sup>[23]</sup>, an enviro activist once a IIT Kanpur Professor and member secretary of the Central Pollution Control Board took his last breath in AIIMS, Rishikesh followed by his 111 days fast demanding a law to save and scrapping of hydro power projects. Again, in February 2023, Sonam Wangchuk's <sup>[24]</sup> climate fast was an effort to draw an attention of Policy makers and officials to the Ladakh's fragile ecology. This instance raises a need for an immediate responsive measure as the government stands as a 'Parens Patriae' for all the resources collectively owned by humankind. Some measures that can addresses the parity to strike equilibrium among Climate Change and Human Rights are mentioned below-

Firstly, stepping towards explicitly specifying the Right to Clean Environment and Health to draw a linkage between climate change on the enjoyment of various Human Rights, this can be done through enacting specific and umbrella legislation and through inserting amendments to ensure the due recognition to human rights as a mandate for environmental clearance and climate change.

Secondly, recognition of procedural Human Rights to Citizens such as - access to climate change information, right to participate and be consulted in action plans and projects and inserting practices as suggested in the Aarhus Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters.

Thirdly, identification and categorization of vulnerable areas based on income, access to resources, social parameters, etc. and communities with orientation i.e., with special mention of gender, age, population, children, LGBTQIA+ etc.

Fourthly, mandate of due observance and to ensure, protect, promote, and respect the human rights guarantees under legislation, Constitution, and International Frameworks.

Fifthly, enacting framework for seeking recourse to assistance against Human Rights violations from Human Right Commission and monitoring committees established within an approachable limit.

Sixth, awareness among people and stakeholders by help of Anganwadi Workers, publication of data and surveys with environmental Impact Assessment.

Seventh, creation of funds by government aid to ensure timely and speedy compensation for relief.

Lastly, addressing these issues requires comprehensive and analytical assessment potential impacts prior to its

implementation together with a policy flexibility that enables adjustment based on timely monitoring as soon as the new data survey is made available.

### Conclusion

Climate Change litigation is pivotal in advancing right-based energy transition and safeguarding climate justice intertwined with human rights. This also brings a challenging task before the judiciary, the task of adjudicating cases where significant issues are at stake. PILs in India have incorporated environmental ethics and human rights principles such as the public trust principle, the polluter pays principle, the precautionary principle and the right to free, prior, and informed consent that structured the environment government by selectively progressive and overarching judgments of the Supreme Court. Yet the potential and strategic planning by way of policing needs to be explored bearing in mind its limitations.

As we navigate this critical juncture, a delicate balance between economic development and ecological sustainability honoring rights must be maintained. Although Indian judiciary have taken profound steps towards fulfilling this obligation, there is more to be done. A more increased ambition with respect to climate change mitigation and adaptation is needed with interlined cooperative framework to ensure the protection of human rights for all citizens addressing the inequities and nascent stage of existential crisis as the new developments are underway, and spark of climate change implications been igniting, from initiation will make their way to the court.

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