

CLIMATE CHANGE: AN ISSUE OF EQUITY, JUSTICE AND HUMAN RIGHTS

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Abstract

Climate change presents a unique challenge for the international community. Its effects transcend political boundaries and therefore it requires a co-ordinated effort to tackle this problem. This paper seeks to study the issue of climate change from the perspective of equity and justice. Climate Change threatens to undermine the human rights of a large number of people and therefore, this paper argues that justice should be at the centre of all policy discussions around climate change. Climate justice argues that all policy decisions regarding adaptation and mitigation strategies as well as international conventions should give due regard to the rights of the communities least responsible for climate change. The right to development and right to safe environment shall be balanced on the scale of justice and equity.

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I Introduction

CLIMATE CHANGE is the defining issue of our times, which threatens the existing way of human life. Climate change will substantially alter the human situation and affect almost all the aspects of human life from food security and availability of water to energy sources and biodiversity. While discussing the issue of climate change one uses the terminology of emissions, carbon footprint, temperature rise, low-carbon economy/technology etc, *i.e.*, we talk in technical terms of ecology and technology. The study of climate change is interdisciplinary in the most fundamental sense of the term *i.e.*, it spans across disciplines of law; economics; science; international relations; as well as ethics and philosophy. The equity dimension of climate change policy should become the centre of all the discussions of tackling climate change. This paper will deal with climate change in the terms of justice. This paper will analyse the issue of climate change from a human rights perspective and a socio-economic angle; and examine the links between the environmental challenges and the issue of justice and equity. It will put forth arguments in favour of role of justice and equity in

climate negotiations. Here the author would like to argue that the principle of equity and justice should be the common thread used to weave the story of present and future climate negotiations.

Justice in its most fundamental understanding refers to “fairness” and “equity”. It is an accepted fact that the overall changes in earth’s environment called climate change are a result of anthropological activities. Although climate change will affect all of mankind however; the people most severely affected by climate change are also the ones who are historically least responsible for it. And this fundamental injustice lies at the very heart of climate justice debate. The communities at the frontline of the effects of climate change so to speak, have benefitted least from the carbon-intensive economic development. Historically speaking the industrialised global north is responsible for the majority of the greenhouse gases in the environment causing climate change. Another aspect of climate change that informs the equity debate is that the effects of climate change will be “intergenerational” *i.e.*, many of the effects of climate change are irreversible and therefore, our actions today will unjustly affect the availability of earth’s resources for the future generations. Therefore, the concept of climate justice and equity can be studied from two angles: intra-generational equity and inter-generational equity. Further the environmental justice approach also insists that the climate negotiations should include the community participation in the decision making and implementation process *i.e.*, climate action should follow a bottom-up approach. Therefore, justice in the context of climate change can have various dimensions like intergenerational equity, rights of indigenous communities and the north-south relations .The need to discuss climate justice while dealing with climate change is that it is as a concept above and beyond the general understanding of climate law (which may be just or unjust) *i.e.*, climate justice is the yardstick by which “fairness” of any climate law can be evaluated.¹Therefore, this paper seeks to establish that the principles of equity and justice should be incorporated in both the procedural as well as substantial part of all climate negotiations and agreements. This paper will analyse the Paris Agreement 2015 from the lens of climate justice. Paris Agreement acknowledges the importance of climate justice in the action against climate change within its preamble itself.

II Climate justice: Concept

¹ Jeremy Baskin, “The Impossible Necessity of Climate Justice” 10 *Melbourne Journal of International Law* 424 (2009).

“No community with a sense of justice, compassion or respect for basic human rights should accept the current pattern of adaptation. Leaving the world’s poor to sink or swim with their own meager resources in the face of the threat posed by climate change is morally wrong. Unfortunately... this is precisely what is happening. We are drifting into a world of ‘adaptation apartheid’. -Cape Town Archbishop Emeritus, Desmond Tutu”²

The term ‘climate justice’ is employed in order to frame the issue of climate change as political and ethical issue as opposed to being treated as a purely environmental issue. Climate justice interweaves development with the cost of that development, to evolve a human rights-based approach to the problem of climate change. Climate justice discourse argues that the adaptation and mitigation measures to tackle climate change should be evolved keeping in mind the rights of the communities which are particularly vulnerable *i.e.*, the global south. And the cost of adaptation and mitigation measures shall be distributed fairly and equitably, keeping in the mind the respective capacities and historical responsibilities. Given the transnational impact of climate change, it requires a concerted effort from the entire international community to combat climate change. And equity in climate negotiations is the only way to achieve this kind of political consensus and ensure sustained efforts by all parties. This is why it is essential to formulate climate change as an issue of justice and human rights.

Before discussing the concept of climate justice and various approaches to achieve climate justice in present and future climate negotiations it is imperative to discuss how climate change perpetuates injustice in the global community. Due to the complexity and far reaching impacts of the phenomena of climate change, it touches upon various aspects and approaches of justice.³For example, in addition to the aspect of equity as mentioned earlier, climate change also undermines the realisation of various human rights- for example right to safe drinking water, right to food, right to livelihood *etc.*⁴ It is imperative to analyse climate change from the human rights angle because the impacts of climate change leads to human suffering.⁵Climate change has increased both the frequency and the intensity of natural

² U N Development Programme, Human Development Report 2007/2008, “Fighting Climate Change: Human Solidarity in a Divided World”47-48, *available at*: http://hdr.undp.org/en/media/HDR_20072008_EN_Cxyzomplete.pdf [hereinafter UNDP, Human Development Report 2007/2008] (last visited on Dec. 20, 2019).

³ B.K. Sovacool and M.H. Dworkin, *Global Energy Justice* 326 (Cambridge University Press, 2014).

⁴ Edward Cameron, Tara Shine *et.al.*, “Climate Justice: Equity and Justice Informing a New Climate Agreement” 2 *World Resources Institute and Mary Robinson Foundation–Climate Justice* 3-5(2013).

⁵ Margaux J Hall and David C Weiss, “Climate Change Adaptation and Human Rights: An Equitable View” in Oliver C. Ruppel, Christian Roschmann *et.al.* (eds.) *Climate Change: International Law and Global*

disasters like droughts, and floods; and is thereby adversely affecting food production and availability of safe drinking water in various regions of the world. Though the effects of climate change are felt all over the world, however due to different geographic and demographic conditions along with differential adaptive capacities the developing countries are more vulnerable to climate change compared to the developed world. This disproportionate burden on the developing countries informs the climate justice debate.

The disproportionate impacts of the effects of climate change calls for the formulation of a justice discourse in the study of climate change. As Gordon Walker argues climate change once again brings to the fore front the historical patterns of inequalities and injustice in the development of the global north and global south.⁶

The impact of climate change is not limited to any one region or country; the greenhouse gas emissions of one country have the potential to affect the global atmosphere. Thus due to the transnational impact of climate change the policy-decisions of one nation have the potential of affecting both its immediate neighbour as well as the countries on the other side of the world. Therefore, the current situation provides a unique opportunity to the world leaders to realise that this is one world and it is so intricately interdependent that unjust consumption of the world resources by the global north has a direct impact on the entire planet.⁷ And in this context the domestic policy-makers of these countries cannot hide behind internal sovereignty and continue on the path of unscrupulous consumption of the natural resources and abuse of the atmosphere. An assessment of the present and potential impact of climate change demonstrates that the countries which are most vulnerable to the impact of climate change are least responsible for the problem. Thus, it can be said that they are unjustly paying the cost of this lopsided development. Sujatha Byravan and Sudhir ChellaRajan calls this “asymmetrical impacts” *i.e.*, the communities that benefitted least from the developmental discourse causing climate change are at the forefront of its adverse impacts.⁸

When we talk about tackling the issue of climate change, the efforts for the same can be broadly divided into: mitigation efforts and adaptation efforts. The focus of the international community has been to mitigate the effects of climate change by reducing greenhouse gas

Governance 263 (Nomos Verlagsgesellschaft Mbh and Co.2013).

⁶ Gordon Walker, *Environmental Justice: Concepts, Evidence and Politics* (Routledge, 2012).

⁷ Anil Agarwal and Sunita Narain, *Global Warming in an Unequal World: A Case of Environmental Colonialism* (Centre for Science and Environment, New Delhi, 1991).

⁸ Sujatha Byravan and Sudhir ChellaRajan, “The Ethical Implications of Sea-Level Rise Due to Climate Change” 24(3) *Ethics & International Affairs* 245 (2011).

emissions and invest in adaptation efforts where the changes are irreversible. However, both of these efforts can be analysed and framed as a justice and human rights issue.

Mitigation

The mitigation efforts of the international community are centred on reduction in greenhouse gas emissions. The international treaties formulated to mitigate the effects the climate change are aimed at progressively reducing greenhouse gas emissions (For example: The Montreal Protocol, 1987 is a global agreement to protect the stratospheric ozone layer by phasing out the production and consumption of ozone-depleting substances (ODS); The Kyoto Protocol, 1997 targeted six greenhouse gases: Carbon dioxide, Methane, Nitrous Oxide, Hydrofluorocarbons, Perfluorocarbons, Sulphur hexafluoride). However, climate justice demands that the burden for reducing greenhouse gas emissions should be shared on an equitable basis between the developed and developing world, and in the context of their respective historical share in the already accumulated greenhouse gases in the atmosphere. It is important to take into account the responsibility of past emissions of the various countries; because earth's climate system is a 'slow-moving beast' *i.e.*, there is what the scientists call a 'thermal-lag' in the atmosphere.⁹ Most of the greenhouse gases have a very long atmospheric lifetime; therefore there is an inertia already built in the atmosphere in the form of the cumulative emissions of past decades which are manifesting in the form of climate change today.

In addition to the historical responsibility for past emissions, climate justice also demands that while setting the emission reduction targets for the current or future emissions there should be a distinction between 'survival emissions' and 'luxury emissions'.¹⁰ That is the distinction between the emissions from developmental projects essential for a reasonable standard of living and those that are a result of luxurious consumption patterns. The earth's atmosphere can only withstand a certain amount of greenhouse gases (GHG) emissions before its balance tips towards an irreversible point. This can be called the 'emissions quota' given to us by the atmosphere, and it is imperative to share this global emissions quota equitably amongst nations. The existing patterns of consumption in the developed and the developing countries indicate that overall GHG emissions of the developed countries are far more when compared with the overall emissions of the developing countries (although the

⁹ Sujatha Byravan and Sudhir Chella Rajan, "Providing New Homes for Climate Change Exiles" 6 *Climate Policy* 248 (2006).

¹⁰ *Supra* note 7 at 3.

developing countries are home to one-third of the world's population).¹¹ And therefore, the GHG emissions of the developed countries have already hijacked the major portion of the 'emissions quota' in the global atmosphere. Sustainable development requires that global GHG emissions should remain within the 'emissions quota' so as to avoid adverse impacts of irreversible climate change. However, while determining the emissions' reduction targets amongst nations, global justice and equity necessitate an approach which will take into account and balance emissions out of luxury consumption of the developed countries against the emissions from necessary developmental projects of the developing countries.¹² In addition to this, within the developing countries there should be a distinction between the luxury emissions of the elites and the survival emissions of the poor. For example, the emissions from burning of fossil fuels in cars or industries cannot be put on the same footing as methane emissions from rice fields. Therefore, any policy decision (whether it is amongst different nation states or within a particular nation) regarding emission reductions should be guided by the principles of climate justice.

Adaptation

Both mitigation and adaptation efforts translate into difficult policy decisions by the governments, however due to the differential capabilities the level of difficulty faced by the developing countries is much more than the developed countries. As Desmond Tutu puts it, the adaptation efforts in developed countries are comparatively "painless", *i.e.*, for people in Sweden or London the rise in average temperature due to climate change can be dealt with by adjusting the thermostat, however, for people in the Asian mega-deltas (Bangladesh and India) climate change translates into extreme floods, loss of agricultural land and homes, for thousands in central Africa it means being forced to walk farther for safe drinking water.¹³ Therefore "adaptation" has become a new ground for "social injustice" within the international community. Desmond Tutu calls this "adaptation apartheid".¹⁴ Where the developed countries which are responsible for the majority of greenhouse gas emissions and the consequent climate change are sheltered from its effects due to their better adaptive capacities; the developing countries on the other hand with their limited adaptive capacities are exposed to its worst effects. Thus the communities which are most vulnerable to the effects of climate change lack the resources needed for efficient adaptation. And since these

¹¹ *Supra* note 2 at 41-42.

¹² *Ibid.*

¹³ *Supra* note 2 at 166.

¹⁴ *Supra* note 2 at 13.

communities are least responsible for climate change, therefore, justice demands that the cost of adaptation should be shared on an equitable basis.

Therefore, the concept of climate justice is built upon the following arguments: first is ‘responsibility’ *i.e.*, there is a disconnect between those who are responsible for climate change in terms of both historic as well as current GHG emissions and the communities which are likely to bear the worst effects of climate change. In an ironic reversal of natural justice ‘the polluter is not paying’.¹⁵ The countries which have contributed least to the GHG emissions are set to face the worst geographical impacts of climate change. The second argument is based on the ‘differential capacities’. In terms of both the capacity to adapt and the capacity to bear the cost of mitigation the developing countries lack the necessary resources.

The third argument is related to the ‘right to development’; it combines both the above arguments in practice. Here the developing countries argue that they have a right to expand their economies and industries in order to reach a dignified level of development. Therefore any climate agreement which imposes stringent emissions reductions so much so that their right to development is threatened is inherently unjust because it will perpetuate inequality within the international community. Thus, the international community is at an impasse, which is a result of the innate conflict between right to development and the environmental cost of that development. Here, in order to get effective support from the developing countries there should be a climate regime that does not put unjust costs on them and insure their right to development. With the aim to develop a just approach to combat climate change Paul Baer, Tom Athanasiou and Sivan Kartha have formulated a ‘Greenhouse Development Rights (GDR) Framework’.¹⁶ This approach seeks to balance the environmental concerns with the developmental concerns of the developing world. As mentioned earlier, the unbridled exploitation of the natural resources by the developed countries for their economic development has cut deep into the atmospheric emissions quota, and left very little space for the rest of the world. The GDR framework proposes to develop a burden-sharing approach which will secure a viable portion of the atmospheric space for the development of the global south.¹⁷ However, it is important to mention here that the ‘right to development’ does not imply unchecked exploitation of the environment, but a right to ‘*reach a dignified level of*

¹⁵ Suman Sahai, “Agro-Biodiversity as a Resource” 54(28) *Economic & Political Weekly* 15 (2009).

¹⁶ Paul Baer, Tom Athanasiou *et al.*, *The Right to Development in a Climate Constrained World: The Greenhouse Development Rights Framework* (2nd edn., Heinrich Böll Foundation, Christian Aid, Eco Equity and the Stockholm Environment Institute, Berlin, 2008).

¹⁷ *Id.* at 1.

sustainable human development'.¹⁸ This is termed as the development threshold. The communities below this development threshold should not be burdened with the cost of the development of the developed world. In this context both their responsibility for climate change and their capacity to bear the cost of it is limited. The GDR framework argues that it is the communities which are above that development threshold, which should bear the burden of the costs of their own development as well as share the cost of low-carbon and sustainable development.¹⁹ Therefore, the developing countries cannot be expected to sacrifice their developmental goals for a climate regime which maintains status quo and perpetuates inequality between the developed and the developing world. To ensure commitment from all the nations the global environmental agreements should be formulated on just and equitable terms.

Inter-generational equity

The above arguments are related to the inequalities in the north-south relations; in addition to this, inter-generational equity is another aspect of climate justice which gives an added complexity to the issue. Climate change is threatening to bring about such irreversible changes in the earth's atmosphere which will impede the future generation's right to enjoy earth's resources. We cannot ignore our responsibility towards the future generations; climate justice is not limited to equity amongst the contemporary communities it extends to equity between present and future generations. Intergenerational equity implies that every generation is required to leave the planet earth and its resources in a state of comparable equity between them and their future generations. There are three principles of intergenerational equity which should inform the actions of the present generation: options, quality and access.²⁰ The first principle 'options' refer to the need to conserve the diversity of natural resources for the future needs of the upcoming generations. The second principle is related to the 'comparable quality' of the environment and natural resources. And the last is equal access to these resources for the future generations.

Thus, intergenerational equity stipulates fairness amongst the different generations of earth, and casts a duty on the present generations to give due regard to the interests of the future generations while formulating international agreements regarding common resources of the

¹⁸ *Ibid.*

¹⁹ *Id.* at 2.

²⁰ Edith Brown Weiss, "Climate Change, Intergenerational Equity, and International Law" 9(3) *Vermont Journal of Environmental Law* 616 (2007).

earth.²¹ However, it is difficult for the present generations to predict the exact needs and ambitions of the future generations. Thus, intergenerational equity demands that the contemporary generations should develop a normative regime which ensures sustainability and provides continued benefits for the future generations. One can find a corollary to this situation in the legal theory of justice by John Rawls.²² The present generation cannot predict the exact needs of the future, and thus can have no preference; this uncertainty thus acts as the ‘veil of ignorance’. In Rawls’ theory behind this veil of ignorance the negotiators have no knowledge about the structure of the society. Here, Rawls argues that the rational choice would be such principles of justice which provides each individual with an opportunity to enjoy their rights to the fullest along with a corresponding right of others to be able to do the same. This is similar to the ‘*normative relationship of intergenerational equity*’;²³ where negotiators of the present generation are unaware of the societal structure of the future. And rationality demands that they favour a rule of fairness (principles of justice) that allows everyone to enjoy their rights to the fullest. In this context intergenerational equity translates into corresponding duties and rights between generations. Each generation holds the earth as a trustee for the future generations. The norm of intergenerational equity implies that the right to enjoyment of natural resources by one generation should not threaten a corresponding right of the future generations.

Therefore, climate justice demands that the earth’s atmosphere should be treated as a common resource not just amongst the contemporary communities but also across generations. The right of present generation to access and enjoy the earth is limited by the corresponding equal right of the next generation.

III Climate change as a human rights issue

Denial of human rights is one of the main forms of injustice. Climate change threatens the realisation of a number of human rights and results in injustice. Climate change is the biggest threat to human development in the contemporary times. Human development essentially means opportunities for growth; however, climate change threatens to limit these opportunities of growth. The UN High Commissioner for Human Rights (“OHCHR”) gave a

²¹ James C Wood, “Intergenerational Equity and Climate Change” 8(2) *Georgetown International Environmental Law Review* 298 (1995).

²² *Id.* at 298.

²³ *Id.* at 299.

report in 2009,²⁴ wherein it analysed the impact of climate change on human rights. This report concluded that climate change undermines a wide range of internationally recognised human rights.²⁵ Climate change has been described as a ‘human tragedy in the making’,²⁶ because inaction on the part of the international community will lead to catastrophic effects on human life. The human rights approach to study climate change has a normative relevance, it concentrates on the human suffering due to climate change so as to build some kind of cooperative political will to acknowledge and redress this issue.²⁷ In addition to these adverse impacts on human rights resulting in injustice; another aspect of injustice is that these impacts will not be felt with equal intensity by all *i.e.*, the developing countries are more vulnerable to these effects both due to their geography as well as economic resources available to tackle them. The asymmetrical impacts of the effects of climate change and consequent lopsided burden on the developing countries leads to added injustice. As mentioned earlier in this paper what further compounds this injustice is the irony that these communities have the least contribution to the anthropogenic causes of climate change. Further, our response to climate change *i.e.*, mitigation and adaptation strategies may also lead to human rights violations and injustice. Therefore, it is imperative to develop a justice and human rights-based approach to study and combat climate change.

Climate change threatens to undermine the right of self-determination and impede human development of a community in general. On an individual basis climate change adversely affects the particular rights of life, health, food, safe drinking water, housing etc.²⁸ Climate change will affect the carrying capacity of certain portions of earth; it will exacerbate both the frequency and intensity of natural hazards like coastal storms, intense heat waves, drought, cyclones *etc.* The average rise in the global temperature and the melting ice caps will lead to rising sea levels. All of these effects of climate change combine together to make some areas uninhabitable, thus leading to human displacement. Human life, health and security are adversely affected by both sudden-onset disasters (storms, floods, cyclones,

²⁴OHCHR, *Annual Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights*, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009) available at: <https://www.ohchr.org/Documents/Press/AnalyticalStudy.pdf> (last visited on Dec. 20, 2019). This report was a result of a written submission by the Republic of Maldives; in 2007 it convened a meeting of small island nations and urged the international bodies including OHCHR to consider the impact of climate change on human rights. Maldives is a small island nation in the Indian Ocean and is especially vulnerable to climate change.

²⁵*Ibid.*

²⁶*Supra* note 2 at 4.

²⁷ David B Hunter, “Human Rights Implications for Climate Change Negotiations” 11(2) *Oregon Review of International Law* 332 (2009).

²⁸*Ibid.*

debilitating heat waves *etc.*) and slow-onset disasters (gradual environmental degradation-desertification, drought *etc.*). However, it is difficult to discern the human impact of climate change (from other factors) with certainty because the same is affected by numerous other factors like a community's economic resources, policy decisions by the state *etc.* Here, environmental degradation combines with lack of economic resources and political will to affect the quality of the lives of the people.²⁹ The frequent exposure to natural hazards will eventually make living in an area impossible by raising the cost of living- rehabilitation after every storm or cyclone or flood draws a great financial cost on the community as well as individual households. In addition to this a substantial number of people living in the developing countries are dependent on the fragile ecosystem for their livelihood *e.g.*, coastal communities of India, Bangladesh, and people living in the small island-nations of Maldives, Tuvalu, Kiribati *etc.*; are dependent on the sea for their livelihood and land near the sea for their household and food. Climate change threatens to increase the frequency and intensity of coastal storms; which in turn threatens the house, food and livelihood of these coastal communities. These situations will eventually force these communities to migrate. In already overpopulated countries of south-east Asia this forced migration spells demographic catastrophe. It has the potential of building unrest in the communities which will receive these people due to increase in competition for already scarce resources. Thus, climate change often creates a causal nexus where the effects of climate change aggravate situations of poverty and inequality in a region. For example, if an area is suffering from scarcity of water, it will adversely affect irrigation and consequently affect availability of food. Such situation will cause a number of related effects *i.e.*, it will reduce agricultural produce and lead to loss of income for the farmers; it will lead to malnutrition due to scarcity of food and water, which will further diminish the economic activity in the region.³⁰

The effects of climate change are more severely felt by the people in the developing countries due to their lack of resources; for example majority of farmers in India are dependent on rainfall for irrigation of their farms, many of these farmers lack resilience to the existing climate variability *i.e.*, failure of monsoon threatens to push them into poverty. Here, climate change threatens to make weather unpredictable and thereby this uncertainty increases the

²⁹ *Supra* note 4 at 4.

³⁰ Annan K., *The Anatomy of a Silent Crisis Human Impact report Climate Change* (Global Humanitarian Forum, Oct. 2008).

risks for both the individual farmer's livelihood as well as the food security for the community.³¹

Once we establish that climate change will have an adverse impact for the realization of human rights for thousands of people, it is imperative to establish responsibility of protection of these rights. Here, it is important to note that 'right to a clean and safe environment' has been recognised as an extension of 'right to life' by numerous jurisdictions including the Indian judiciary. In line with this reasoning the Inuit people (community from Arctic) in 2005, filed a petition with the Inter-American commission citing the adverse impact of global warming on their culture, livelihood and survival. They claimed that, "The impacts of climate change, caused by acts and omissions by the United States, violate the Inuit's fundamental human rights protected by the American Declaration of the Rights and Duties of Man and other international instruments."³² The petitioners requested relief in terms of compulsory emissions reduction commitments by the United States; and protection of the Inuit culture as well as assisting the Inuit community to adapt to climate change.³³ This petition brought the necessary international attention to the effects of climate change on human rights; and even though it was a failed attempt legally but it established a human rights voice in the climate negotiations.

Human rights perspective to study climate change can make substantial contributions to make the climate change regime more representative; and more sensitive to the issues of justice and equity. Firstly, a human rights perspective can equip the climate regime to assign respective responsibility amongst the developed countries for their historical and contemporary emissions leading to climate change; and the developing countries which are suffering the worst impact of this climate change. Thus, human rights perspective to climate change helps address the ethical issue of justice and fairness, and helps in developing a political will to potentially formulate policies which are not discriminatory and do not exacerbate the existing inequalities. Both mitigation and adaptation efforts to climate change have numerous alternative strategies to choose from, and they have different implications; a human rights

³¹ *Ibid.*

³² Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United State (*submitted by* Sheila Watt-Cloutier) (Dec. 7, 2005) at 5.

³³ *Supra* note 27 at 336.

perspective helps making these choices in a just and equitable manner. Further, it will also help prioritise and allocate the limited resources towards the said efforts.³⁴

Therefore, the main reason why it is important to look at climate change from a human perspective is to re-prioritize our response from an exclusive focus on carbon emissions, towards a more inclusive approach that takes into consideration principles like fairness and equity while formulating any policy.³⁵ That is an approach which gives due consideration to the impact on the most vulnerable communities. The way humanity decides to respond to the effects of climate change will have a substantial impact on the future human development. As mentioned earlier in this paper OHCHR gave a report establishing a link between human rights and climate change, in this report the human rights council committed to further engage in the climate change debate from the human rights angle; thus the human rights approach will bring in diverse voices in the climate change regime and make it more effective.

IV Approaches/theories of climate justice

Therefore, we can acknowledge that climate change is not merely an environmental issue but also an issue of ethics to be studied from the lens of equity and justice. In this context there are various approaches or theories of climate justice. The theories of climate justice can be broadly categorised as: corrective approach *i.e.*, contribution to the problem (polluter pays principle); distributive approach (ability to pay principle); hybrid approach (both corrective and distributive); and greenhouse development rights approach (right to development).³⁶In addition to these Edward Page suggests a ‘beneficiary pays principle’ *i.e.*, those who benefit from the activities leading to GHG emissions should bear the climate burden.³⁷

The first approach to climate justice *i.e.*, contribution to the problem, is corollary to the ‘pollute pays principle’ of environmental law. The rationale given is that the burden of every state in context of climate change shall be proportional to their contribution to greenhouse gas emissions.³⁸This approach takes into account the historical as well as the contemporary emissions as a country’s contribution to the issue of climate change.

³⁴ *Supra* note 27 at 340.

³⁵ *Supra* note 27 at 335.

³⁶ Rosemary Lyster, *Climate Justice and Disaster Law* 126 (Cambridge University Press, 2015).

³⁷ Edward Page, “Climatic Justice and the Fair Distribution of Atmospheric Burdens: A Conjunctive Account” 94(3) *The Monist* 414 (2011).

³⁸ *Ibid.*

The second approach is ‘ability to pay’ also called the distributive approach. This approach to climate justice argues that the burden of climate change should be shared on the basis of the individual state’s capacity. Therefore, this approach is based on the ‘Common but differentiated responsibilities and respective capabilities’ principle. This approach enumerates that those who have the capacity to pay should bear the burden, irrespective of their contribution to the problem of climate change. The scholars of this approach also add that this responsibility to pay shall be based on ‘excess capacity’ *i.e.*, they are supposed to contribute or bear the burden without having to compromise the well-being of their citizens.³⁹

A ‘hybrid approach’ to climate justice is a combination of elements of the above two approaches. This approach takes a cosmopolitan stand on climate justice; ‘it seeks to pierce the ‘statist’ veil and place an obligation to pay on anyone that possesses wealth, including individuals and corporations.’⁴⁰ It places responsibility on the wealthy to pay for combating climate change, however without compromising on a decent standard of living on one hand. And on the other hand, it places a responsibility on the poor communities to pursue clean development or low-carbon development; however, the same should not be at great and unreasonable cost.⁴¹ This approach puts the responsibility on the wealthy nations to play a leading role in the efforts to tackle climate change. Henry Shue argues that ‘the greater the absolute wealth of a nation, the greater burden can be reasonably put on them’.⁴²

As mentioned earlier in this paper the greenhouse development rights approach to climate justice argues in favour of an international climate regime that safeguards the right to development of the vulnerable communities. And the same should not imprison them in their existing poverty.

The beneficiary pays principle is the approach to climate justice which places the burden on those who benefit from climate change causing activities. The rationale being those who benefit should help manage the adverse effects of climate change. Here, while accounting for past benefits it is not required that these beneficiaries should have been aware of the harmful effects at that time. The liability flows not from knowledge but from the benefits acquired by them *via* climate change inducing activities. In this context this approach is distinct from both

³⁹*Supra* note 36 at 129.

⁴⁰*Supra* note 36 at 130.

⁴¹*Ibid.*

⁴² Henry Shue, “Global Environment and International Inequality” 75(3) *International Affairs* 537 (1999).

‘contribution approach’ and ‘ability to pay principle’.⁴³ In practice however, these three principles often converge while discerning responsibilities of the particular nation, because generally speaking the nations which have the ability to pay have acquired this ability because they benefited in the past from unbridled use of fossil-fuels, which is responsible for the contemporary climate change.⁴⁴

V Climate justice and Paris agreement

The international climate regime essentially represented by the UNFCCC recognises the need for equity in climate policies via its principle of common but differentiated responsibilities (article 3).⁴⁵ The UNFCCC and its corollary multilateral agreements like the Kyoto Protocol and the Paris Agreement, 2015 provide the platform for justice and equity issues to engage with the climate change policy-making. In this section we will look at how the principle of justice influenced climate change debate in general and the Paris Agreement 2015 in particular. The demand for global justice within the climate change negotiations till date has translated mainly into a north-south debate. Here, the developing countries have argued that a country’s responsibilities within the climate change regime should be formulated keeping on mind its historical responsibilities, current capabilities and the level of development. The developed countries on the other hand demand equal commitments from the developing countries as well arguing that climate regime should take into consideration contemporary and future emissions rather than historical emissions. However, these perspectives are not homogenous even within these two groups *i.e.*, the small-island nations argue for immediate strict emission reductions from all, while the larger developing countries demand development rights which will allow a ‘breathing space’ in the context of increase in emissions for development. Within the developed countries, some Scandinavian countries recognise the need for major cutbacks in emissions and transfer of low-carbon technology to the developing countries; whereas countries like the US have been vary of giving any such commitments and argue that equity demands that large developing countries like India and China should take up equal responsibilities. Therefore, there are multiple perspectives as to what climate justice entails and how to achieve the same within the climate regime.⁴⁶ This led to various situations of deadlock in climate negotiation like the 2009 Copenhagen failure.

⁴³ *Supra* note 37 at 421.

⁴⁴ *Ibid.*

⁴⁵ The United Nations Framework Convention on Climate Change, 1992, art. 3.

⁴⁶ Chukwumerije Okereke and Philip Coventry, “Climate Justice and the International Regime: Before, During, and after Paris” 7(6) *Wiley Interdisciplinary Reviews: Climate Change* 7 (2016).

However, the world leaders managed to adopt the Paris Agreement in 2015, designed to come into force in 2020 at the end of the second commitment period of Kyoto Protocol.

As mentioned earlier, Paris Agreement 2015 acknowledges the importance of the principles of climate justice in the climate change policy and governance. Paris Agreement is based on voluntary nationally determined emissions reduction commitments, *i.e.*, countries were asked to voluntarily submit an intended nationally determined contribution (INDC) plan, keeping in mind its national goals and resources. Thus, in this context the Paris Agreement is based on a bottom-up approach. This voluntary approach has its own equity implication which differentiates it from the top-down approach of the Kyoto Protocol. Another point of difference is that Paris Agreement has shifted away from categorical binaries of dividing countries into developed and developing, even though it mentions that the developed countries should take a lead in climate action, but on a voluntary basis. Both of these are aimed at avoiding a deadlock situation during the implementation, and also to avoid countries from dropping out of the agreement. Here, the agreement sets up a common goal to keep the rise of average global temperature below 2 degree Celsius while allowing the individual countries the flexibility of determining their own plans to reduce emissions in accordance with their nation's conditions and capacities through 'self-differentiation'. However, these voluntarily determined contributions backstopped by two conditions: *i.e.*, these nationally determined contributions cannot be regressive or less than their previous commitments under UNFCCC, and the future commitments under the agreement will have to be progressive and enhanced.⁴⁷ Therefore, the Paris Agreement addresses the CBDR principles in more subtle ways without dividing the parties into strict categories and setting up strict targets for particular countries. It also urges the parties to keep in consideration and respect human rights while formulating domestic policies for climate action under the agreement.

Despite ambitious commitments for emissions reduction, some of the impacts of climate change will be inevitable *i.e.*, the earth's atmosphere is already geared towards certain adverse effects due to anthropogenic GHG emissions which cannot be reversed. These include certain level of sea-level rise and extreme weather events. And the communities which will primarily bear the brunt of these effects are the communities with limited or no substantial resources to handle them like – Small Island Nations and low-lying coastal cities. The international community recognised the inherent injustice of this situation; and therefore

⁴⁷ Jennifer Huang, "Climate Justice: Climate Justice and the Paris Agreement" 9 *Journal of Animal & Environmental Law* 37-38 (2017).

with the aim to help these communities formulated a mechanism to both compensate for the loss and help them in their adaptation efforts. The Warsaw International Mechanism for Loss and Damage associated with climate change impacts was created in November 2013 for this purpose. The Paris Agreement 2015, under its article 8 has recognised and enhanced the said mechanism in accordance with the decisions taken by the Conference of Parties to the agreement. And in this context the agreement seeks to secure justice for the nations which will be suffering the inevitable adverse effects of climate change.

In 2010, at the Cancun Conference of Parties (CoP) the temperature goal was set at 2 degree Celsius; to this the small-island nations highlighted the grave injustice done to their interests because such a target would result severe consequences for these communities in the form of loss of habitable lands due to rising sea-levels. They gave the slogan “1.5 to stay alive”, arguing that anything above this temperature would mean catastrophe for them. In response to this potential injustice to the especially vulnerable communities the Paris Agreement revised the Cancun target and committed the parties to ‘temperature well below 2 degree Celsius above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 degree Celsius’.⁴⁸ However, sceptics argue that the said target is deceptive and does nothing more than giving false hope to the world. As per the analysis of IPCC, in order to hold the temperature at 1.5 degree Celsius, the world is required to cut back its aggregate carbon emissions by 45% till 2030.

As Jennifer Huang puts it Paris Agreement, 2015 is following a ‘hybrid-approach’ where on one side it follows a bottom-up approach based on countries submitting their voluntary commitments. On the other hand, it also provides for certain top-down rules where the countries are required to maintain and update periodically a record of their nationally determined contributions (NDCs) *i.e.*, accounting and reporting requirements. The agreement did not categorically bifurcated the countries into developed and developing while setting common goals; however it has maintained the differentiation principle of CBDR in a more nuanced manner. For example, it sets the common goal for ‘peaking’ the global GHG emissions ‘as soon as possible’, while maintaining that this ‘peaking’ will take a longer time for developing countries. Further the agreement also links the climate action with sustainable development and eradication of poverty. These are in-line with the development rights’ approach to climate justice. In addition to this the agreement has also committed the parties to

⁴⁸ The Paris Agreement, 2015, art. 2.

cooperatively develop and transfer low-carbon technology, capacity-building and finance for mitigation and adaptation measures.

Though scholars have criticised the agreement for setting vague targets like ‘as soon as possible’; in addition to no clear measures to analyse the NDCs *i.e.*, whether they are enough to fulfil the common temperature goal or are equitable within the country. However, these shortcomings can be overcome in the subsequent negotiations for formulating detailed rules. For example, the conference of parties held at Katowice, 2018 has attempted to address some of these issues.

India in its NDCs has made specific reference to the principles of climate justice, equity and CBDR. India has made commitments to promote sustainable development. The NDC document of India has taken the development rights approach and mentioned its specific national conditions where there is a need to eradicate poverty, create employment opportunities, rapid urbanisation *etc.* However, having mentioned all these India has made commitments to develop a policy framework to promote energy efficiency and invest in renewable/clean energy sources like solar power, wind energy, biomass energy. Promote sustainable waste management *via* its ‘waste to wealth’ policies. In addition to these India has also made commitments to build sustainable and climate resilient urban centres by way of adaptation.

VI Conclusion

Thus, the climate justice discourse formulates climate change as essentially an ethical issue. Climate change will affect everyone however; these effects are not evenly distributed and thus raising issues of social justice. Climate Justice is an offshoot of environmental justice. Environmental justice argues that the disproportionate impact of environmental degradation on the already poor and vulnerable is not ‘random’; however, it is a reflection and a consequence of the lopsided development. This asymmetric historical development translates into differential capacities of the developed and the developing countries to be able to adapt climate change. The issue of toxic waste-dumping in the developing countries by the developed countries is one of the many scenarios that demonstrate this unequal and unjust relationship between the global north and the global south. Here, the advocates of climate justice seek to establish an international climate regime which does not perpetuate the

abovementioned inequalities; “Climate justice builds on a platform of equitable development, human rights and political voice.”⁴⁹

Climate change is a global issue, which requires a coordinated global action. It threatens both the quality of human life at present, and curtails the opportunities of human development in the future. Therefore, climate change demands a commitment from the international community. Such a commitment from both the developed and developing countries can be achieved under an international environmental regime, only when all the stakeholders are satisfied that such a normative document is not prejudicial to the interests of anyone on the table. Thus, it is imperative to look at climate change through the lens of climate justice and equity.

The multilateral agreements to combat climate change shall reflect the following elements of climate justice within its provisions, namely: it must aim at making substantial cuts on the global emissions of greenhouse gases; the same should be fair in both procedure as well as substance *i.e.*, the negotiations should be representative and the burden of climate change should be equitably shared; and that the provisions of the said agreement shall not perpetuate the existing inequalities amongst nations.⁵⁰ Only a just and equitable agreement can ensure full commitment within the international community and continuous efforts from everyone to tackle the issue of climate change.

⁴⁹ Barbara Adams, Gretchen Luchsinger, “Climate Justice for a Changing Planet: A Primer for Policy Makers and NGOs” *Non-Governmental Liaison Service* (2009).

⁵⁰ *Supra* note 1 at 429-131.