

National and International Legal Framework for Climate Justice

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Abstract

The Climate hazards exacerbate other stressors especially for people living in poverty. Sustainable development and equity provides a basis for assessing climate policies. The Farmers face a large problems and livelihood challenges at the regional level. The national and international legal framework is already present but they have their own limitations for the enforcement of the laws.

Farmers tackle more problems in the interpretation of laws such as The Water (Prevention and control) Act 1974, The Air Act 1981, The Environmental Protection Act 1986 and The plant Protection Act, Indian Forest Act 1927 which is more crucial for the Farmers. The farmers in India have to understand the changing nature of the environment and there by adapt the new technologies so as to cope with the new challenges. For all these the farmers must be ready to work on practical action such as working with communities, organizations, national and international bodies with schools and teachers and also to launch and supporting campaigns.

KEYWORDS: Climate justice, Plant protection Act, Laws, Farmers.

I. Introduction:

The father of medicine Hippocrates, some 2400 years ago to Montesquieu in 1748 have assumed that the climate of specific areas influenced the population living in those areas. For ex.: Hot southern climates produced hot blooded people and cold northern climate produce cold blooded people.

In 1800s criminologist from Adolphe Quetelet Cesare Lombroso argued that climate influenced the biology of an individual which would lead the population of a given climate towards higher rates of crime¹ Peace on earth depends on our ability to secure our living environment². The tree planting in one of the means to achieve climate justice.

Environment is a combination of all the nature gift without even the trace of human contribution to it. The present paper attempts to trace down the nature of interrelationship between the climate justice and various laws in Indian perspective that examines the legal framework to tie the relationship more firmly. The paper is divided into three parts 1) Introduction 2) Climate change an overview regarding international scenario 3) National and International Legal Framework for climate justice Legislative and Administrative measures.

Material and Methods:

The study covered with all National and international frame work for climate justice. The selection criteria in ensured that all laws are covered which are having unique characteristics. Around 11 laws were selected and the principal behind the laws were focused so that the general farmers, people of India and abroad may be benefited.

More ever my emphasis of this research works resolve around the farmers, as they are feeding to the entire world. This fact may not be forgotten by a any person of the world.

II. Climate change: An overview of the International Legal Scenario:

The human energy consumption to the level of 85% is derived from fossil fuels.³ Fossil fuel is a general term for buried combustible geologic deposits of organic materials, formed from decayed plants and animals that have been converted to crude oil, coal, natural gas or heavy oils by exposure to heat and pressure in the earth's crust over hundreds of millions of years. Because of the immense time spans to create coal, oil and natural gas, they are classed as non-renewable sources of energy. These are hydrocarbons, primarily coal, fuel oil or natural gas.

The inter-governmental panel on climate change (IPCC), set up jointly by the World Meteorological organization and United Nations Programme released in Fourth Assessment Report (AR4) in 2007. The report first brought to light that climate change is a real and very grave problem and that is mostly man made. From direct observations of change in temperature, sea level and snow cover in the northern hemisphere during 1850 to 2007. The AR4 concluded that the earth climate system is slowly but steadily changing.

A green house gas (GHG) is a gas in the atmosphere that is transparent to in coming short wave solar radiation but can absorb and trap long wave radiation emitted by the earth surface. GHGs include carbon-di-oxide (CO₂), methane (CH₄) and nitrous oxide, Hydrofluoro carbons (HFCs) perfluoro carbons and sulphur hexafluoride (SF₆). There exist natural amount of GHG without whose presence; the earth would be too cold for life. However an increase in the concentration of GHGs tends to warm the surface of the earth which is termed as the Green House effect.

Veinna convention is the Montreal Protocol of 1987 which provided for new regulatory technique and adoption of innovative financial mechanisms. It has specific limitations and reduction on the level of consumption and production of certain ozone depleting substances. The Protocol list is having a number of substances, which are to be controlled strictly in their consumptions; some of them are chlorofluorocarbon, Halons, Carbon tetrachloride, Methyl chloroform.

2.1 Framework Convention and Kyoto Protocol :

The United Nations Framework convention for climate change (UNFCCC), 1992 was signed by 195 states and reflected some kind of compromise between the nations, which wanted specific emissions reduction schemes and those states who advocated only for a basis for future protocols. The 1992 convention, for the first time, amidst surrounding scientific uncertainties, recognized that climate change was a problem, which would surely escalate in the near future if immediate steps were not taken. It ultimate objective is to stabilize Green House Gases (GHG) concentration at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system. It states that such a level should be achieved within a time frame sufficient to allow ecosystem to adapt naturally to climate change, to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner. The first task of UNFCCC was for signatory nation to establish national Greenhouse Gas Inventories of Green house gas (GHG) emissions and removal which are used to create the 1990 bench mark levels."

2.2 Green climate fund (GCF)

The largest gathering of world leaders on climate change opened in United Nations on Tuesday 23-9-14 facing for calls for action towards reversing global warming. The 120 members from various countries attended the climate summit (catalyzing action) climate 2014. The delegation was headed by Rajendra Pachauri, Head of the United Nations climate panel, and the noble peace prize winner in 2007. In the year 2015 there will be conference in Paris that is to yield a deal on reducing green house gas emissions by 2020.

In the presidential address United Nations Secretary General Ban-ki-Moon Urged to reduce the green house gas emissions and declared that by the end of the century the world must be carbon neutral. He said climate change threatens hard won peace, prosperity and opportunity for billions of people. **"We are not here to talk, but we are here to make history."** French president Francois Holland announced that Paris contribute up to and 1 billion to the U.N.s global Green climate fund (GCF) which helps poorer nations finance climate change reform.

There is tremendous increase in green house gases since last two to three decades. The agricultural activities also produce green house gases such as nitrous oxide and methane. In the year 1987 the Montreal Protocol provided for new regulatory technique and adoption of innovative financial mechanisms whereas the Kyoto protocol which was adopted in 1997 in regards to reduce the emission for the nation state.

Result:

The results are seen via the implementation of national action plan on climate change so as to fulfill the aspiration of the farmers and **We the People of India.**

In India there are various national action plan on climate change such as

- National Solar mission
- National Mission for enhanced energy efficiency
- National mission on sustainable Habitat
- National water mission
- National mission for sustaining the Himalayan ecosystem.
- National mission for a green India.
- National mission for sustainable agriculture
- National mission on strategic knowledge for climate change⁴.

The World Bank has also moved ahead by entering into an agreement with infrastructure development finance company (IDFC) whereby the IDFC will handle the carbon finance corporations in the India regarding carbon finance Facilities. Approximately 20-30 percent of plants and animals assessed so far are feared to be at the risk of extinction if increase in global average temp exceeds 1.5 to 2.5⁰C. The impact of climate change is multiple and long term process like sea level rise, temperature increase etc. It is the complex network of changes before the world.

Discussion:

III. National and International Legal Framework for Climate Justice Legislative and Administrative Measures

3.1 Climate

The Environmental (Protection) Act of 1986, Act no 29 the act is used as "Umbrella" legislation designed to provide a framework for central government Coordination of the activities of various central and state authorities established under previous laws, such as water act and air. The Act of 1986 is a comprehensive legislation empowering the central government to take measures to protect and improve the quality of environment by constituting authorities under sec 3(3) of said act and that was not possible under the previous legislations and this feature distinguishes it from other laws.

3.2 Air protection

➤ **The Air (Prevention and Control of Pollution) Act of 1981, No. 14, 29 March 1981.**

This act is to provide for the prevention, control and abatement of air pollution. It has a broad approach for the preservation of natural resources of the earth including the preservation of quality of air and established air pollution control boards to carry out the objects. The boards are empowered to issue directions to the person violating the law and also lodge complaints against such persons in a court of law.

➤ **The Ozone Depleting substances (Regulation and control) Rules, 17 July 2000.**

This rules are meant for regulating ozone depleting substances under the powers conferred by section 6,8 and 25 of the Environment (Protection) Act, 1986.

3.3 Energy:

The Energy Conservation Act of 2001, NO 52, 29 September 2001, This act is for providing efficient use of energy and its conservation and for matters connected therewith or incidental thereto. Energy conservation (Amendment) Act 2010, No. 28, 24 August 2010 is to amend the energy conservation Act of 2001. Electricity Act 2003, Amended in 2007. This Act is for better coordination and development of the power sector by providing a comprehensive framework for power development.

3.4 Forests

➤ **The Indian Forest Act of 1927, No. 16, 21 September 1927.**

This act was brought into the society to consolidate the law relating to forest, the transit of forest produce and the duty leviable on timber and other forest produce.

➤ **Forest conservation Act of 1980, No, 69, 27 December 1980**

The act is mainly focusing on conservation of forest and for matters connected therewith or ancillary or incidental thereto. The British in order to monopolize the control over forest, introduced the forest act 1865 having right of ownership, denying others and powers to protect the same. The underlining object of the law is to impose restrictions on use of forest land for non-forest purpose and to protect and conserve the green cover essential for the trapping of the carbon-di-oxide.

3.5 Environmental Impact Assessment

➤ **The national Green Tribunal Act, 2010, No. 19, 2 June 2010.**

This act provides for the establishment of a green tribunal for the effective and expeditions disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to

environment and giving relief and compensation for damages to persons or property and for matters concerned therewith or incidental thereto.

➤ **The National Environment Appellate Authority Act, 1997, No. 22, 26 March 1997.**

This authority has been constituted to hear the appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations, or processes, shall not be carried out or shall be carried out subject to certain safeguards under the environment (protection) Act, 1986 and for the matters concerned therewith or incidental thereto.

3.6 Water:

➤ **The water (Prevention and Control of Pollution) Cess Act, 1977, 7 December 1977.**

This act is amended in 1992, to provide for the levy collection of a cess on water consumed by persons carrying on certain industries and by local authorities, with a view to augment the resources of the central board and the state board for the prevention and control of water pollution constituted under The Water (Prevention And control of Pollution) Act 1974.

➤ **The control Regulation Zone notifications, 1991, 19 Feb. 1991.**

This notification is amended on 16 Aug. 1994 and 18 April 1996, to impose the following restrictions on the setting up and expansion of industries, operations and processes etc in the said coastal regulation zone.

3.7 The Wild Life Protection Act, 1972 as amended in 1993

The act is for the protection of wild animals, birds and plants, introduced and enforced at the time when there was no discussion on the climate change and conservation of the biodiversity drawing worldwide focus until 1992. Under section 9 of the act the hunting of wild animals specified in schedules is prohibited. Under section 17-A act prohibits picking, uprooting, damaging, acquiring or collecting any specified plant. The central and state government may be notified to declare any area as sanctuary under sec. 18 and national park under section 35. If the area is of adequate ecological, faunal, floral, geo morphological or of natural significance for the purpose of protecting, propagating or developing wild life or its environment. The act lays down for in-situ conservation as well as ex-situ conservation.

3.8 The Wild (Protection Act) Amendment act, 2002, No. 16 of 2003, 17 Jan. 2003.

This amendment is made for protection of wild animals, birds and plants, and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country.

3.9 The Biological Diversity Act, 2002, No. 18 of 2003, 5 Feb. 2003.

The act provides for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto. The act focuses on utilization of genetic resources and regulates access to biological resources and associated traditional knowledge. Under section 36 it lay down the duty of the central government to develop national strategies, plans, programmes for

the conservation, promotion and sustainable use of biological diversity including measures for identification and monitoring of areas in biological resources.

Under section 37, the state government may, in consultation with the local bodies, notify areas of biodiversity importance as biodiversity heritage sites. Under section 38 The act also empowers the central government, in consultation with the concerned state government, to notify any species which is on the verge of extinction or likely to become extinct in near future as threatened species and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve those species. The biodiversity legislation has multifaceted scope and utility from regulating the activities in biodiversity rich areas to casting duties on the government to adopt measures to conserve the diversity in the living organisms.

3.10 Recycled plastics Manufacture and Usage Rules 1999, 2 September 1999.

The act defines rules for the manufacture and the uses of recycled plastics carry bags and Containers.

3.11 The scheduled tribe and other traditional forest Dwellers (Recognition of Forest Rights Act, 2006)

The Act has specific provisions for empowering those who hold forest rights, checking activities detrimental to the forest and biodiversity⁵. Climate change is the defining problem of the country. Climate change will affect all countries in all parts of the globe. The impact will be distributed differently among regions, generations, age classes, income groups, occupations and genders⁶.

3.12 International Agreements:

United Nations Framework convention on climate change (UNFCCC) has framed various objectives such as

- 1) Article 4 (1) (a) To create and make available an up to date inventory of anthropogenic emissions by sources and removal by sink of all green house gases.
- 2) Article 4 (1) (b) To create regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions including measures to adapt to climate change.
- 3) Article 4 (1) (c) To promote participate in the sharing of the technologies and information over a range of industries that control, reduce or prevent anthropogenic emissions of greenhouse gases.
- 4) Article 4 (1) (d) To promote the sustainability of sinks and reservoirs of all greenhouse gases within various ecosystem.
- 5) Article 4 (1) (e) To create plants that address the impacts of climate change and promote adaptation to climate events such as floods and desertification.
- 6) Article 4 (1) (f) To incorporate climate change considerations within social, economic and environmental policies and actions, minimizing the potential for adverse effects.
- 7) Article 4 (1) (g) Promote and contribute to programmes that increase the certainty with which climate change is understood in various discipline and increase the understanding of the consequences that are likely to result from various response strategies.

- 8) Article 4 (1) (h) To contribute to the exchange of information in various fields, which address the economic and social implications of various climate change response strategies.
- 9) Article 4 (1) (i) To facilitate education, Training, awareness and participation of the public and Non Governmental Organizations in matters dealing with climate change.
- 10) Article 4 (1) (j) Communicate to the conference of the parties, information related to implementation, in accordance with Article 12 that defines the scope, method and timing of the communication⁷.

The Kyoto protocol was created in 1997 to better meet the objectives of the UNFCCC in a better manner. By 2005, 140 countries had ratified the protocol, an international agreement that forces developed nations to reduce their emissions of Green House Gases (GHGs) to pre 1990 levels by 2012. The Green House Gases (GHGs) include Carbondioxide, Methane, nitrous oxide, hydro-fluorocarbons, Perfluorocarbons and sulphur hexafluoride.

Clean Development Mechanism

One of the core elements of the Clean Development mechanism is that it is intended to contribute to the sustainable development of host countries. One of the major tasks of the climate policy should be to focus also on avoiding future emissions in countries which have low current aggregate and per capita emissions but which are likely to industrialize rapidly in the coming decades.⁸ **Milestones of UNEP (United Nations Environment Programme) from 1972-2005.**⁹

Sr.No.	Year	Description
1	1972	UNEP established after UN conference on the Human environment
2	1973	Convention on International trade in Endangered species of Wild fauna and Flora
3	1975	Mediterranean Action plan: First of thirteen regional action plans under the UNEP regional seas programme.
4	1979	Bonn convention on Migratory species.
5	1985	Vienna convention for the protection of the ozone layer.
6	1987	Montreal protocol on substances that deplete the ozone layer
7	1988	Intergovernmental panel on climate change (IPCC) established to assess information related to Human induced climate change
8	1989	Basel convention on the Trans boundary movement of Hazardous waste
9	1991	Global Environment facility established.
10	1992	UN conference on environment and development (Earth Summit) issues Rio declaration and agenda 21.
11	1992	Framework convention on climate change
12	1992	Convention on biological diversity

13	1994	Convention to combat desertification
14	1994	Global programme of action (GPA) launched to protect marine environment from land based sources of pollution.
15	1998	Rotterdam convention on prior informed consent.
16	1999	Un Global compact launched
17	2000	Cartagena Protocol on bio-safety adopted to address issue of genetically modified organism
18	2000	Malmo Declaration: A cause to action on international environmental governance by the first global ministerial environment form
19	2000	Millennium Declaration environmental sustainability listed as one of eight millennium development goals.
20	2001	Third IPCC Assessment report details the extent of human induced global warming
21	2001	Stockholm convention on persistent organic pollutants
22	2002	World summit on sustainable development reaffirm UNEPs central role in international efforts to achieve sustainable development
23	2005	Kyoto promotions on climate change enter into force.
24	2005	Bali strategic plan for technology support and capacity building adopted by UNEP governing council mandating national level support to developing countries
25	2005	Millennium ecosystem assignment highlights the impact of ecosystem to human well being and the extent of ecosystem decline
26	2005	2005 world summit agree to explore a more coherent institutional framework system for international environmental governance.

Suggestions and Recommendations

- 1) There must be end of multinational control of our genetic resources including genuine Agarian reforms for food sovereignty, farmers must be benefited by Longlife Pension in their old age The Agro-ecological revolution is a solution to climate justice and there must be restructuring of the entire food system for large masses in India. There must be Equal participation of women in implementation of laws to all parts of country; Therefore Depending on the human needs the laws must be applied spuriously to benefit all the people in India.
- 2) The farmers in India must produced their own seeds instead of depending on seed producing industries in India. For example: Agriculture department directorate of Rice research institute Hyderabad and CSIR department centre for cellular and molecular Biology Hyderabad have interdisciplinary produced a new variety of rice which is producing more yield of rice and which is having a resistant gene i.e. Bacterial Xanthomonas resistant which is very much beneficial to the farmers of

Andhra Pradesh especially to Curnoon side. Such experiment can be done effectively.

- 3) The govt. of India various schemes given by the Agricultural ministry such as Modified National Agricultural Insurance Scheme (MNAIS), weather based crop insurance scheme (WBCIS), Coconut Palm Insurance Scheme (CPIS) must be used by the farmer so as to enhance and bring a revolutionary change. **The Farmer in the India and abroad must be given extra-ordinary importance as they are feeding to entire world and all necessary means must be availed to them as per their requirement.**
- 4) In any legal system there must be liability for failure to observe obligation imposed by its rules. In the context of international law this liability is called responsibility. **A nation state is responsible if it fails to observe obligation imposed by the treaty. Hence at any cost the treaties, agreements, conventions must be implemented and respected by each and every country.** The Conventions are non legal rules regulating the way in which legal rules shall be applied.¹⁰
- 5) In Supreme court AOR Association.¹¹ The court explained that the scope of a convention (in context of the constitution) was to fill up the gaps and to solve problems of interpretation since a great deal may be left unsaid. Therefore, conventions are to supplement legislation for convenience.¹² Government has constituted a high-level committee to review various environmental laws in order to bring them in line with “current requirements”. The committee has been set up in the backdrop of government taking serious measures to fasten the environment clearance process for achieving economic growth without compromising green issues. “Based on experience gained in the implementation of aforesaid Acts, it has been decided to constitute a high-level committee to review these Acts and suggest appropriate amendments to bring them within their objectives.” The panel will review the important green laws enacted between 1971 and 1986. These laws include Environment (Protection) Act, 1986, Forest (Conservation) Act, 1980, Wildlife (Protection) Act, 1972, The Water (Prevention and Control of Pollution) Act, 1974 and The Air (Prevention and Control of Pollution) Act, 1981. According to the Terms of Reference, the committee will assess the status of implementation of each of the Acts vis-à-vis the objectives. It will also examine and take into account various court orders and judicial pronouncements relating to these Acts. “The panel has been asked to recommend specific amendments needed so as to bring them in line with current requirements. It has also been asked to draft proposed amendments in each of the aforesaid Acts to give effect to the proposed recommendations.”¹³

Conclusion:

The conserving natural ecosystem in the form of Terrestrial freshwater and marine and protecting threatened genetic and species diversity or maintaining equilibrium is essential for over all goals of United Nations Framework Convention on climate change. Flexibility in the implementation of international law instruments constitutes a new approach to fostering more effective and economically efficient implementation of international commitments. The research article has shown that the demand is that co-ordination and cooperation are relatively important and the current design of laws already

shows that there is insufficiency in implementation of laws. The number of issues must however be resolved within the framework given by convention on and effective environmental harm mitigation action at international level while contributing to economic and social development in those countries which need it mostly.

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