

CLIMATE JUSTICE AND CLIMATE JUSTICE LAW: A STUDY OF ITS EVOLUTION AND RELEVANCE WITH SPECIAL REFERENCE TO INDIA

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ABSTRACT

The paper provides a synoptic overview of the functioning of the climate Justice law and reviews the growth of climate justice governance in India as developed in different phases. The paper is based on the assumption that no progress on climate change can be made without improving its environmental governance including the adoption of best practices those based on domestic as well as international environmental principles. The paper further argues that a sound climate governance system that is capable to respond to environmental challenges requires a judicial structure that offers access to environmental justice. As India is currently facing multiple environmental and social challenges, the paper argues that its policies and laws relating to environmental justice have become comprehensive and stringent particularly as a consequence of the Bhopal tragedy in 1984. The paper, however, concludes that in the policy formulation and its implementation relating to environmental justice, efforts should be more on problem identification and on its impact assessment as the issue of climate change cannot be taken up without linking it to developmental needs such as poverty, health, energy access and education.

Keywords: Climate Justice, Sustainable Development, Supreme Court of India, International Environmental Principle, Human Rights, Poverty, Natural Disaster

Climate Justice is to guarantee a better and healthy environment for all irrespective of any race, caste, creed, gender, income or age. Environmental/Climate justice started as a result of a movement which was against the disproportionate injustice and burden on certain communities.¹

In India Climate Justice is a new concept. It is associated with developmental aspects encountered by the state. The interrelationship between climate change and social and economic disparity and inequality have resulted in environmental movements across the world for more than three decades. Environmentalism in India has also its share in many core tenets with environmental justice movements in the USA and Europe.²

The United State Environment Protection Agency defines climate justice as the “fair treatment and meaningful involvement of all people regardless of “race, colour, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.”

The movement for climate justice started way back in 1980s when it was realized that the burden of environment in the form of pollution from industries, power plants and other waste disposal were affecting more adversely in the areas belonging to minorities and low-income groups. Consequently, the movement for climate justice worked to ensure that environmental burden should be equally distributed among all irrespective of their back ground.

Climate justice from USA to Europe-

The concept of Environmental/Climate Justice was first given by US during 1990s and it represented the civil rights movement. Some of the authors in the recent past have included ‘Smart growth’ and transportation, planning equity in the environmental justice framework besides racial, gender and class discrimination.³

Article I of the convention on “Environment for Europe” held on June 25th 1998 in Aarhus state its objectives to contribute to the protection of right of every person of present and future generations, to live in an environment adequate to his or her health and

¹What is environmental justice? Definition, Principles, Examples and Issues

<<https://study.com/academy/lesson/what-is-environmental-justice-definition-principles-examples-issues.html>>

² The State of India’s Environment, (Centre for Science and the Environment New Delhi, 1982).

³ Robert, Bullard, Johnson, Glenn Johnson, *Just Transportation: Dismantling Race and Class Barriers to Mobility*, Philadelphia. (New Society Publishers, ed. 2007).

wellbeing. The Article 1 of the convention also guarantees the rights of access to information public participation in decision making and access to justice in environmental matters". Climate Justice concerns as a social policy was first taken up in Scotland and then in England during early 2000.⁴ In UK Climate Justice is one of the strategic priorities in the main regulating agency for environment.⁵

Growth & Evolution: Climate Justice-

The concept of climate justice has become broader in its scope from its original framework. It has encompassed the forms and processes of injustice.

The evolution of Climate Justice has brought relevance to the territory and community. The climate justice agenda has become globalized. It is extended between and across nation states.⁶ The term 'Justice' is getting more inclusive. It includes gender, age and rights of future generation. This implies that the present generation should be responsible towards climate justice so that the further generation inherits a healthy environmental for its well being. In the name of development and economic growth the present generation should not engage and indulge in environmental degradation. The present generation should go for development which is inclusive and sustainable.⁷

The concern and scope of nations on environmental issues has become broad. It encompasses to environmental goods and resources like water, energy and green lands.⁸

⁴ Eloi, Laurent, Issues in Environmental Justice within the European Union, (*Ecological Economics* 2011)

⁵ Helen, Chalmers; John, Colvin, Addressing Environmental Inequalities in UK Policy: An Action Research Perspective, (*Local Environment* 2005)

⁶ Carolyn, Stephens; Simon, Bullock; Alister, Scott, *Environmental Justice: Rights and Mean to a Healthy Environment for All*, Special Briefing Paper 7 (ESRC Global Environmental Change Programme, 2001).

⁷ Jane, Jane, *Environmental Justice*, (*Encyclopedia of Applied Ethics* 2nded)

⁸ . Karen, Lucas; Gordon, Walker; Malcolm Eames; Helen, Fay; Mark, Poustie, *Environment and Social Justice: Rapid Research and Evidence Review. Sustainable Development Research Network*. London: Policy Studies Institute .

Some environmentalists also include 'food justice problems' in the discourse and relate this to workers rights and their working conditions i.e. inequality in access to food and land use or for that matter how systems are organised with respect to food production distributions etc.⁹

According to some authors Environmental Justice law can be categorized into three types viz. Preventive, Corrective and retributive. Ikeme, Jekwer (2003) accordingly explain that environmental Justice should be more broad encompassing all the issues of Justice related to environmental decision making.¹⁰

Climate justice and India

Indian environmentalism has been mostly about social justice. During 1970s and 1980s India was concerned with differential access and disparity to natural resources and ecological systems. India's delegation to the 14th General Congress of UNESCO in 1968 was led by none other than the Prime Minister of India, Mrs. Indira Gandhi. It was due to her efforts that 'Biosphere' was considered for the first time as political issue. She clarified India's stand on Environment by presenting a proposal called "A Design for Living".¹¹ After four years in 1972 with her very strong commitment she gave emphasis to development and clarified that development is the cure for problems not the cause of problems. The under developed and poor countries have to look upon and depend on planned development for improving the quality of life. She further emphasized that such planning should encompass development for social and human needs, of health, shelter, clean air and water along with the beauty of nature. She stressed upon qualitative

⁹ . Robert, Gottlieb, *Where We Live, Work, Play... and Eat: Expanding the Environmental Justice Agenda*, (*Environmental Justice* 2nded)

¹⁰ . Jekwu, Ikeme, *Equity, Environmental Justice and Sustainability: Incomplete Approaches in Climate Change Politics*, (*Global Environmental Change*, 2003)

¹¹ . Indira, Gandhi, *Towards a Better Environment* (Inaugural Function of the National Committee on Environmental Planning and Coordination at New Delhi, 1972). cited in S. Ravi Rajan, *A History of Environmental Justice in India*, (*Environmental Justice*, Vol 7, 2014. <<https://www.liebertpub.com/doi/abs/10.1089/env.2014.7501>>

improvement of life rather than quantitative growth of various economic sectors.¹²

Her speech in the United Nations Conference on Human Development at Stockholm on July 14, 1972 was acclaimed as controversial as she started by suggesting that progress should be synonymous with an assault on nature.¹³

Her speech was balanced and sensitive. She was for nature and ecology. She touched upon the ecology in a planet at the same time she emphasized that earth was important and a home for humans. She also advocated for the poor and said that they aspired for a better life, which is their basic right. She rejected the idea of extreme views, rather spoke in favour of discoveries of modern science, which should be available to rich and poor alike. According to her the conflict was for unmindful and reckless exploitation not between growth and nature.¹⁴ The essence of her speech was that India will go for modern technology to improve the quality of economic life at the same time it will make all efforts to conserve and preserve its environment.

Environment justice law in this sense is regarded as preventive, progressive and forward looking in nature. It follows international law and national environment policy. The Stockholm Declaration of 1972 and the Rio Declaration endorse the rights of the countries to use and exploit their own resources for their development projects with the condition that the projects do not hamper and affect the environment of other states.¹⁵ If there is any environmental injustice, corrective

action is sought. Environmental justice also seeks remedies for environmental injustice.¹⁶

The two conferences of Stockholm and Rio de Jenerio in 1992 on 'Environment and Development' have impacted environment policies in most of the countries along with India.

It should be understood that unequal or differential access to environment is related to quality of life and to human wellbeing. For example, if some people are deprived of their right to access to fresh natural resources, like drinking water or forests, it affects their life as they are dependent on these resources for their living. Similarly, the unhealthy and toxic environment adversely affects their lives and deprives them of leading a healthy life.

The focus of India's debate on environmental issues is mainly focused on above concerns and on questions about access to public goods and presence of public beds.¹⁷ The issues of public good and bad are related to inclusion proper representation, human rights etc.¹⁸

In India the debate about environmental human right and justice security etc. may be traced to three phases. The first phase started in 1970s and it was regarding access to natural assets.¹⁹

The first phase is regarding conflict and disparity over access to forest and forest products. People living near the forest areas traditionally enjoyed their rights, when forest legislation deprived them of their rights, it resulted in revolts against state policy and reflected in the form of a environment movement i.e. Chipko Movement.²⁰

The second phase involves the damaging of rivers. The first Prime Minister of India, Jawaharlal Nehru was always in favour of building dams and considered them as a tool for modernization. He called them as temples.

¹² Ibid

¹³ Gandhi, Indira, *Man and Environment* (Plenary Session of the United Nations Conference on Human Environment at Stockholm, 14 June 1972), cited in S. Ravi Rajan, *A History of Environment Justice in India* (Environmental Justice, Vol. No. 7, <<https://www.liebertpub.com/doi/abs/10.1089/env.2014.7501>> .

¹⁴ Gandhi, Indira, *Man and his World*, (speech at the UN Conference on the Human Environment, Stockholm, June 14, 1972, Hodder and Stoughton, London 1982) PP.60-67.

¹⁵ United Nations Conference on Environment and Development (UNCED, 1992)

¹⁶ Jesse, Ausubel; David, Victor, *Verification of International Environmental Agreements*, (Annual Review of Energy and Environment, 17, 1992) pp.1-47

¹⁷ M, Gadgil and R, Guha, *Ecology and Equity: the use and abuse of Nature in Contemporary India*, (Washington, D.C., Rutledge, 1995)

¹⁸ S, Visvanathan; Carnival, A, *Essays on Science, Technology and Development*, (New Delhi: Oxford University Press, 1997)

¹⁹ Boyce, J., Shelly, B. *Natural Assets: Democratizing Ownership of Nature*, (Island Press, ed 2003)

²⁰ R, Guha, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*. (New York: Oxford University Press, 2000)

But this resulted in forceful evacuation of thousands of people. It also had its social and ecological implications.²¹ Over the years the conflicts over access to natural assets have resulted in moving into new sectors like mining.²²

The third phase of environmental justice movement may be attributed to Bhopal gas tragedy of 1984. The disaster was the result of toxic gas leakage from the US based multinational company Union Carbide, in which more than 2000 people died and around half a million people suffered the aftermath and are still continuing to suffer.²³

Bhopal Gas tragedy led to activism and mobilization against industrial policy. It also drew attention to other related issues, like chemical, air and water pollution.²⁴ The first and second phases of India's environment history were that of social movements and charismatic leaders were actively involved in it. They also sparked debate on what development is? They debated on the vision of future of India and questioned the concept of modernity. During the first two phases many acclaimed scholars and activists worked hard for environmental justice. Moreover, the Supreme Court of India also gave many rulings in favour of environmental justice.

The third phase of Indian Climate movement has added a new dimension. While in the first two phases, many lawyers, social scientists and natural scientists were involved, in the third phase many technical professionals are involved. In different sectors from water use to climate change, the debate on justice is being done by technical experts. Hence, the debate about climate justice, in the present, is collectively represented by scientists,

philosophers and non-profit organisations alike.

India's economic policies had adverse effect on the environment and thus also adversely affected the livelihood of people by the end of the last century. Government's own statistics portrayed a very grim picture. It claimed that soil erosion, water logging and salinity impacts 60% of cultivated land. The average per capital water availability decreased by 70%. The area covered by forest had a sharp decline. These statistical data was crucial as it has a social dimension and is linked to poverty.²⁵

The climate change is posing a threat and challenge for the government and states in underdeveloped and developing countries. India is also facing the same problem. Climate change will greatly affect the rate of growth in social and economic field. Eradication of poverty is one of the first and foremost concerns of India. Thus India has a major stake in the climate change negotiations being taken up by United Nations Framework Convention as Climate Change (UNFCCC).

It is to be further explored and analysed the effects that how India's policy regarding climate will face the overwhelming challenges in dealing with the poor and vulnerable.

Threats Faced by India: Natural Disasters

India covers an area of 32,87,263 sq.km. extending from snow-covered Himalayan heights in the north to the tropical rain forest of the south. In the north, the territory is bounded by the Great Himalayans and stretches' southwards narrowing down into the Indian Ocean between the bay of Bengal and the Arabian sea.

On account of the large geographical size of the country, India often faces natural hazards like floods, cyclones and droughts occurring frequently in different parts of the country. At times, some areas, normally subjected to drought situation, have got in certain years. Hazards like earthquakes, hailstorms, avalanches, landslides, etc. occur randomly, but they are limited in their impact in terms of time. The extent of the impact of an earthquake depends on its intensity, season and time of

²¹ S,Khagram, Dams and Development: Transnational Struggles for Water and Power. Ithaca, (NY: Cornell University Press, 2004)

²² F,Padel, Out of This Earth: East India Adivasis and the Aluminium Cartel. (Hyderabad: Orient Blackswan, 2011)

²³ T.R,Chouhan, *Bhopal-The Inside Story*, 2nd Ed.,Goa,(Other India Press,New York)

²⁴ U,Narain, andR,G, Bell, 'Who Changed Delhi's

Air?' (*Economic and Political Weekly*, 2006) pp. 1584–1588.

²⁵ J,Boyce;B, Shelly, *Natural Assets: Democratizing Ownership of Nature*. (Washington, DC, Island Press, 2003)

occurrence. The humanitarian community, though has done an appreciable job in responding to disasters, the most important task in the medium and long term, however, is to strengthen and broaden programmes which mitigate the number and cost of disasters.

There is need, therefore, to further strengthen country's response capacity and collaborate with the international community to build a 'global culture of prevention'. This means greater efforts to minimize vulnerability to natural hazards.

The purpose of Disaster Management in the context of Climate Justice, however is to reduce sufferings as well as find their causes and solutions. International Decade for Natural Reduction (IDNR) has fixed the following objectives and goals in this direction. At the time when the UN General Assembly adopted resolution 44/236 in 1989 and formally decided on the IDNR, the following objectives and goals were established: (i) The objective of the decade is to reduce through concerted international action, particularly in developing countries, the loss of life, property damage and social and economic disruption caused by natural disasters, such as earthquakes, windstorms, tsunamis, floods, landslides, volcanic eruptions, wild fire, grasshopper and locust infections, draught and desertification and other natural calamities. (ii) The goals of the decade are: (a) To improve the capacity of each country to mitigate the impact of natural disasters expeditiously and effectively, emphasizing on assisting developing countries in the assessment of disasters damage potential and in the establishment of early warning systems and disaster-resistant structures as and when needed; (b) To devise appropriate guidelines and strategies for implementing existing scientific and technical knowledge, taking into account the cultural and economic diversity among nations; (c) To foster scientific and engineering efforts aimed at closing critical gaps in knowledge in order to reduce loss of life and property; (d) To disseminate existing and new technical information linked with no measures for the assessment, prediction and mitigation of natural disasters; (e) To develop measures for the assessment, prediction, prevention and minimization of natural disasters through programmes of technical

assistance and technology transfer, demonstration projects, and education and training, tailored to specific disasters and locations and to evaluate the success of these programmes.²⁶

Global warming in India.

The greenhouse gases like carbon dioxide, methane, nitrous oxide, and other constituents of the atmosphere that can absorb or scatter radiant energy keep the earth warm. The increase of these gases beyond the acceptable limit had increased vulnerability of the earth's atmosphere having adverse impact on its climate and biodiversity. The increase of these greenhouse gases in our surroundings has been mainly attributed to the burning of fossil fuels, like coal and oil to meet our energy demands, burning up of forest products and biomass as fire wood, and release of methane (CH₄) from rice fields and enteric fermentations. The observed increase in the average temperature of the earth's near surface air and oceans is commonly known as global warming. The earth has experienced a steady increase in temperatures during the last few decades due to several man-made activities enumerated above, and, thus, the global warming has been perceived as "human caused climate change" or "anthropogenic climate change".

The contribution of India towards greenhouse gas emission is observed to be considerably high. Its coal based power industry, oil intensive transportation system, vast areas of paddy cultivation and over 440 million cattle population constitute the principal source of greenhouse gases emitted into the atmosphere. In the present trend of globalization, industrialization and burning of oil in transport, the greenhouse gas emission is bound to increase, and it has been predicted that CO₂ concentration is likely to increase from the present 1 billion tons to about 4.92 billion tons per year.²⁷ Similarly, addition of methane is also likely to increase manifold, because of expansion of paddy cultivation, increase in dairy industry and water logging in aqua farms. In addition to the emission of these two main

²⁶ .Naseem Ahmad, Managing Disasters, (New Delhi, Kilsa Books) pp.27-38

²⁷ . N,R,Krishnan, Global Warming and India, (The Hindu Survey of the Environment, Chennai, 2007)

greenhouse gases, release of Nitrous oxide and Ozone accelerates the problem of global warming to new height, and during the last couple of years, many parts of this subcontinent experienced hotter summers. The country, as a whole, has experienced erratic rainfall coupled with other environment degradational changes. The coastal zone habitats and their inhabitants became the worst victims of the global warming and sea level rise, more so, along the east coast and islands. The exact global sea level rise in future is not yet correctly predicted. However, the current scenario of increasing greenhouse gases in the atmosphere indicate an accelerated rate of sea level rise in 21st century.

Global warming and sea level rise can lead to a series of catastrophic effects both on land and the ocean. It will inundate the coastal wetlands and low lands, accelerate coastal erosion, exacerbate coastal floods; damage coastal structures raise water tables and increase the salinity of rivers, bays and coastal aquifers. A cumulative effect of sea level rise, therefore, is bound to interfere with the biodiversity of coastal ecosystems, more particularly in estuaries, lagoons, mangroves, coral beds etc. The change in the temperature condition of the sea surface could also affect the plankton production and, thereby, the fisheries as well as biogeochemical cycling of elements.

In fact, as a consequence of climate change in our recent geological past, some existing ecosystems and their flora and fauna have been lost and some new habitats with contemporary flora and fauna have emerged. The global warming caused due to increased concentration of greenhouse gases in the atmosphere over the last 100 years or so, has brought many visible alterations in the physical conditions of different habitats, which have led to change in the species composition of floral and faunal assemblages.²⁸

Coastal zone habitats became more vulnerable due to submergence, subsidence and bio-invasions.

Needless to say that India forms one of the 27 countries, which have been identified as the

most vulnerable to the impacts of global warming related sea level rise.²⁹

It has been known for some time, and recent findings from the Intergovernmental Panel on Climate Change (IPCC) further confirm, that climate change will disproportionately affect the poor and the marginalized. The impacts of global warming will overlay on embedded structural causes of existing poverty and are expected to increase livelihood vulnerability, becoming an additional burden on the poorest. These effects will further exacerbate existing exposures to environmental harms, inequalities, and social and economic problems in direct and indirect ways.

Concerned over the situation the court in the Karnataka Industrial Area Development Board v. C Kenchappa,(2006) 6 SCC 371 at 380³⁰ observed that :

Concerned over the situation the court in one of its hearing has stated that

1. Global warming may result in melting the ice which ultimately gives rise to sea level. Consequent upon these coastal cities like Mumbai, Chennai and Kolkata may submerge under water in future.
2. Global warming can change in the rainfall pattern, which may affect the agricultural outputs in the various parts of the globe.
3. Global warming may be also result in changes in water distribution
4. Extreme climates may be caused by Global warming by bringing changes in wind pattern.
5. The variation of weather pattern will have major implications on the cropping pattern.
6. The sea lives may be grossly affected by rise in the level of sea, the rising temperature will also affect the ecological system of the sea.
7. The rise in the temperature may cause death of microorganism.
8. Biodiversity will be adversely affected by climate change and global warming and it may result in the extension of any species.
9. Green house effect will also disturb the lives in the earth.

²⁸Forecasting the Effects of Global Warming on Biodiversity, (Bio-Science, Volume 57, Issue 3, 1 March 2007)

²⁹ The state of the world environment (UNEP Governing Council, 15th session, Nairobi, KE, 1989)

³⁰ Karnataka Industrial Area Development Board v. C Kenchappa,(2006) 6 SCC 371 at 380

10. The global warming will also have socio economic impacts. Many economic sectors, particularly, physical infrastructure, will be affected by climate change. The flooding and landslide will result into a large-scale human migration. This will adversely affect the living conditions in other human settlements.

Half of the population of South Asia is reeling through overwhelming poverty as per the report of UNHDR. Most of the families suffer from poor health and low standard of living with scanty education. Mostly children below the age of three suffer from malnutrition and mortality rate of infants are very high. More than a billion people have earning which is less than US\$2 per day in South Asia. The low development indicators are also seen in the per capita green house gas emission of the countries.

The irony is that South Asian states are also affected by climate change. There is frequent change in the monsoon resulting in scarcity of fresh water. Flood, draughts and change in monsoons are common features of South Asia. Melting of Himalayan glaciers will further aggravate the problems of climate change in South Asia. Apart from the physical changes, a lot of secondary changes are also expected out of the physical changes. Destruction of livelihood is also a great problem encountered by South Asia along with migration, stress on local and urban institutions.³¹

Climate Justice and Environmental Law

India has realised the importance of Environmental Law in addressing the problems of climate. Earlier environmental law focussed on punitive aspects only. Later on the state paid attention to the prevention of environmental degradation and pollution.

The legal objective has changed from punitive to preventive.³² It is essential for India to take some very urgent steps to curb global warming. India has established an environmental, legal

and institutional system to address the environmental challenge,

In India Law of Torts has been followed for equity and justice. The Supreme Court has evolved the principle of absolute liability in addition to the above traditional categories as it felt that the rule of strict liability laid down in *Ryland v Fletcher* was no longer suitable in the prevailing socio-economic conditions of the country.³³

The Stockholm Conference of 1972 had phenomenal impact on legislation regarding environment. The Government was so serious about it that it took drastic steps and established NCEPC; a National Committee on Environment Planning and Coordination in its department of Science and Technology. The Govt of India even brought amendments in the constitution and also brought new legislation to implement the decision of the Stockholm Conference. The Govt also created new institutions for the proper implementation of legislation. The Constitution of India was amended by the 42nd constitutional amendment and the subject of "ecology and environment" was incorporated for the first time through Articles 48A and 51A (g).³⁴ The state was directed by the constitution to protect the environment along with the forest and wildlife. The constitution also gave directives to every citizen of the country to be compassionate to living being and to preserve and protect the natural environment.

Taking a bold step India included environmental protection rights and duties in its constitution. India incorporated article 48A in part IV of the constitution which contains Directive Principle of State Policy. The State has the constitutional mandate to protect and preserve the environment along with forest and wildlife. It is the duty of the state to deal with the environment as a constitutional mandate.³⁵

Besides constitutional mandate, India has a number of national policies for the governance of environment. Some of the national policies

³¹ Sujata, Byravan *Climate policy and the Poor: Some Perspectives*, (Environmental Justice Volume 7, 2014) pp. 142-143, <file:///C:/Users/Admin/Downloads/RajanEJ_Special_Issue.pdf>

³² Sprinz and Weifs, Martin, *Domestic Politics and Global Climate Policy*, (Techno Science Publications, Jaipur 1996) p. 88

³³ M. C. Mehta v Union of India, AIR [1987] SC 1086

³⁴ Constitution of India, Art. 48A, Art 51A (g).

³⁵ Bhaskar Kumar, Chakravarty, *Environmentalism: Indian Constitution and Judiciary*, (2006), 48, *JILI*, 10

of India are National Policy on Pollution Abatement(NPPA-1992).³⁶

India has enacted much legislation for the protection and preservation of the environment. Most of its concerns have been towards pollution (water and air both) deforestation, soil, erosion loss of wild life etc. It is indeed a challenging task for India to protect the environment because it also wants to industrialize fast at the same time.

Article 252 and 253 of the constitution deals with most of the environment related laws. The legislation regarding environment are mostly either regulatory or punitive, sometimes it is also preventive.³⁷

Based on the notion of safety and protection from national calamities,National Calamity Management Act 2000 was enacted by Indian Parliament to ensure the efficiency management of natural and other calamities, to achieve a greater coordination and responsiveness in respect of prevention and mitigation of disaster arising out of natural calamities and to provide for better relief and rehabilitation of the victims of such disasters.³⁸

After the disaster of Bhopal Gas tragedy it was felt necessary that there should be an act of parliament to protect the environment, consequently, the Environment Protection Act (1986 EPA) was enacted by the parliament. More than 3000 people lost their lives in the Bhopal Gas tragedy, the basis of the enactment of this very Act (1986 EPA) had its origin to the decision taken in the Stockholm Conference in 1972 the EPA is a frame work for the coordination of activities between state and central authorities established under previous laws. It also enables and delegate's powers to the executive were to enable bureaucrats to bring rules and regulations in a framework.³⁹

The central govt has the power to take necessary measures to protect, preserve and

improve the environment quality by the act the central govt can also set standards for regulating the location or for emission and discharges of different industries. It can also set standards for managing toxic wastes and thereby protecting public health and wellbeing.⁴⁰

Factories Act 1948 (amended in 1987)

Keeping in view the Shriram Gas leak case (MC Mehta V Union of India AIR 1987 SC 965)⁴¹ and the background of Bhopal Gas Disaster an amendment was brought to the Factories Act of 1948. The Act of 1948 was for the welfare of the workers and the benefit for their employment but the amendment of 1987 brought about special provision for hazardous industrial activities. This act gives power to the state to appoint committees for the appraisal of site. The committee is empowered to give suggestion and advice on locations using hazardous processes.

International conventions are held for action plan on climate change. The main objective of the United Nation Framework Convention on Climate Change (UNFCCC 1992) was to monitor and stabilize gas emission of Green House that may affect the global climate. The convention differentiated responsibilities. India was a signatory to the convention in June 1992 but later on its ratification was done in Nov 1993.

Role of Judiciary

Recently the courts of law by giving landmark judgements have changed the perception of common man towards judiciary. Indian Judiciary has carved out a niche for itself as a unique institution. So far as the environmental litigations are concerned, the judiciary has played a positive role in this regard.

The judiciary has responded in a very positive way to all the environmental litigations in India. When the courts deal with the environmental litigation it make sure that the law enforcement agencies whether they be State agencies or the Central government agencies are working properly towards the

³⁶.M. Karpagam, GeethaJaikumar, *Green Management : Theory & Applications*, (Ane Books,Pvt.Ltd.New Delhi)p.354

³⁷ *Constitution of India*, Art. 252 (1), Art 253

³⁸ Naseem Ahmad,Op.cit.26,p.88

³⁹ Goel, P.K, Sharma K.P., *Environmental Guidance & Standards in India*, (Techno Science Publications, Jaipur 1996)p.66

⁴⁰ The legal and regulatory framework for environmental protection in India

<<http://envfor.nic.in/divisions/ic/wssd/doc2/ch2.html>>

⁴¹ M. C. Mehta v. Union of India AIR [1987] SC 965

protection of environment. As the court may not direct the law enforcing agencies to work properly, it at times directs law enforcement agencies to pass laws which would protect the rights of human beings to live in a healthy environment.⁴²

In developing a new environmental jurisprudence, the Supreme Court has held that under article 32 of the Constitution of India, the powers of Supreme Court are not restricted, and it has all the rights to provide damages in case of a Public Interest Litigation or Writ petition where harm has been caused to environment due to pollution. In addition to this the person who has caused pollution will also be asked to pay the damages. This approach of the Supreme Court of India is based on the "Polluter Pays Principle". The Supreme Court of India has also asked the companies such as Coca Cola and Pepsi to pay for the exemplary damages for the pollution which they have caused in the States of Himachal Pradesh and the State of Jammu and Kashmir by painting on the rocks. The Supreme Court thus asked these Companies not to further pollute the environment and take off their advertisements from the rocks.⁴³

The public and private rights and duties also include the environment imperative which is also very important for the future generations which are not available to be purchased at any going rate as the negotiable commodities.⁴⁴

The role of judiciary in the recent times has been commendable in protecting the environment. The judiciary has been successful in protecting the environment through proper interpretation of the constitutional provisions and related laws. The current debate in the country is about the sustainable development and protection of environment. Masses are made conscious of their health and hygiene. Accordingly everybody expects to get clean air, clean water, and cleaner surroundings and ecologically balanced atmosphere. The concern and protection of ecological sustainable

environment should be seen as the responsibility of all and may not be seen as the responsibility of judiciary alone. The judiciary has its own limitations and cannot go beyond a certain point.

The legal provisions regarding the environmental protection in the country are very strong and need to be strictly implemented. This is important as the country is in the transformative stage and experiencing increase in poverty and population further complemented by industrial growth and urbanisation. Since the 1970s an extensive network of environmental legislation has grown in the country.

India currently is implementing its international law obligations steadily and effectively. India, as a developing country has reasons to be concerned about the adverse impact of climate change on its economy.

A large part of its population depends on climate sensitive sectors for livelihoods which makes it highly vulnerable to climate change.

The natural calamities and disasters, such as earthquake, floods, tsunamis, volcanic eruptions, cyclones and landslides occur suddenly with far-reaching, severe physical ecological and socio-economic consequences. They can also occur slowly, like drought and desertification, which are caused by natural phenomena, coupled with overt effects of human actions. Global Environment Change has resulted in melting of ice caps, rise in sea level, and change in monsoon patterns, droughts and devastating floods. Despite phenomenal progress in agricultural production, the number of undernourished is still on the rise in the developing countries. Socio-economic and political inequities still persist. Challenges posed by hunger and poverty remain as compelling as ever. Disasters, whether natural or man-made, play havoc with the lives of millions of people every year around the globe. Their aftermath is nothing but a grim picture of death, devastation and sufferings. These can be frightening for adults and traumatic for children. Women, children, old and handicapped suffer most during natural calamities. Different kinds of disasters impinge different impacts on women. Women are particularly vulnerable because they have little access to resources. Natural and

⁴² Indian Council for Enviro-Legal Action v. Union of India, (1996) 5 SCC 281 at 294 (popularly known as Coastal Protection Case)

⁴³ MC Mehtav.Kamal Nath,(1997),1SCC388. See also MC Mehtav.Kamal Nath,(1999) 1 SCC 702 and MC Mehtav.Kamal Nath,(2000) 3 SCC 745.

⁴⁴ Law Society of India v. Fertilizers and Chemicals Travancore Ltd., A.I.R. 1994 Ker. 308 at 321.

man-made disasters jeopardize economy and development. These catastrophes typically result in the substantial loss of hard earned development gains as well as diverting the development funds towards fuelling disasters relief.

Disasters are no longer viewed as extreme events created by natural forces but as unresolved problems of development. In many areas of the world; disaster losses land to outweigh the development gains. Thus, the need for an effective disaster management strategy has been acutely felt in many quarters. Disasters are phenomenon, which cannot be stopped altogether but advance planning can mitigate suffering.

The management of disasters continues to be the major challenge for the government as it remains the core responsibility of the government. In practice, it is impossible to eliminate all disasters. Although many risks are potentially avoidable, global environmental change and uncertainty about future hazardous events, together with the central role played by human failings, “make the total elimination of environmental disasters, an unrealistic task. For disaster management, whether it is drought, tsunami, earthquake, floods and cyclone, relief is the key instrument for all humanitarian assistance provided by the government as well as donor agencies focused towards the immediate needs of the people for shelter, water and medicines. The global warming caused due to increased concentration of greenhouse gases in the atmosphere over the last 100 years or so, has brought many visible alterations in the physical conditions of different habitats, which have led to change in the species composition of floral and faunal assemblages⁴⁵. Hence, the approach to the management and prevention of disasters should be linking disasters with poverty alleviation programmes in order to attain the goal of sustainable development.

Climate change can have serious impact on its crops, forests, coastal regions, etc. which can in turn affect the achievement of its important national development goals. The issue of climate change cannot however be taken up

without linking it to developmental needs such as poverty, health, energy access and education. The Indian courts have played a very significant and vital role in environment protection in India by applying the principles of international law.

Further, as is evident that India’s climate policy framework is complicated by several factors, including the need for getting large numbers of people out of poverty, the momentum generated by rising aspirations, and in international context, there is a need that policymakers formulate a vision that focuses primarily on the development needs of those sections of the population that are considered poor by virtually any standard. Efforts should concentrate at problem identification, proper impact assessment and implementation of various legal provisions and laws, together with creation of public awareness and public participation.

This is an exercise which also involves reorienting our attitude towards technological advancement and industrialization. These are engines of development and essential for economic betterment of people particularly in the poor and developing countries. But in the race for economic development, inherent risks of potential disasters cannot and should not be marginalized. There should be a human audit of technological innovations and modes of industrialization before going ahead with these engines of growth. The developed countries too should evolve and increasingly take to such alternative modes of economic activity, not only to cut down the damage already done, but also to provide a model for the less-developed based on the principles of sustainable growth, justice and development.

Conclusion

Climate change can have serious impact on its crops, forests, coastal regions, etc. which can in turn affect the achievement of its important national development goals. The issue of climate change cannot however be taken up without linking it to developmental needs such as poverty, health, energy access and education. The Indian courts have played a very significant and vital role in environment protection in India by applying the principles of international law.

⁴⁵Daniel B, Botkin, *et al.*, ‘Forecasting the Effects of Global Warming on Bio-diversity’, (2007) 57(3), *Bioscience*, 227-236

One may however needs to understand that despite the best of the legal provisions regarding the environmental protection in the country , there is strong need that they should be strictly implemented without any bias or favour. In the present , the country is in the transformative stage and experiencing increase in poverty –coupled by industrial growth and urbanisation.

As is evident that India’s climate policy framework is complicated by several factors, including the need for getting large numbers of people out of poverty, the momentum generated by rising aspirations, and in international context, there is a need that policymakers formulate a vision that focuses primarily on the development needs of those sections of the population that are considered poor by virtually any standard. Efforts should concentrate at problem identification, proper impact assessment and implementation of

various legal provisions and laws, together with creation of public awareness and public participation.

This is an exercise which also involves reorienting our attitude towards technological advancement and industrialization. These are engines of development and essential for economic betterment of people particularly in the poor and developing countries. But in the race for economic development, inherent risks of potential disasters cannot and should not be marginalized. There should be a human audit of technological innovations and modes of industrialization before going ahead with these engines of growth. The developed countries too should evolve and increasingly take to such alternative modes of economic activity , not only to cut down the damage already done , but also to provide a model for the less-developed based on the principles of sustainable growth, justice and development.