



Environment and Climate Change–Role of Judiciary and Tribunals in Climate Justice

*¹Chetankumar TM

*¹Assistant Professor, Raja Lakhamgouda Law College, Tilakwadi, Belagavi, Karnataka, India.

Abstract

A sustainable world is defined as one where human needs are fulfilled fairly, without compromising the capacity of future generations to satisfy their own needs, and without causing damage to the environment or the functions and services of ecosystems. According to this significant challenge necessitates considerable effort in the face of climate change, economic development, and population growth. It involves safeguarding and preserving our natural heritage, forecasting weather and environmental conditions, preventing and managing pollution, and fostering clean growth alongside a sustainable environment for both current and future generations. To minimize global warming as much as possible, climate protection measures must be implemented and it is essential to evaluate the unavoidable effects to respond accordingly. The continuously rising global population and the quest for better living conditions result in a greater accumulation of greenhouse gases in the atmosphere. Consequently, fresh viewpoints are required to separate growth from fossil fuel consumption. Simultaneously, the impact of different technologies on plant and animal life needs to be considered. To combat climate change and ensure the long-term preservation of ecosystems, it is essential to advance and standardize resource-efficient technologies and products. Simultaneously, we require efficient actions to protect biodiversity. To safeguard the environment, detrimental actions need to be prevented, their effects minimized, and ecological conditions revitalized. A key strategy for climate protection is minimizing greenhouse gas emissions. However, the preservation of forests, peatlands, and oceans as biodiversity sources and carbon sinks is crucial for environmental and climate protection. The cross-industry megatrend of digitalization presents a substantial opportunity. Nonetheless, the correct path needs to be established early on to ensure that digital processes and applications are developed in a sustainable manner. Conversely, digitalization might exacerbate climate change instead of alleviating it.

Keywords: Environment, Climate Change, Role, Judiciary & Tribunal, Climate Justice.

Introduction

One of the most widely used definitions of environmental protection is the action taken by governments and organizations to preserve the environment. This idea sometimes called “environmental preservation” has gained even more significance in these trying times. The ability to preserve our environment is undoubtedly a key component of environmental protection, the interaction between humans and the environment is another fundamental principle. Because of this, industry professionals also mention the goal of enhancing our very life but also protecting essential resources that could take hundreds or even thousands of years to replenish after they have been depleted ^[1].

Environmental conservation is more important than ever in a time of rapid industrialization and population expansion. The preservation and management of ecosystems, biodiversity, and natural resources to guarantee their sustainability for present and future generations is referred to as environmental protection. One of the most important global issues of our day is climate change, and environmental conservation is essential to reducing it. Rising temperatures and unpredictable weather patterns are caused by greenhouse gas emissions into the

atmosphere from activities like deforestation, industrial emissions, and the burning of fossil fuels. We may reduce greenhouse gas emissions and lessen the severity of the effects of climate change by taking steps like reforestation, switching to renewable energy sources, and adopting sustainable habits.

The preservation of the environment is essential to human life and success, not a luxury. Whether through lobbying, personal lifestyle choices, or support for sustainability focused policy, everyone can contribute to environmental conservation. By working together, we can secure a more promising future for future generation, one in which all life on earth flourishes ^[2].

Courts and tribunals are essential in promoting climate justice by interpreting laws, holding governments accountable, and ensuring that those impacted by climate change have access to justice. They have the ability to interpret environmental legislation, enforce constitutional rights pertaining to the environment, and establish legal principles that foster sustainability. With their specialized knowledge, tribunals can facilitate quicker and more cost-effective resolutions to environmental conflicts. Courts and tribunals interpret

environmental laws to guarantee their effective and consistent application. They can also interpret constitutional provisions related to the environment, such as the right to a healthy environment, ensuring that these rights are safeguarded. Additionally, courts can formulate legal doctrines concerning sustainable development, striking a balance between environmental protection and economic growth. By interpreting both international obligations and domestic laws, courts can hold governments accountable for their roles in climate change. Tribunals provide a specialized and often more accessible means for resolving environmental disputes. Furthermore, courts can offer remedies to individuals and communities adversely affected by the impacts of climate change.

Climate Change – Its Impact

Climate change refers to a prolonged alteration in global or local climate trends, mainly driven by heightened atmospheric carbon dioxide levels resulting from fossil fuel combustion. This results in various environmental effects, such as increased temperatures, severe weather phenomena, rising sea levels and disturbances to ecosystems. The impacts of climate change are extensive, influencing human health, food availability, water supplies, and general societal welfare.

The term climate change can be understood and interpreted in a different manner ^[3]. Rising global temperatures result in a higher occurrence and severity of heat waves that can negatively impact human health and agriculture. Climate change results in an increased occurrence and intensity of severe weather events such as hurricanes, droughts, floods, and wildfires. The melting of glaciers and ice sheets is contributing to higher sea levels, posing a risk to coastal communities and ecosystems. Variations in temperature and rainfall patterns can cause alterations in the habitats of plants and animals, affecting biodiversity. Climate change can intensify water scarcity in certain areas due to changes in rainfall patterns and higher evaporation rates. Severe weather occurrences and shifting climate conditions can harm crop production and livestock yields, resulting in food shortages. Climate change can degrade air quality, facilitate the spread of infectious diseases, and result in heat-related health issues. The effects of climate change may cause substantial economic setbacks due to infrastructure damage, diminished agricultural output, and rising healthcare expenses. There is a need to take some positive measures to overcome from the negative impact of climate change ^[4].

According to climate experts, almost all of the global warming that has occurred in the past 200 years is human caused. The earth is warming more quickly than it has in at least the last two millennia due to greenhouse gas emissions from human activities. There is an 86% chance that at least one year during the 2025-2029 period will surpass the 1.5⁰ C limit over pre-industrial levels, meaning that the Earth's average surface temperature in 2025 will likely be between 1.2⁰C and 1.9⁰C higher than the pre-industrial average (1850-1900) ^[5]. There is a significant possibility (80%) that at least one of the next five years, including 2025, will be even hotter than 2024, which was the first calendar year with a worldwide mean temperature that was more than 1.5⁰ C over the pre-industrial baseline.

A number of UN reports indicate that thousands of scientists and government evaluators concurred that capping global temperature increase to a maximum of 1.5⁰C would assist in preventing the most severe climate consequences and ensuring a habitable climate. However, existing policies

indicate a rise of up to 3.1⁰C in temperature by century's end. Emissions responsible for climate change originate from all regions globally and impact everyone, yet some nations contribute significantly more than others. In 2023, the top six emitters ^[6] combined were responsible for over 50% of total worldwide greenhouse gas emissions. In contrast, the 45 least developed nations contributed merely 3% of worldwide greenhouse gas emissions ^[7].

Climate change impacts all forms of life, or organisms, as well as the environments they inhabit, though the effects are not uniform. The Arctic stands out as one of the ecosystems most susceptible to the repercussions of climate change. It is experiencing warming at a rate that is at least double the global average. The consequences of climate change can compound, leading to further harm to ecosystems. For instance, rising sea levels can result in sediment burying corals. While some organisms can adapt to and even thrive due to climate change, certain plants are experiencing extended growing seasons or earlier blooming periods. However, these alterations may occur too rapidly for other plants and animals to adapt accordingly.

Certain species have adapted by either expanding or shifting their geographic range, which indicates that they now inhabit areas that were previously too cold or otherwise unsuitable. When a species expands or alters its range, it can negatively impact other species that are already established in the new location. Additionally, existing invasive or nuisance species, such as lionfish and ticks, may find even more favorable conditions due to climate change. Ocean ecosystems are confronted with another significant issue: ocean acidification. The ocean takes in approximately 30% of the carbon dioxide emitted into the atmosphere from the combustion of fossil fuels. Consequently, the water is becoming increasingly acidic, which has detrimental effects on marine life.

Climate change impacts the environment in various ways, such as increasing temperatures, rising sea levels, droughts, floods, and others. These occurrences influence crucial elements we rely on and cherish, such as water, energy, transport, wildlife, farming, ecosystems, and public health ^[8].

Climate Justice – Role of Judiciary and Tribunals

Courts and tribunals are essential in promoting climate justice by interpreting legislation, enforcing accountability, and protecting the rights of individuals and communities impacted by climate change. They have the ability to analyze current laws, establish new legal precedents, and hold governments and corporations responsible for their actions that lead to climate change. Judicial bodies can analyze environmental regulations, constitutional rules, and human rights standards to tackle climate change challenges. This may include outlining the boundaries of environmental rights, creating legal structures for climate initiatives, and establishing benchmarks for upcoming cases.

The human rights of people and communities affected by climate change, such as the right to life, access to clean water, and a healthy environment, can be acknowledged and upheld by courts. Courts can influence governments and other players to take more aggressive action to slow down climate change and prepare for its effects by rendering decisions in climate related cases. Courts and tribunals can often a venue for people and communities to seek compensation for damages caused by climate change and guarantee that those most at risk have access to the legal system. By upholding human rights, encouraging climate action, and holding governments and companies accountable, the judiciary and

tribunals are essential to the advancement of climate justice. Despite the difficulties they encounter, their participation is essential to guaranteeing a fair and sustainable future in the face of climate change.

In order to guarantee environmental justice on a worldwide scale, environmental law has become essential. The idea of the environment was first introduced in *Kautilya's Arthashastra*, from which environmental jurisprudence evolved. The kings had an obligation to preserve and safeguard trees and their products. In addition, people had an obligation to preserve the environment. As a result, land, water, air, trees, and animals were all regarded as divine powers. According to the Rigveda, the five fundamental elements – earth, water, air, fire, and ether are the basis for all living things on earth. It is possible to think of the ancient men's *Yajnas* as the biological revolution for environmental protection. These were carried out in order to improve the environment and promote prosperity in all spheres of life.

An in-depth examination of Indian environmental law reveals a love, respect, and preservation of the environment that dates back to the Indus Valley Civilization. It's possible that Manusmriti outlined various penalties for harming plants. People had a basic need for an environment free from pollution. As a result, several actions were taken to bring the environment back into balance as well as to punish wrong doers. Historical texts were a uniting factor in this quest, bridging the gap between the duty to protect the environment and the right to use it. Nowadays, everyone agrees that this idea is known as “sustainable development”.

As society has evolved, the idea of environmental justice has emerged as a contemporary interpretation of justice that connects to earlier notions of fairness. Environmental justice encompasses theories relating to the environment and justice, along with the laws governing the environment and their enforcement. It has integrated itself into the broader framework of social justice^[9].

Climate change has been a highly discussed topic in ethics since the early 1990s. It is a global issue affecting future generations that can be addressed through universal ethical theories to effectively encourage and enhance real-world solutions. These principles are explored in the UNFCCC, partially represented in the Paris Agreement and decisions made in subsequent COPs.

Principles of justice typically aim to tackle the disparities between people in developing and developed nations, as well as between individuals within each nation, concerning personal contributions and institutional obligations related to GHG (Anthropogenic Green House Gas) emissions and the ability to mitigate these emissions. Another form of asymmetry relates to varying levels of susceptibility to the effects of climate change. Generally, individuals residing in developing nations, particularly in the least developed countries and fragile states, are more susceptible and possess a significantly lower ability to withstand the harmful effects of increasingly frequent extreme weather events related to climate change, along with alterations in precipitation patterns and the rise in global average sea levels, compared to those living in advanced economies. Additionally, within communities globally, particularly in developing nations, disadvantaged individuals, especially women, face greater susceptibility to the detrimental effects of climate change.

A third asymmetry arises from the delay in managing the causes of a slowly evolving process. The greenhouse gas emissions generated by the current generation are worsening an already escalating issue, making it more detrimental for

future generations. These asymmetries are likely to heighten poverty, malnutrition, hunger, health risks, and forced migrations among more vulnerable populations. In an ideal scenario, a normative theory of climate change ethics could play a significant role in determining how to allocate investments between mitigation and adaptation strategies, how to appropriately weigh the costs and benefits of mitigation efforts, and how to share the costs and non-climate advantages of decarbonization. Furthermore, it could facilitate a just transition from a fossil fuel-dependent global economy to one that is driven by renewable energy sources^[10].

Climate justice manifests in three primary forms^[11]. Grassroots climate justice and climate action movements represent a type of climate activism that emerged from the principles and movements of environmental justice, which began to surface in society during the 1990s. The Environmental Justice and Climate Change initiative was established in 2001, coinciding with the inaugural Climate Justice Summit at the COP6 meeting^[12].

The number of environmental courts and tribunals has increased dramatically during the last few decades. There are currently more than 350 of these specialist forums for settling environmental disputes, and they are located in every part of the world. While certain environmental tribunals and courts have had greater success than others, some have had less. Environmental Courts and Tribunals (“ECT”) have grown exponentially over the last few decades. ECTs’ rise in popularity and the benefits that stakeholders in jurisdictions that have set up and used these specialized forums have received as a result have sparked discussion in nations without ECTs. Globally, ECTs that have not been successful are frequently perceived as either unsuitable or invalid venues for addressing environmental conflicts. The capacity of an ECT to cultivate environmental jurisprudence relies, in turn, on its being given chances to achieve this. The independence and neutrality of ECT judges or decision-makers can be facilitated by institutional systems and regulations regarding the selection of judges or decision-makers based on suitable qualifications^[13].

Climate change represents the foremost justice challenge of time, with its increasingly severe effects on human societies and ecosystems giving rise to significant international legal issues. Nations and various stakeholders are turning to international courts for clarification regarding their obligations in the global effort to combat climate change, as well as their liability for climate-related losses and damages. Through climate litigation at the national level, and also through regional and international dispute resolution mechanisms, justice is being pursued and responsibilities are being acknowledged.

International courts and tribunals are being requested to elucidate the legal duties of States in tackling climate change through advisory proceedings. This includes the mitigation of oceanic impacts, the safeguarding of human rights, and broader considerations within international law. The International Tribunals for the Law of the Sea (ITLOS), the Inter-American Court of Human Rights (IACtHR), and the International Court of Justice (ICJ) are leading these proceedings, which hold the potential to transform international climate law and governance^[14].

International climate litigation has accelerated recently, especially initiatives to seek advisory opinions and refer climate change-related disputes to international courts and tribunals. In the last few decades, domestic courts have been the main focus of climate litigation. Plaintiffs aimed to force

governments and corporations to lower greenhouse gas emissions (GHG), protect human rights impacted by climate change, and prevent or prepare for the harmful effects of climate change.

The fact that international climate litigation frequently relies on human rights obligations is one of its main characteristics. Climate change is having a significant impact on human rights, as vulnerable groups face threats to their right to life, health, and a clean environment, as well as the loss of their means of subsistence and displacement.

International climate litigation relies on international climate law, governance, and principles of sustainable development—including precaution, sustainable resource use, equity, and integration. These principles are enshrined in key international sustainable development treaties^[15]. These tools provide the framework for the legal arguments in international climate litigation, especially when it comes to states' duties to support international mitigation efforts and take preventative action, adapt to the effects of climate change and foster resilience, and reroute financial flows in the direction of more sustainable development. International courts have laid the foundation for future climate litigation by gradually elucidating the extent of state responsibility with regard to climate change through a variety of cases, such as state-to-state disputes, investment arbitration, and human rights litigation.

The *Klimaseniorinnen case*^[16], which was taken to the European Court of Human Rights (ECtHR) by a group of older women in Switzerland, is one such example. The plaintiffs claimed that their rights under the European Convention on Human Rights – specifically, the right to life and the right to a healthy environment were breached by the Swiss government's inadequate climate action. The lawsuit highlighted states' legal obligations to shield vulnerable groups from the negative consequences of climate change. The ECtHR's decision is a major step toward acknowledging climate change as a human rights concern. Courts' treatment of state obligations in the context of global warming is still influenced by the growing connection between climate change and human rights, which has been reflected in a number of other international legal procedures.

The *Ogoni case* before the African Commission on Human and Peoples' Rights provides yet another significant illustration of regional climate-related litigation in Africa. The degradation brought about by Nigerian oil extraction operations, which seriously harmed nearby communities, was the subject of this case's Commission. Although the case centered on the African Charter on Human and Peoples' Rights violations, it also brought attention to the wider ramifications of fossil fuel development on human rights, such as the right to health^[17].

Conflicts may occur when private investors argue that state initiatives to lessen reliance on fossil fuels or erode pledges to renewable energy unfairly impact their interests. In *Vattenfall v. Germany*^[18], for instance a Swedish energy corporation called *Vattenfall* contested Germany's decision to deny a coal-fired power station a water permit. The investor claimed that their rights under the Energy Charter Treaty had been infringed by Germany's regulatory actions. Although the dispute was eventually resolved, it brought to light the conflict between investor rights protection and state regulation to lower greenhouse gas emissions, posing important issues regarding how international law should strike a balance between investor protection and climate action.

In the *Eiser Infrastructure Limited and Energia Solar*

Luxembourg SA v. Spain^[19] award, investors in the Spanish solar energy industry sued Spain over proposed changes to its renewable energy subsidy regime. This case serves as an illustration of the latter. The tribunal decided in favor of investors who had depended on the rate commitment to finance renewable energy, arguing that Spain's changes to the feed in tariff scheme, which were intended to lessen the nation's fiscal burden, amounted to expropriation and violated their rights under the Energy Charter Treaty.

The environmental crisis is an undeniable reality of our time; every nation, regardless of its size or wealth, is encountering the same issue and is on the brink of disaster due to this shared tragedy of climate change or environmental degradation. The 2009 global humanitarian report highlighted the importance of addressing the possible risks of environmental decline on human health and existence. The majority of negative impacts from environmental degradation or climate change are felt by impoverished and low-income communities globally, which have increased vulnerability regarding their health and financial stability, along with significantly lower capacity to cope with these environmental shifts.

In democratic nations, the judiciary holds significant influence. A vital component of their function is to safeguard personal rights and civil freedoms. An associated aspect involves serving, as an essential branch of the government, oversight and balance on the other branches. For courts to uphold their power, the other branches of the government, along with the citizens, must trust in the legitimacy of the judiciary and its rulings. In democratic nations, the legitimacy of the judiciary stems from the principle and framework of separation of powers or *trias politica*^[20].

As a developing nation, India is encountering the same issues of environmental crisis and climate change, making it more susceptible to the negative effects of climate change. Acknowledging the effects of climate change, the Indian government implemented numerous measures through the introduction of laws and policies at both central and state levels to address the issue and serve the interests of its citizens. India took part in the Stockholm Conference held in Stockholm and signed the treaty that announced the "Stockholm Declaration."

The Stockholm Declaration is regarded as the Magna Carta in the timeline of environmental safeguarding and achieving the objective of sustainable development. It also embraced specific significant decisions, resolutions, and recommendations to tackle the issue, one of which was to take prompt measures and develop an action plan to address environmental degradation and climate change.

This conference, along with the resolution adopted by the general assembly, laid the groundwork for the constitutional amendments to the Indian Constitution^[21]. A notable result of this conference was the series of legislative actions undertaken by the Parliament of India through the enactment of various laws^[22].

The judiciary has been actively engaged in ensuring justice for victims of environmental degradation. The Supreme Court has broadened the interpretation of the "right to life" as stated in Article 21 of the Indian Constitution to encompass the "right to live in a clean environment^[23]," Justice P N Bhagwati, in his explanation of the concept of life during the "*Maneka Gandhi's case*,"^[24] determined that life extends beyond mere existence; it must also incorporate personal liberty to convey its true significance.

In the case of *Subhash Kumar v. State of Bihar*^[25], the court

further elaborated on the right to life as outlined in Article 21, asserting that it includes the right to enjoy pollution free water and air, which are essential for the complete enjoyment of life under this right.

The Supreme Court further transformed international environmental law principles such as sustainable development; polluter pays principle, public trust doctrine, precautionary principle, and intergenerational equity^[26] into national environmental jurisprudence by declaring the "right to healthy environment" to be a fundamental right under Article 21 of the Constitution. This enhanced environmental jurisprudence.

The rise in environmental litigation due to escalating environmental degradation and consequent climate change, along with challenges in handling cases with techno-scientific aspects, forced the court to acknowledge their limitations in denying jurisdiction over such cases^[27].

"The National Green Tribunal Act 2010" was passed by the Indian government. By examining the legislation that gave rise to the National Green Tribunal Act of 2010, one can have a thorough understanding of the Indian experience with the National Green Tribunal's operations. As is well known, the Act was passed in an effort to fairly treat the environment and environmental victims. It was created with the shortcomings of regular courts in mind, where judges frequently fail to decide environmental case due to a lack of technical knowledge^[28].

Climate justice underscores the necessity for fair and equitable treatment of all individuals concerning the causes and consequences of climate change. It acknowledges the unequal effects of climate change on low-income and marginalized communities, emphasizing that climate justice encompasses both procedural equity – ensuring that marginalized voices are included in decision-making processes – and distributive equity, which entails the fair distribution of the burdens and benefits associated with climate policies.

International courts and tribunals have increasingly taken on cases that lie at the crossroads of human rights and environmental protection. For example, the Inter-American Court of Human Rights has recognized the rights of indigenous communities impacted by environmental degradation in landmark cases such as *Saramaka People v. Suriname*^[29]. These cases illustrate the capacity of human rights law to tackle environmental damages, setting important precedents for future climate justice litigation^[30].

Conclusion

The idea of justice is complex and multi-dimensional. In a world more and more endangered by global crises, such as the combined challenges of climate change, decline of biodiversity, and pollution, the idea of justice increasingly includes environmental justice. Environmental justice encompasses a minimum of three forms of justice: distributive justice, procedural justice, and recognition justice. Recognition justice entails acknowledging and valuing everyone. The planetary crises are profoundly affecting these facets of justice. Climate change, for example, affects those who have had the smallest role in causing it the hardest, even though they will endure the greatest consequences.

The International Court of Justice (ICJ) — the main judicial organ of the United Nations (UN) — is in the process of developing an advisory opinion to elucidate the responsibilities of states in safeguarding the climate system from greenhouse gas (GHG) emissions. While not legally

enforceable, the advisory opinion could elucidate the nature and specifics of obligatory climate commitments and their influence on the interpretation of other international agreements. Numerous states will interpret the advisory opinion as an obligation to enforce climate policies at both national and regional levels.

The fundamental aim of courts is to provide justice. In these periods of ecological emergencies, this aim encompasses the provision of environmental justice. This includes guaranteeing an equitable allocation of environmental advantages and disadvantages (distributive justice); fair processes that encompass access to environmental data, public involvement in environmental policymaking, and access to legal remedies (procedural justice); and proper acknowledgment and respect for everyone (recognition justice).

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3. i). Significant and long-lasting changes in weather patterns over extended periods of time usually decades or more are referred to as climate change.
ii). The rise of greenhouse gases, such as carbon dioxide, in the atmosphere is the main cause of the current climate change.
iii). The greenhouse effect is the term used to describe how these gases trap heat and raise global temperatures.
iv). The main source of greenhouse gas emissions is the burning of fossil fuels, such as coal, oil, and gas.
4. a). Important actions include lowering deforestation, increasing energy efficiency, and switching to renewable energy sources.
b). Putting into practices strategies to mitigate the effects of climate change, like creating sea barriers, creating crops resistant to drought, and enhancing preparedness for disasters.
c). Coordinated international cooperation and national action are necessary to combat climate change.
d). By supporting sustainable activities, conserving energy and water, and lowering their carbon footprint, individuals can also have an impact.
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