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From Environmental to Climate Justice: A Discourse with Special Reference to India

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Environmental justice is a key movement and organisational rhetoric in the field of environmental politics, and both the movement and the idea have had a significant impact on the understanding of climate change and climate justice. Climate change is threatening basic human rights for poor and vulnerable people. It makes it difficult for them to realize the right to water, food, and energy, thus worsening the basic condition of life. Gains in economic development will be unsustainable unless sufficient resources are directed toward effectively reducing greenhouse gas emissions and responding to climate change. Climate justice acknowledges the development paradox that people who contributed the least to greenhouse gas emissions will be the hardest hit by the effects of climate change. Climate justice aims to promote more equal burden distribution at the local, national, and global levels through proactive regulatory efforts and reactive legal remedies based on international human rights and domestic environmental justice ideas. The Indian judiciary, which is known for its liberal approach and ability to function as a ‘lever of transformation,’ is cautiously addressing climate-related cases. Hence, this paper presents an overview of the impact of environmental justice movements and concepts on the development of climate justice rhetoric, with special reference to India.

Keywords: *climate change, climate justice, environmental justice, India, judiciary.*

INTRODUCTION

The proponents of environmental justice both at the national and international levels have only recently shifted their focus to a new subset of the environmental problem i.e., global climate change.¹ According to the World Meteorological Organization, since the 1980s, 'each decade has been warmer than the previous one leading to global warming and other long-term climate change trends as a result of record levels of heat-trapping greenhouse gases in the atmosphere.'²Global warming, as per most experts, is likely to cause substantial changes to the earth's environment resulting in the melting of glaciers, significant warming of the oceans, etc. These changes, in turn, may lead to catastrophic effects on human civilization, such as the drowning of coastal cities including low-lying islands, dramatic changes to local temperature patterns, negative impact on flora and fauna, changes in disease patterns among humans and animals, and new patterns of severe hurricanes, cyclones, and tornadoes.³Before taking this discussion any further, it is also crucial to emphasize the existing debate around climate change, especially, with regard to the collection, assessment, and reliability of data (based on which different aspects of climate change are either predicted or documented).⁴ For instance, changes in global temperature patterns are well documented and are virtually beyond dispute, however, disputes still exist in relation to the cause of temperature change and its possible effects on human beings and the environment.⁵ Despite the above-mentioned debate, nearly all aspects of the climate change problem have strong racist and/or classist elements.⁶ As noted by Roberts and Parks, although rich nations of the Global North share the larger percentage of all greenhouse gases released into the atmosphere, poor/developing nations of the Global

¹ David E. Newton, *Environmental Justice: A Reference Handbook* (2nd edn., ABC Clio 2009) 97

² Paul Strauss, '2021 joins top 7 warmest years on record: WMO' (*UN News*, 19 January 2022) <<https://news.un.org/en/story/2022/01/1110022>> accessed 12 April 2022

³ David E. Newton (n 1)

⁴ Gordon Walker, *Environmental Justice: Concepts, Evidence and Politics* (1st edn., Routledge 2012) 183

⁵ *Ibid*, 184

⁶ J. Timmons Roberts & Bradley C. Parks, *A Climate of Injustice: Global Inequality, North-South Politics, and Climate Policy* (1st edn, Cambridge 2007) 34

South face a greater risk of damages resulting from climate change when compared to the rich nations of the Global North.⁷ According to Kaswan,

*“Climate change policies addressing transportation, energy production, industry, commercial enterprises, housing, land use, and agriculture will inevitably have significant social and economic repercussions - on the poor, on consumers, and on affected industries. Notwithstanding the critical importance of significant greenhouse gas (GHG) reductions, policies designed in a vacuum, focusing solely on reductions, could create significant and unintentional adverse consequences. Moreover, policies to address climate change have the potential to address long-standing societal problems, like distributional inequities.”*⁸

Climate change is most likely to further deepen already existing environmental inequities (grounded in race and class bias), as a result, it is important that both existing and new laws and policies prevent environmental inequities by ensuring environmental justice by recognizing the rights of victims of climate change and providing assistance (such as compensation, restoration, and reparation for the loss of land, livelihood and other associated injustices) to communities most seriously affected by environmental harms.⁹ The present paper is divided into two parts. The first part provides a brief overview of environmental justice and then goes on to examine climate justice by placing it within the broader environmental justice framework. The second part addresses environmental justice and its linkages to climate justice claims mainly through the lens of the Indian judiciary and its role in shaping climate change litigation in India.

PART I

Environmental Justice: What does it mean?

⁷ *Ibid*, 37-38

⁸ Alice Kaswan, ‘Environmental Justice and Domestic Climate Change Policy’ (*SSRN E-Journal*, 18 January 2008) <<https://ssrn.com/abstract=1077675>> accessed 13 April 2022

⁹ Robert D. Bullard, “Unequal Environmental Protection: Incorporating Environmental Justice in Decision Making” (Adam M. Finkel & Dominic Golding), *Worst Things First: The Debate over Risk-Based National Environmental Priorities* (1st edn., Routledge 1995) 239-240

Environmental justice is broadly concerned with highlighting the interconnectedness of the environment and social differences i.e., how for certain people and social groups the environment is a 'commodity' that is readily available to them for consumption/exploitation and therefore is a source of living the 'good life' of prosperity, health and well-being, while for others the environment is only a source of threat and risk mainly because of inequitable distribution of environmental 'goods' and environmental harms.¹⁰As noted by Bell,

*"Environmental justice is relevant to the health and survival of all-natural beings and systems, though it particularly emphasizes how assaults on nature adversely affect humans. It incorporates many different aspects but is, fundamentally, about achieving a healthy environment for all, now and in the future."*¹¹

Since its early construction in the United States in the 1980s, the understanding of environmental justice has been continuously expanding and being diversified due to its application around the world.¹²Environmental justice in the 1980s focused majorly on the relationship between race and poverty in the United States by studying how poor black communities were being intentionally chosen when it came to the positioning of polluting sites for dumping industrial wastes. These findings led to accusations of 'environmental racism' and therefore the overall growth of an environmental justice movement during the 1980s was centred heavily around the use of environmental justice as a concept for better understanding systemic racism.¹³ Whilst environmental racism is still an important issue within the United States,¹⁴ environmental justice as a concept has been applied to more diverse contexts and issues.¹⁵As noted by Walker,

"The forms of social difference that have been featured in recent environmental justice research include, for example, questions of age, the environmental rights of indigenous people, gender differences, the

¹⁰ Karen Bell, *Achieving Environmental Justice: A Cross-National Analysis* (1st edn., Bristol Policy Press 2014) 1

¹¹ *Ibid*

¹² Karen Bell (n 10) 15

¹³ Gordon Walker (n 4) 2

¹⁴ Frida Garza, 'America's dirty divide: how environmental racism leaves the vulnerable behind' (*The Guardian*, 11 February 2021) <<https://www.theguardian.com/us-news/2021/feb/11/environmental-racism-americas-dirty-divide>> accessed 13 April 2022

¹⁵ Gordon Walker (n 4)

environmental and participatory concerns of disabled people, and responsibilities to future generations. The range of environmental concerns that have featured in the environmental justice research literature is now vast - from landfills to oil extraction, lead in paint to whaling, wind farms to hog farms - and covers a wide diversity of environmental risks, and benefits and resources.”¹⁶

Bell points out that in the process of expanding the application of the concept, environmental justice has rather become a contentious term. This according to her is linked to the debate around how environmental justice should be primarily defined.¹⁷ Walker also notes that academics, activists, and policy documents have always defined environmental justice more in terms of an *objective* i.e., something that needs to be achieved given certain conditions are met.¹⁸ As a result, it can be argued that there are possibly several definitions of environmental justice out there given its wide applicability to different contexts and issues (considering how the concept is largely being seen and understood as an *objective*). Following are two definitions of environmental justice used here as examples for the purpose of shaping our understanding of the concept:

The United States Environmental Protection Agency (EPA) defines environmental justice as:

“Environmental Justice is 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...It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.”¹⁹

As per Bryant,

“Environmental justice refers to those cultural norms, values, rules, regulations, behaviours, policies, and decisions to support sustainable communities, where people can interact with confidence that their environment is safe, nurturing, and productive. Environmental justice is served when people can realize

¹⁶ Gordon Walker (n 4) 2-3

¹⁷ Karen Bell (n 10) 15

¹⁸ Gordon Walker (n 4) 8

¹⁹ ‘Environmental Justice’ (United States Environmental Protection Agency, 11 February 1968)

<<https://www.epa.gov/environmentaljustice>> accessed 14 April 2022

*their highest potential, without experiencing the 'isms'. Environmental justice is supported by decent paying and safe jobs, quality schools and recreation; decent housing and adequate health care; democratic decision making and personal empowerment; and communities free of violence, drugs, and poverty."*²⁰

The above-mentioned definitions, in general, concern themselves with justice to people and their specific understanding of justice is vis protection from environmental harms. For instance, for the United States, EPA underscoring race, colour, national origin, or income is important in defining the term 'people' when considering fair treatment and meaningful involvement whereas Bryant goes on to broaden the meaning of environmental justice to include a safe, nurturing and productive environment by placing people at its centre while referring to the varied dimensions of environmental justice.

But, regardless of how the above definitions attempt to envisage the concept of environmental justice, they do point towards the basic concepts of justice i.e., distributive,²¹ procedural²², and substantive²³ and how 'within the environmental justice movement, one simply cannot talk of one aspect of justice without it leading to another.'²⁴ In other words, the above definitions not only look at how environmental justice should be defined but also to whom it is to be applied; further, which environmental issues are relevant and how they ought to be addressed; more importantly, when looking at solutions is there also a need for a wider critique on how the earth's resources are to be fairly shared including the equitable distribution of environmental harms.²⁵

Having given an overview of the concept of environmental justice the next section briefly examines climate justice within the notion of the environmental justice framework.

CLIMATE JUSTICE: EMERGING CHALLENGES

²⁰ Bunyan Bryant, *Environmental Justice: Issues, Policies and Solutions* (1stedn, Island Press 1995) 6

²¹ Gordon Walker (n 4) 10

²² *Ibid*

²³ *Ibid*

²⁴ Karen Bell (n 10) 17; See also, David Schlosberg, *Defining Environmental Justice: Theories, Movements and Nature* (1stedn, Oxford University Press 2009) 73.

²⁵ Gordon Walker (n 4) 10

Climate change as a global emergency certainly makes a fair case for urgently framing a justice framework.²⁶ The experiences of climate change so far have revealed patterns of inequality that point towards a clear threat to the health and well-being of some of the poorest and most vulnerable people around the world.²⁷ In short, climate change necessitates that a rational approach is the need of the hour to understand how climate change affects people, groups, and communities differently because climate change has revealed that some nations are suffering more than others despite not contributing anything to what is happening in terms of climate change.²⁸ Inger Andersen, United Nations Environment Programme Executive Director also calls for justice to be an integral part of the environmental discussion. She notes that,

*“Today, nearly half of humanity is living in a danger zone. Weather extremes have exposed millions of people to acute food and water insecurity, especially in Africa, Asia, Central, and South America, on Small Islands, and in the Arctic - places that have contributed little or nothing to climate change.”*²⁹

In view of the above, the discourse on climate change within a justice framework of climate justice needs to focus on both patterns of impact and vulnerability (including who shoulders the responsibility for polluting) keeping in mind existing social differences in the world.³⁰ This discourse also needs to take into consideration how the different concepts of justice - distributive, procedural, and substantive are not only interlinked but also significantly impact climate justice, particularly while addressing the concerns of the vulnerable communities.³¹ Note that, the placing of justice at the centre of climate change discourse does present many challenges. The first and the most important challenge is to deal with the enormous risk associated with outrightly denying the threat of climate change mainly because of the debate around the collection, assessment, and reliability of data. The uncertainty resulting due to this debate undermines claims made by vulnerable communities based on patterns of inequality in

²⁶ ‘Inger Andersen: Justice is an essential part of the environmental discussion’ (*United Nations: Climate Action*) <<https://www.un.org/en/climatechange/inger-andersen-climate-justice>> accessed 23 April 2022

²⁷ *Ibid*

²⁸ Inger Andersen: Justice is an essential part of the environmental discussion (n 26)

²⁹ *Ibid*

³⁰ Henry Shue, *Climate Justice: Vulnerability and Protection* (1st edn., Oxford University Press 2014) 127-128

³¹ *Ibid*

climate change impacts, adaptation, and mitigation.³²The need, therefore, is to remain open in our understanding of the inequalities associated with climate change and at the same time in the face of uncertainty (mainly because most research in the environmental arena is predictive in nature based on different scientific models) be guided by both trust and precaution.³³

The second challenge is related to the understanding of climate change claims i.e., predominantly, climate change has always been examined at a global scale with the Global North being held responsible for greenhouse gas emissions. The need, however, is to also look within national borders while collecting evidence and constructing justice claims.³⁴ For instance, rich groups and communities in poorer countries can also be responsible for greenhouse gas emissions as those placed in the Global North. Climate justice as a concept then also must provide for holding such groups and communities in poorer countries responsible for contributing to environmental harm.³⁵The third challenge is concerned with providing a sustainable alternative to the existing status quo of economic and political power that stands to gain from the many forms of inequality and is against an attempted 'decarbonization' in the name of stopping global warming.³⁶As noted by Sayer,

*"The project of stopping global warming through regulation runs up against not only the accumulation based nature of capitalist economy and culture but the enormous social-spatial inequalities it has generated, for they in themselves present a huge barrier to the development of collective responses."*³⁷

In view of the above-mentioned challenges, climate justice processes need to protect the human rights of the most affected social groups and communities including women and children by providing space for their voices in setting mitigation targets and policies.

³² Gordon Walker (n 4) 183-184

³³ *Ibid*

³⁴ Gordon Walker (n 4) 185

³⁵ *Ibid*

³⁶ Gordon Walker (n 4) 185-186

³⁷ Andrew Sayer, 'Geography and Global Warming: Can Capitalism be Greened' (2009) 41 (3) *Area*, 351

Vulnerable groups should not be allowed to pay for the massive expenses of preparing for, coping with, and recovering from increasing climate change impacts.³⁸

The next part attempts to shed light on the discourse on climate change within the domestic justice framework, particularly, in the Indian context. For this purpose, this paper focuses on examining the role of the Indian judiciary and its contribution to the understanding of climate justice claims bearing in mind the existing debate around environmental justice globally and the challenges around climate justice (as discussed in the previous sections). This paper does not, however, outline and mention all climate change cases in India for this purpose, instead, only focuses on some illustrative ones that have contributed to an understanding of climate change in the Indian scenario.

PART II

Judiciary and Climate Litigation

The climate crisis demands an urgent need to respond to its varied challenges, particularly, societal challenges that will mostly place the poor and marginalized communities at a greater risk of experiencing the adverse effects of climate change, environmental degradation, and related displacement. In this context, as advocated by Gill and Ramachandran, there is a need to adopt a ‘transformations towards sustainability approach to create a sustainable future for everyone.’³⁹Note that, the 2021 United Nations Environment Programme (UNEP) report also echoes the necessity to move towards a system-wide transformation to meet the challenges of climate change. The UNEP report states the need to bring an ‘overall transformation in the technological, economic and social organization of society.’⁴⁰The sustainable development goals (SDGs) as envisaged under the UN 2030 Agenda for Sustainable Development also envision bringing forth ‘transformative steps to balance the three dimensions of sustainable

³⁸ J. Timmons Roberts, ‘The International Dimension of Climate Justice and The Need for International Adaptation Funding’ (2009)2 (4) Environmental Justice, 185, 185

³⁹ Jessica Blythe et al., ‘The Dark Side of Transformation: Latent Risks in Contemporary Sustainability Discourse’ (2018) 50(5) Antipode, 1206

⁴⁰ Gitanjali N. Gill & Gopichandran Ramachandran, ‘Sustainability transformations, environmental rule of law and the Indian judiciary: Connecting the dots through climate change litigation’ (2021) 23 (3) Environmental Law Review, 229

development i.e., economic, social and environmental dimensions.⁴¹ But then what are ‘transformations towards sustainability or ‘sustainability transformations’ which are believed to be so crucial for bringing about a step-change in our day to day lives to not only achieve social inclusion but also help in negating the harmful effects of the climate crisis? Gill and Ramachandran answer this question by referring to research that presents seeking transformation as a solution to environmental problems. They rely on the definition given by Patterson and others, to not only understand the meaning of ‘transformations towards sustainability but also link the same with governance and how multiple actors working at various levels and institutions including the judiciary can help bring transformation in the climate change discourse to achieve an equitable future.⁴² According to Patterson and others, ‘transformations towards sustainability’ is defined as

“Fundamental changes in structural, functional, relational, and cognitive aspects of systems that lead to new patterns of interactions and outcomes...It places an explicit focus on the processes of change in human society involved in moving towards more sustainable and equitable futures, which can be approached in both a normative way (e.g. as a good/desirable thing to do) as well as an analytical way (e.g. what actually “happens”, and how and why).”⁴³

The judiciary as an institution is seen by Gill and Ramachandran as playing a significant role in steering the transformative process and working towards achieving ‘transformations towards sustainability.⁴⁴ Note that, the SDGs also identify the judiciary as a crucial partner in achieving sustainability.⁴⁵ The UNEP report also recognizes the judiciary as an institution that can help in achieving sustainable development more importantly by integrating the rule of law in environmental matters.⁴⁶The role of the judiciary in effecting transformational change to

⁴¹ ‘Transforming our world: The 2030 Agenda for Sustainable Development’ (UN General Assembly, 21 October 2015) <<https://www.refworld.org/docid/57b6e3e44.html>> accessed 23 April 2022

⁴² Gitanjali N. Gill & Gopichandran Ramachandran (n 40) 230

⁴³ James Patterson et al., ‘Exploring the governance and politics of transformations towards sustainability’ (2017) 24 Environmental Innovation and Societal Transitions, 2

⁴⁴ Gitanjali N. Gill & Gopichandran Ramachandran (n 40) 230

⁴⁵ *Ibid*

⁴⁶ ‘Environmental Rule of Law: First Global Report’ (UNEP, 2019)

<<https://wedocs.unep.org/20.500.11822/27279>> accessed 23 April 2022; See also, ‘Making Peace with Nature: A

meet the challenges of the climate crisis is also evident from recent global trends in climate change mitigation. For instance, in *The State of the Netherlands v Stichting Urgenda*,⁴⁷ the Supreme Court of Netherlands held that State parties (including the Netherlands) to the European Convention on the Protection of Human Rights (ECHR) are obligated to reduce greenhouse gas emissions from their territory in proportion to their share of the responsibility since the risk of dangerous climate change is global in nature and the consequences of those emissions are also experienced around the world. Further, the obligation to take suitable measures is based on Articles 2 and 8 of the ECHR which deal with protecting the right to life and protecting the right to respect for private and family life respectively.⁴⁸ Coming to the importance of judicial participation or judicial response within the climate governance framework, Justice Benjamin notes that there are four reasons why the involvement of the judiciary is crucial for facilitating transformational outcomes.⁴⁹ Firstly, it is the legitimacy of the courts for which there are no other substitutes.⁵⁰ Secondly, the advancement of legal systems cannot turn a blind eye toward climate change and how that affects environmental jurisprudence because doing so would prevent the proper evolution of legal systems.⁵¹ Thirdly, courts acting as spaces for effecting meaningful interventions required to mitigate the challenges of climate change would also complement their role as an institution for facilitating social transformation.⁵² And, fourthly, climate change adds a layer of complexity to, or exacerbates, existing environmental challenges, such as dangerously high levels of air pollution in cities, deforestation, and rapid biodiversity loss, as a result, climate change litigation cannot be overlooked.⁵³ Along similar lines, Chief Justice Brian J. Preston also makes an argument for how the judiciary as an independent functionary can contribute to addressing

Scientific Blueprint to Tackle Climate, Biodiversity and Pollution Emergencies' (UNEP, 18 February 2021) <<https://www.unep.org/resources/making-peace-nature>> accessed 23April 2022

⁴⁷ *The State of the Netherlands v Stichting Urgenda* (2015) ECLI:NL:HR:2019:2007

⁴⁸ Eeshan Chaturvedi, 'Climate Change Litigation: Indian Perspective' (2021) 22 (8) German Law Journal, 1460

⁴⁹ 'Climate Change, Coming Soon to a Court Near You: Climate Litigation in Asia and the Pacific and Beyond' (ADB, 2020) <<https://www.adb.org/publications/climate-litigation-asia-pacific>> accessed 23April 2022

⁵⁰ *Ibid*

⁵¹ *Ibid*

⁵² *Ibid*

⁵³ *Ibid*

climate change within the governance framework.⁵⁴ According to him, the judiciary can contribute by

“Providing equal access to justice; determining and not deferring climate change claims; upholding the rule of law; taking and forcing the executive, legislature, and private sector to take climate change seriously; explaining and upholding the fundamental values underpinning the law; promoting environmental values and putting a price on them; assisting the progressive and principled development of climate change law and policy; and making reasoned and evidence-based decisions.”⁵⁵

Therefore, in view of the above, it can be argued that the judiciary has a vital role to play in building a judicial consensus around climate justice and thereby addressing the global challenges of climate change through the promotion of the basic concepts of environmental justice. The next section explores the role played by the Indian judiciary through the help of some illustrative cases in shaping the principles of environmental law from a transformative perspective.

Climate Governance, Climate Change Litigation, and Indian Judiciary

India lacks comprehensive climate legislation, however, there are several environmental acts to combat the effects of climate change.⁵⁶ In relation to protecting the environment, the proactive efforts of the Indian judiciary that have often acted as a ‘lever of transformation’ has been recognized globally.⁵⁷ However, it has been seen that in most climate change litigation in India, climate concerns that affect human well-being often take a backseat while these litigations usually get limited to enforcement of existing environmental laws.⁵⁸ Note that, the discussion on climate change mitigation and the role of the judiciary (in its understanding of environmental concerns and identifying pathways to achieve sustainability transformations)

⁵⁴ Brian J. Preston, ‘The Contribution of the Courts in Tackling Climate Change’ (2016) 28 (1) *Journal of Environmental Law*, 12

⁵⁵ *Ibid*

⁵⁶ Preethi Lolaksha Nagaveni & Amit Anand, ‘Climate Change and its Impact on India: A Comment’ (2017) 4 *National Law University Odisha Law Journal*, 87

⁵⁷ Making Peace with Nature: A Scientific Blueprint to Tackle Climate, Biodiversity and Pollution Emergencies (n 46

⁵⁸ S. Ghosh, ‘Climate Litigation in India’ (F. Sindico & M. M. Mbengue), *Comparative Climate Change Litigation: Beyond the Usual Suspects* (1st edn, Springer 2021) 347

within the broader climate governance framework needs to take into account the realities and aspirations of India's developing economy. This, in turn, will help us to understand why India has not been able to make radical changes to its environmental policy so as to adequately enforce its Paris Agreement commitments. Given this backdrop, we now look at some of the judicial contributions toward achieving sustainability transformations in the Indian context. The Supreme Court of India, in *Intellectuals Forum, Tirupathi v State of A.P. & Others*, while referring to the importance of sustainable development, and rights of the future generations, held that:

*"The world has reached a level of growth in the 21st century as never before envisaged. While the crisis of economic growth is still on, the key question which often arises and the courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development can be achieved only by way of protecting the environment and conserving the natural resources for the benefit of humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The growth and development process are terms without any content, without an inkling as to the substance of their end results. This inevitably leads us to the conception of growth and development, which sustains from one generation to the next in order to secure our common future. In pursuit of development, the focus has to be on sustainability of development, and policies towards that end have to be earnestly formulated and sincerely observed."*⁵⁹

Note that, to expand the environmental jurisdiction, the National Green Tribunal (NGT) was set up in India in 2010 as an alternative to the general judicial system 'for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources.'⁶⁰ Despite its many structural challenges (such as limited jurisdiction), the NGT has helped India move towards achieving a holistic approach to achieving sustainability through its decisions which have often even borrowed international environmental law concepts and principles.⁶¹ For instance, in its decision in *Society for*

⁵⁹ *Intellectuals Forum, Tirupathi v State of A.P. & Others* (2006) Appeal (Civil) No. 1251/2006

⁶⁰ Eeshan Chaturvedi (n 48) 1464

⁶¹ *Ibid*

*Protection of Environment & Biodiversity v Union of India*⁶², the NGT stayed a notification issued by the Ministry for Environment, Forests and Climate Change, Government of India which violated the provisions of the Environmental Impact Assessment Notification, 2006 and even that of Environment (Protection) Act, 1986, and if allowed would have led to the destruction of the environment due to unregulated construction activities. The NGT in its decision also stated the following:

“Some other provisions of the same Notification ex facie suffer from legal infirmities and are incapable of being implemented in accordance with the scheme of a federal structure under the Constitution of India. Out of them, some provisions are directly opposed to the Principle of Non-regression as they considerably dilute the existing environmental laws and standards to the prejudice of the environment.”

Similarly, *In Court on its own motion v State of Himachal Pradesh*,⁶³ the NGT,

*“Contextualized the illegal felling of trees and its adverse contribution to deforestation including the destruction of carbon sinks, animal habitats, and medicinal plants; global warming; and soil erosion. By highlighting the severity of climate change impact, the tribunal engaged with deep and complex inter-dependent sustainability domains.”*⁶⁴

In *Hanuman Laxman Aroskar v School of Legal Studies, REVA University, Bengaluru, India Union of India*,⁶⁵ the Supreme Court of India demonstrated its sustainability vision by reflecting on the environmental rule of law, particularly, by highlighting the need to adopt low-carbon initiatives to reduce greenhouse gas emissions. The court,

*“Directed the regulatory authorities to explore best practices for climate change and energy conservation in the construction of green-field airports. These could include green infrastructure development programmes, the adoption of less emission-intensive technologies, renewable energy programmes, electrical vehicles, airport carbon accreditation, and the installation of LED lights.”*⁶⁶

⁶² *Society for Protection of Environment & Biodiversity v Union of India* (2020) Writ Petition (Civil) No. 631/2020

⁶³ *Court on its own motion v State of Himachal Pradesh* (2018) Civil Writ Petition No. 15/2010

⁶⁴ Gitanjali N. Gill & Gopichandran Ramachandran (n 40) 242

⁶⁵ *Hanuman Laxman Aroskar v Union of India* (2020) Civil Appeal No. 12251/2018

⁶⁶ Gitanjali N. Gill & Gopichandran Ramachandran (n 40) 245

The above-mentioned judicial responses aim to provide both systemic and long-term guidance to identify and mitigate challenges presented by the climate crisis. The judicial responses more importantly act as a bridge between 'climate change' and 'climate justice claims' to develop a forward-looking approach towards realizing sustainability and SDGs bearing in mind the impact of climate change. As noted earlier, despite India's complex social-legal and evolving economic setup, the small transformational steps taken by the judiciary in the promotion and protection of the environmental rule of law go a long way in not only changing behaviour onto a course towards achieving sustainability but also helps India fulfill its global environmental commitments.

CONCLUSION

Considering the potentially irreparable damages resulting from the climate change crisis it is becoming increasingly essential that we develop/strengthen existing mechanisms to seek transformation in our lifestyles, particularly in our consumption of earth's resources. One way of achieving this goal is by ensuring the implementation and enforcement of environmental protection laws both domestically and globally. In this view, this paper has focussed on the discourse on climate change mitigation through the linkages between environmental justice and climate justice claims. The discourse on climate change litigation in this paper has been addressed especially through the help of judicial decisions in India and how the Indian judicial system has slowly begun to address the climate change crisis through its expansive thinking by emphasizing strengthening legal processes and creating accountability to achieve sustainable outcomes. The Indian judiciary through its decisions has not only created awareness about climate change but also ignited a debate around developing effective, accountable, and transparent systems that can deal with climate threats in line with sustainability and SDGs. Further, the judicial decisions are reflective of a progressive approach adopted by the Indian judicial system to start looking at climate change litigation in a more serious manner similar to the courts in the Global North in order to actively contribute to the development of the jurisprudence of climate change governance.