



Intergenerational equity: A socio-legal framework for climate change

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Abstract

Climate change is an issue of universal concern. Undoubtedly, human being is responsible to bring this disastrous changes to the environment. International and National efforts are warranted to check this disastrous effect way back in 1972. Yet till date desirous changes has not been seen in environmental upgradation. Therefore the author intends to critically analyze that who is responsible to protect the environment? The attempt of this article is to analyze that, how human actions that directly or indirectly degrade the environment in the present will affect future generations of humans and other living creatures. Government as a trustee of the natural resources should take rational and stringent steps for the protection of these for future generation. However, there is total callous attitude by the executive as well as legislature, as they are more interested in keeping this generation happy for their own personal gains. There are ample of examples which clearly gives us an idea about total failure on the part of government machinery to control pollution and protect the environment. In this context, this article seeks to focus on the individual duty to do the social justice to the future generations. The authors attempt is to bring the attention of every human being to the significance of the principle of intergenerational equity.

Keywords: climate change, environment protection, intergenerational equity, social justice

Introduction

“In 1972, 113 nations of the world gathered in Stockholm, Sweden. They were concerned. The much-vaunted goal of economic growth had brought prosperity and high standards of living. But it had also brought unwanted spillover effects. The land, air and waters of the world were being polluted to a dangerous level. The natural resources were being exploited unsustainably. The world’s biological diversity was being diminished. Species were being culled at an exponential rate. It was time for a rethink.”

-Justice Brian J. Preston

This was concern way back in 1972. Number of International and National efforts were warranted thereafter. Despite of that, in 2018 we are witnessing the momentous changes into the environment. Climate change is an issue of universal concern. This is no doubt a great testing period for the human species on this small planet. Who is responsible for this? Nobody will differ in the opinion. This is human being, who is responsible to bring disastrous changes into the environment. Undoubtedly “man is both creator and moulder of his environment, which gives him physical substance and affords him the opportunity for intellectual, moral, social and spiritual growth”. History shows that - as one of nature’s finest creations- man has proved itself and sustained and developed by full utilization of resources of the Earth. But as Gandhi underscored “Earth provides enough to satisfy every ones need but not anybody’s greed”. In fact defining and respecting the threshold of need is the principal source of humankind’s dilemma. Because of the long and tortuous evolution of human race on this planet a man has transformed this environment at unprecedented scale. In the words of Dasmann, “Human race is likely on ape with hand granite. Nobody can say when he will pull the pin”. In fact the man has caused irreversible harm to the environment, on which his own life and wellbeing is dependent. Nature has reciprocated to the action of human

being. That compels human being to take measures for the restoration of natural balance of environment. The man, then united, took array of measures to prevent the frightening prospect of ecocide.

The efforts have warranted international environmental cooperation cutting across nation states. A set of principles and rules of international law have evolved in the process to provide a series for international environmental regulatory efforts. Accordingly national rules and regulations have been formulated to take efforts at national level. India is no exception to it. We have number of environmental legislations and policies to deal with the environmental problem. But will this be sufficient without co-operation from the basic root, i.e. individual human efforts? The attempt of this article is to analyze that, how human actions that directly or indirectly degrade the environment in the present will affect future generations of humans and other living creatures. In this context, it seeks to focus on the individual duty to do the social justice to the future generations.

Major Causes for Environmental Pollution

Man is the only rational animal on the earth. He is bound to think about his development. Development of the individual visa-vie state is impossible without Industrial development. Rather Industrial development is a part and parcel of state development. But at the same time we can not ignore the fact that industry is the main source of environmental pollution. According to central pollution control Board (CPCB) official’s industrial effluents and wastes etc discharged into water is the biggest source of water pollution in India. As such 90% industrial wastes that reach the sea- a staggering 32,000 million metric tons is carried there by rivers and other inland water bottles. Heavy industrial sewage is expelled from the various industries such as jute mills, large distilleries textile mills, tanneries,

formidable pumps, paper mills having variable characteristics. Obviously this polluted water creates lot of health problem and also spoils the land. The soil pollution is an inevitable consequence of the water pollution. Besides water pollution air pollution resulting from industrial development is a major environmental concern today.

Some other sources also contribute greatly to the environmental pollution. There is a soil or land pollution because of unintended or incidental contamination of the soil with man made chemicals like pesticides garbage or polythene bags thrown in the water and soil. For instance River Yamuna, the main source of drinking water supply in Delhi is the free dumping place for untreated sewerage and industrial water. Likewise change in standard of living is also a major contributory factor for it, for instance, excessive use of motor vehicles, generators, gensets, and Air conditioners etc. Regular flow of persons from rural to urban area and deforestation also has made major contribution towards environmental degradation.

Absence of Working Plan by the Government

For the present scenario, one cannot deny the callous attitude shown by the authorities responsible for the pollution control in India. There are ample of examples which clearly gives us an idea about total failure in the part of government machinery to control pollution and protect the environment. Recent example is Adani Coal Plant at Tadoba, Chandrapur, which has been cancelled after the mass agitation. Thankfully the Indian judiciary rightly pointed out the lack of proper planning by the government and corrected the errors made by Govt., wherever required. Classic example of absence of a working plan by the Govt. despite of clear cut judicial order is the forest of Andaman and Nicobar Island, which is one of the global bio diversity hotspot. Calcutta High Court in Andaman & Nicobar islands forest plantation and development corporation and others V. Sushil Dhali, regarding the lease agreement between the F. D. and the A N E P D C, observed, "...we are at a loss to understand how under the law of contract or under any other law for the time being in force the Government could grant lease in 1987 with retrospective effect from 1977. The grant of lease with retrospective effect by the state authorities in favour of a corporation is not permissible under the law..." In spite of this observation of the court, the lease has continued to be operation till 2002. Means, in spite of clear order by the H. C. timber extraction in little Andaman, was continued for long time. In the meanwhile, there was one more judgment of the S. C. which said that, "the felling of trees is to remain suspended in accordance with the working plans of the state governments as approved by the central Government. Making the mockery of the law and the rights of the Onges (The Onges are a community of around a hundred individuals and the thickly forested Island of little Andaman is their only home. Ethno botanical knowledge of the Onge tribal community is staggering), there was a drastic decline of rare creatures like the monitor lizard, the dugong and the endemic Andaman wild pig".

Again the matter of violation of the tribal reserve in little Andaman and rights of the Onges tribal community were brought to notice of Calcutta High Court in 1999. The court directed the matter to the Supreme Court, as the related matter was pending before the Supreme Court.

Following the order of the High Court the petitioner

approached to the Supreme Court in 1999 via an interlocutory application (IA) 502 in the Writ Petition (Civil) No. 202.T. N. Gondavarnman Thirumulukpad V. Union of India and others. The court observed "In the mean time the cutting of naturally grown trees in any going projects or otherwise, except plantation wood, is prohibited". Then further directed that, "no sawmill plywood or veneer factory shall utilize any naturally grown trees without further order from this court." The court also appointed an expert commission to look after the state action.

Thus despite of various regulations for the protection of Andaman and Nikobar island judicial intervention was required for its protection because of lack of proper working plan to safe guard the natural gift from the god.

Another significant example could be poor Taj Mahal. Although Taj Mahal has always been one of the most talked about wonder of the world it has become the target of state irresponsibility's again and again. Taj Heritage Corridor project is the latest attempt to put in peril Shaha Jahan's dream as a "scam involving corrupt politicians and bureaucrats". Had the so called "Heritage corridor" come up, it would have also affected the ecology".

It is no doubt that, rapid industrial development, excessive use of transport vehicles, technical & scientific advancement, urbanization and deforestation, lack of proper town planning and layouts, modernization in standard of living have made major contribution towards environmental degradation but at the same time authorities entrusted with the work of pollution control can not be permitted to sit back with folded hands on one or the other pretext.

Pay Back Policy of the Environment

From the causes of the environmental pollution one could easily understand the irony of the situation that," more the economic development in the word, the more is danger to environment". Development no doubt is essential for human wellbeing but can it be at the cost of life of human being? The problem which present generation is suffering shall not be ignored at the sake of development. According to 1996 World Health Report 50000 people are dying every day from infectious diseases. In last 20 years at least 30 new infectious diseases have emerged, which are threatening the health of hundreds of million people. Many of these diseases have no treatment, cure or vaccine. We are standing on the bank of diseases. Apart from infectious diseases, there is a great threat of cholera, Malaria, tuberculosis, respiratory diseases.

Apart from the threat of spread of life killing diseases, the havoc created by nature through instances of natural calamities is also a warning to the human being that, no more interference with nature will be entertained! "Despite of all its intelligence and scientific power, humankind still remains primitive as far as its understanding of the earth is concerned".

What is Individual Role?

Today human society is facing a new risk and pressures in terms of polluted land, water and air. Human health is deteriorating because of direct or indirect effect from polluted environment. The poor and children are the most vulnerable section to the negative effect of climate change. This is result of ignorance on the individual part that, this is the earth which enabled life to come into existence. We do

require healthy environment for individual moral, spiritual, physical & intellectual development. But we have acted just like a shaikhchilli and cut the branch of tree on which we are sitting. At least now we must wake up and try to understand our own duty towards environment. No doubt it is apparent that environmental problems cannot be resolved individually. Rather even individual states are not in a position to cope up with the problem without international co-operation. Undoubtedly there is note worthy contribution at international level through different international bodies. At international as well as national level there are plethora of legislations policies and programs, which have focus into environmental protection. Whenever there is lack of proper outlook by the Government, Indian Judiciary has played commendable role and has always proved its efficacy for the protection of ecological balance. In addition to this wide range of non-governmental organization are also concerned with environmental issue. Despite of all over efforts from all angles, where are we lacking? It is in designing the program or implementation of it? One may rightly think of it and very easily shift the responsibility on the shoulders of state but have we ever thought of our own responsibility? Have we ever asked a question to ourselves, what is my duty for the protection of environment on which my life and well being is depending? Very comfortably we have forgotten the fact of human evolution. We have started our journey from the very concept of nature only. That must be the reason why our scripture teaches us to respect nature.

In Hindu Philosophy, it is believed that the human body is composed of five elements (pancha tatva) vise, air, water, sky, earth and fire. In this way nature creates a body. Nature possesses an inherent quality of curing pollution by itself. "The protection and clearing up of environment was the essence of Vedic culture. In Hindu theology forests, trees and wildlife protection held a place of special reverence. These were worshipped as rituals". Vishnudharmasutra says that if you plant a tree it will be your son in the next generation. The plantation of trees were treated in Hindu culture not only a sacred ceremony or a religious activity but regular protection and patronage was also prescribed. Cutting green trees was prohibited and punishment was prescribed for such acts.

16-A of the Constitution of India also imposes an obligation on the individuals to protect and improve the natural environment (Art. 51 A [g]). There are several international conventions which also imposes a duty on individuals. Like under Stockholm Declaration – amongst other one principle says that "man bears a solemn responsibility to protect and improve the environment for present and future generation". India being the signatory to this have the same law, Sec. 4 of the Environmental Protection Act, 1986, imposes a duty on every person to take step to prevent or mitigate the environment pollution. Sec. 15 of the said Act contains provisions relating to the penalties that may be imposed for the contravention of any of the provisions of the said Act and directions issued there under.

If we would have realized duties of ours and would have acted through fuller knowledge and visor action, we would have achieved real prosperity & a better life.

Intergenerational Equity

The most widely accepted definition of 'intergenerational equity' is the one espoused by the World Commission on Environmental and Development in 1987, which held that

"policy makers should seek to meet their own needs without compromising the ability of future generations to meet their own needs". The concept of intergenerational equity has the following three aspects, as enumerated by Professor Edith Brown Weiss in her seminal paper 'Intergenerational equity: a legal framework for global environmental change' published in 1992 and reinforced by Justice Brian J. Preston in his paper 'The Role of the Judiciary in Promoting Sustainable Development: The Experience of Asia and the Pacific':

1. Each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should also be entitled to diversity comparable to that enjoyed by previous generations. This principle is called "conservation of options".
2. Each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations. This is the principle of "conservation of quality."
3. Each generation should provide its members with equitable rights of access to the legacy of past generations and should conserve this access for future generations. This is the principle of "conservation of access."

The essence of the concept is summarized by Edith Brown Weiss in the following terms:

"The proposed theory of intergenerational equity postulates that all countries have an intergenerational obligation to future generations as a class, regardless of nationality... There is increasing recognition that while we may be able to maximise the welfare of a few immediate successors, we will be able to do so only at the expense of our more remote descendants who will inherit a despoiled nature and environment. Our planet is finite, and we are becoming increasingly interdependent in using it. Our rapid technological growth ensures that this dependence will increase. Thus our concern for our own country must, as we extend our concerns into longer time horizons and broader geographical scales, focus on protecting the planetary quality of our natural and cultural environment. This means that, even to protect our own future nationals, we must cooperate in the conservation of natural and cultural resources for all future generations".

The concepts of intergenerational and intragenerational equity are an integral element of ecologically sustainable development, and have been incorporated into international law as such. The 1975 Charter of Economic Rights and Duties of States declared that:

"The protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all States. All States shall endeavour to establish their own environmental and developmental policies in conformity with such responsibility. The environmental policies of all States shall enhance and not adversely affect the present and future development potential of developing countries"^[1].

Similarly, the concepts of intergenerational and intragenerational equity are enshrined in Principle 3 of the

1992 Rio Declaration which provides that: “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”.

Can Intergenerational Equity be the Answer?

Life is precious, it has to be preserve. Life definitely does not mean mere animal existence. To lead a meaningful & dignified life clean environment is required. This is possible only if holistic approach towards environment is adopted at the world level through individual efforts, because primarily it is the individual who pollute the environment most.

The concept of intergenerational equity and responsibility may be the probable answer to get clean environment. As discussed earlier world level effort are been required to achieve environmental protection. But this will really be fructified, if human being individually decides to contribute some thing for this. The concept of intergeneration equity talks on the same line. This is the responsibility of present generation to think about the well being of future generation. Indeed intergenerational equity is a value concept which focuses on the right of future generations. It is a notion i.e. implicit in ecological sustainability. It emphasizes the need for thinking about how human actions that directly or indirectly degrade the environment in the present will affect future generations of human and other life creatures. Intergenerational equity is a notion that views the human community, a partnership among all generations. Each generation has the right to access to the same diversity in natural and cultural resources enjoyed by previous generations and to equitable access to the use and benefit of these resources. At the same time the present generation is a custodian of planate for future generation, obliged to conserve this legacy so that future generations may also enjoy these same rights. In this way Intergenerational equity extends the scope of social justice in to the future. Intergenerational equity refers to relationship that a particular family has on resources. As every individual member inclusive of future member has right over the family property, each member from future generation has right over the natural and clean environment. Therefore individual has to think on the same line and shall make positive efforts to protect the environment. We may better realize this if be imagine the situation from individual point of view. We must think about our own child, what am I going to give to my child? Is it money with no body to enjoy that? What will he inherit from me? Is it diseases and unpredictable climate? Obviously, nobody wish to handover this kind of situation to ones child. Therefore more than international and national policies what we need is change in the attitude of human being. Change mind set to do some thing for the future generation (my own child) will definitely achieve required social justice.

Intergenerational equity is not only a social concept but has been greatly appreciated by legal fraternity. This concept is being applied by courts to settle disputes involving questions relating to environmental pollution and development. The Supreme Court in *K.M. Chinnappa V. Union of India* very aptly described the importance of the principle of intergenerational equity and held that “sustainable development is essential policy and strategy for continued economic and social development without detriment to the environment and natural resources on the quality of which continued activity and further development

depend. Therefore, while thinking of the development natures the need of the present and the ability of the future to meet its own needs and the requirement have to be kept in view. While thinking of the present, the future should not be forgotten. We owe a duty to future generation and for a bright today, bleak tomorrow can not be countenanced. We must learn from our experiences, mistakes from the past, so that they can be rectified for a better present and the future. It can not be lost sight of that while today is yesterdays tomorrow, it is tomorrow’s yesterday”.

Role of the Judiciary

The Executive Director of the United Nations Environment Programme (UNEP), stated in his message to the UNEP Global Judges Programme:

“Success in tackling environmental degradation relies on the full participation of everyone in society. It is essential, therefore, to forge a global partnership among all relevant stakeholders for the protection of the environment based on the affirmation of the human values set out in the United Nations Millennium Declaration: freedom, equality, solidarity, tolerance, respect for nature and shared responsibility. The judiciary plays a key role in weaving these values into the fabric of our societies.

The judiciary is also a crucial partner in promoting environmental governance, upholding the rule of law and in ensuring a fair balance between environmental, social and developmental consideration through its judgements and declarations”.

Befitting to the responsibility, in number of judicial decisions the judiciary played a very pivotal role in promoting the intergenerational equity.

In *State of Himachal Pradesh v Ganesh Wood Products*, a writ petition was filed seeking issuance of a writ restraining the government of the State of Himachal Pradesh from permitting the establishment of any factory units for the manufacture of Katha in the State. Katha is derived from the Khair tree which are found in considerable numbers in the State. Only the central portion of the trunk of the Khair tree is used for the manufacture of Katha. Hence, the manufacture of Katha requires the cutting of the Khair trees. The Supreme Court of India (B.P Jeevan Reddy J and M.K. Mukherjee J) in a Judgement delivered by BP Jeevan Reddy J upheld the appeal and stated that:

“The considerations of environment and ecology and preservation of forest wealth are absolutely relevant considerations which the Government must keep in mind while devising its policies and programmes”.

The Supreme Court then emphasised the significance of the concepts of sustainable development and intergenerational equity. As to the latter, the Supreme Court said:

“Intergenerational equity means the concern for the generations to come. The present generation has no right to impede the safety and well being of the next generation or the generation sot come thereafter”.

In *Rural Litigation and Entitlement Kendra v State of Uttar Pradesh*, the petitioners were rural villagers concerned about the unauthorized and illegal mining of limestone in the Mussorie-Dehradun belt in the State of Uttar Pradesh which adversely affected the ecology of the area and led to environmental disorder. The mining also adversely affect the villagers.

The Supreme Court described the environmental consequences caused by the excessive exploitation and

clearing of the forests and considered the mines that were operating in reserved forests: The Supreme Court held that: "To these areas the Forest Conservation Act applies and to the allow mining in these areas even under strictest control as a permanent feature would not only be violative of the provision of Forest (Conservation) Act but would be detrimental to restoration of the forest growth in a natural way in this area. Once the importance of forests is realised and as a matter of national policy and in the interests of the community, preservation of forests is accepted as the goal, nothing which would detract from that end should be permitted. In such circumstances we reiterate our conclusion that mining in this area has to be totally stopped".

The Supreme Court's decision, therefore, addressed both intergenerational equity and intragenerational equity for the affected villagers in the valley.

In *M.C. Mehta v. Union of India*, The Supreme Court stayed all mining operations in the entire Aravalli Hill range within the State of Haryana in which mining operations were being carried out by upholding the principle of intergenerational equity. The Supreme Court held that: "Environment and ecology are national assets. They are subject to inter-generational equity...."

In *T.N. Godavarman Thirumulpad v. Union of India*, The Supreme Court, while considering Measures to be taken to compensate for loss of forest land and effect on ecology when forest land is used for non-forest purposes including payment of Net Present Value based on Total Economic Value, held that:

"The damage to environment is a damage to the country's assets as a whole. Ecology knows no boundaries. It can have impact on the climate. The principles and parameters for valuation of the damage have to be evolved also keeping in view the likely impact of activities on future generation."

Recently in Goa Mining Case, The Hon'ble SC of India once again compelled everyone to think about the significance of principle of intergenerational equity. In this case the SC was determined to implement intergenerational equity and formed an Expert Committee to examine the issue. In this case, Goa Foundation, the petitioner in the Goa mining case, raised the issue of Intergenerational Equity in its petition. In the course of the hearings, Adv. Prashant Bhushan, representing Goa Foundation submitted a detailed note on the legal aspects of intergenerational equity.

This judgement of the SC on 21st April, 2014 had a number of significant elements, amongst other, the Hon'ble SC held that all minings after 22 Nov. 2007 was illegal and finally stopped mining on 11 Sep. 2012. And the Goa Iron Ore Permanent Fund was established on grounds of intergenerational equity and sustainable development.

There are few different aspects that need to be assessed as to what happened aftermath this judgment, however, that is not a subject matter of present study. However, the important point which author intend to appreciate is the judicial activism or interference is always required to protect the environment as government i.e. executive as well as legislature are only concerned with the present generation and we individual also do not find enough time till today to rethink about our actions.

Conclusion

The frequent disastrous attack by the nature on human communities through different ways are indeed lessons for the human being. This is high time that we must learn a

lesson that is to respect nature and to think in terms of living in harmony with the environment that surrounds us. Our mother earth is teaching us a lesson in universal responsibility. But are we ready to take the responsibility? We always wish to shift this responsibility on the shoulders of others, some time on nation and some time on international bodies. What these international and national bodies will do without the co-operation of common individual. Perhaps it is individual initiative which will definitely help to bring ecological balance. Individually, one need to think what little bit contribution he / she might make for the protection of environment.

We must act as a prudent human being and shape our action for the protection of our own mother. We must reciprocate to the love and care shown to us by this mother. Let take a pledge of not changing the word but to change our own mindset for small but meaning contribution for the protection of environment. So that I can allow my own child. my next generation to take a breath in healthy environment. This changed attitude of each individual on the earth will definitely make a big difference and this nature again bestowed the love and happiness on us for our peaceful and meaningful co-existence which in turn will definitely lead to the development.

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