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Climate Change and Environmental Justice: Contemporary Legal Challenges

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Abstract

Climate change and environmental justice create complex legal issues which current legal systems are not sufficiently tackling. This paper explores the interaction between the current legal frameworks for climate action and the procedural and substantive aspects of environmental justice, and finds that there are many structural gaps in the protection of marginalised groups who are most affected by climate change. The research identifies key gaps in environmental protection mechanisms based on Indian constitutional jurisprudence, international legal instruments like the Paris Agreement and comparative judicial precedents, and examines how distributive, procedural and recognition justice dimension's function or do not function in the existing legal regimes. The jurisprudence in the Indian courts is very strong and places environmental protection as a fundamental right under Article 21, but statutory implementation is scattered in various regulatory fields with no framework for integrated climate governance. International legal architecture is based on principle rather than enforcement, and gives a lot of leeway to the nation-states and not much to the marginalised communities in decision-making processes. The authors conclude that the challenge of environmental justice requires stepping beyond technocratic management to justice-oriented legal frameworks that involve intergenerational accountability mechanisms, recognition of indigenous knowledge systems and employment protection with the climate transition. These specific recommendations include comprehensive Climate Act legislation, strengthening of participatory mechanisms using Free Prior and Informed Consent procedures, development of sector transition frameworks protecting affected workers, and intergenerational impact assessment. The study concludes that, although law is essential in safeguarding environmental rights, there is need to give a greater weight to the environmental and social justice needs as opposed to the short-term economic interests.

Keywords: Environmental Justice, Climate Law and Policy, Constitutional Environmental Rights, Intergenerational Equity, Participatory Environmental Governance.

1. Introduction

Climate change is what many have called the defining challenge of our time. However, while the legal ramifications especially with respect to designing equitable legal systems that address disparate impacts on disadvantaged populations by economic

status is maturing, it is still an underdeveloped and fragmented landscape across numerous jurisdictions and regulatory areas.¹ You cannot consider climate change without considering environmental justice as a central part of the conversation; Climate change addresses the very fundamental questions about equity, representation and inter-generational responsibility. The problem manifests concretely. The ones most heavily impacted by climate marginalised agricultural communities, coastal populations facing submersion, workers in carbon-intensive sectors of the economy have little to no say in policy. This tension is particularly pronounced in India.² While constitutional jurisprudence has significantly transformed the landscape of Indian law and established environmental protection as a justiciable fundamental right,³ enforcement of such rights remains deeply insufficient in confrontational structures that climate change worsens.⁴ This paper proceeds in four movements. This comparative analysis starts by mapping the conceptual relation of environmental justice with climate law. It examines established areas of law at the constitutional, statutory and international legal levels. Third, it examines judicial responses and highlights their limitations. It subsequently proposes specific legal innovations to respond to the challenges of our time.

2. Conceptual Framework: Environmental Justice and Climate Jurisprudence

Environmental justice epistemology was developed as a separate analytical frame in the early 1980s, and it played a central role in questioning the idea that environmental protection is an unqualified or uniformly good thing across all communities.⁵ The most profound insight from the movement, that environmental harms are disproportionately borne by already-vulnerable communities and benefits accrued to privileged groups disproportionate; revolutionized regulation conceptualization for environmental advocates.

Climate change accelerates this dynamic. Climate change occurs in many forms including rising temperatures, extreme weather events, and ecological disruption and is disproportionately burdensome on communities who lack the adaptive capacity to cope. Peasant farmers in Maharashtra battling fluctuating patterns of monsoon; fishing communities in Kerala coping up with advancement of salinity and land loss; workers engaged in thermal power plants grappling with pressures from transition; slum resident bears the brunt of heightened urban heat island effect, this is climate impact at scale but the magnitude is inversely proportionate to their share of causation.⁶ Legal systems face this dual but interlocking challenge in a variety of ways. *Distributive* justice concerns Whether and how climate impacts and adaptation burdens are distributed fairly among social groups. *Procedural* justice-related questions inquire about whether communities impacted by a decision have meaningful voice in the process. *Recognition* justice, frequently neglected is concerned with to what extent legal systems recognises the specific experiences and knowledge systems of certain communities.⁷ Through constitutional jurisprudence, Indian environmental law has partially evolved a sophisticated conception of distributive justice concerns. Article 48A (added by the 42nd Constitutional Amendment) inserts a duty on the State to take steps to protect forests and wildlife.⁸ Even more importantly, the right to life held in Article 21 has been wide interpreted under the guise of judicial intervention to include protection of environment.⁹

3. Legal Frameworks Governing Climate and Environment: Constitutional Foundations

The Indian Constitution provides surprisingly robust environmental protection language for a document drafted in 1950, amended substantially in 1976. Article 48A, 51A(1) also cast affirmative obligations on the State to be a steward of the

environment. Article 51A(g) clearly makes citizens responsible for protecting forests and wildlife.¹⁰ Though non-justiciable, these provisions have played an important part in judicial consumption of justiciable rights. The transition was made via judicial activism. The *Supreme Court in Subramaniam Balaji v. State of Karnataka* (2007)¹¹ has treated environmental degradation as affecting the right to life under Article 21 and held that “life” includes quality of life and not just biological existence. This represents a qualitatively new kind of treatment, beyond simply treating environmental protection as a legislative convenience. Instead, it ties environmental preservation into constitutional foundations.

Taking the next step, in *Sachidanand Pandey v. State of West Bengal* (1987)¹² followed by three other landmark decisions on this theme, it was held that citizens have rights to clean air and water which can be enforced. The Court decided that standing can be granted for public interest litigation which allows claims for environmental damages without being directly injured. This development partially responds to the concern about recognition justice because it allows access to redress for marginalised communities who would otherwise be shut out from traditional litigious avenues. Even more recently, *Indian Council for Enviro-Legal Action v. Union of India* (1996)¹³ applied the precautionary principle to environmental decision-making: avoid action that may lead to harm wherever there is uncertainty on its consequences. It changes the burden of proof from opponents of potentially dangerous activities proving danger to proponents demonstrating safety. The principle, however, is unevenly adhered to despite its significant nature.

Table 1: Evolution of Constitutional Environmental Protections in India

Period	Constitutional Basis	Judicial Development	Scope
1950-1975	Articles 48A, 51A (Directive Principles)	Limited recognition; treated as state discretion	Environmental management
1976-1990	Articles 48A, 51A (Constitutional Amendment 42); Article 21 expansion	<i>Subramaniam Balaji</i> , PIL mechanisms	Environmental rights
1990-2010	Article 21 jurisprudence; precautionary principle	Strict liability; intergenerational equity	Environmental justice
2010-present	Climate-specific constitutional interpretation	Climate dimensions of Article 21	Climate and fundamental rights

4. Statutory Architecture: Environmental Protection Act, 1986

The Environment Protection Act, 1986 (EPA) is the principal general statute in India that governs environmental protection since Bhopal disaster. The Central Government, under Section 3 of the Act, is conferred with an unbelievably broad power to prescribe environmental standards.¹⁴ This structural concentration of power in central institutions presents challenges for procedural justice when state and local communities seek to engage parties that establish standards with respect to results. The EPA’s definition of “environment” encompasses air, water, soil, and human beings dependent thereon.¹⁵ Importantly, this definition does not mention climate-related definitions and the key difference between protecting air or even “air” (strike), but rather specifics in maintaining levels of atmospheric composition. Because of this conceptual gap, the EPA cannot serve as a sufficient statutory foundation for climate governance, even though the Act is broad.

Section 15 makes the liability for environmental damage absolutely liable, a departure from Indian tort law’s “negligence requirement” under *Rylands v. Fletcher*.¹⁶ But the provision is limited to activities that generate “hazardous substances” in industry. The standard, plain vanilla economic activity emissions transportation, energy production,

agriculture are not subject to absolute liability. In theory, participatory mechanisms are in place through EIA procedures.¹⁷ Qualitative research does describe the systematic exclusion of marginalised communities from consultations on EIA, and many more discussions held at local level primarily relate to natural resource extraction which involves eviction or displacement of adivasi (indigenous) and tribal communities.¹⁸ When consultation is dominated by language, time and places that do not suit contemporaries, mostly without proper interpretation of technical material then procedural participation is rendered performative.

5. International Legal Architecture: Paris Agreement and Beyond

The Paris Agreement (2015)¹⁹ is the most ambitious climate agreement in world history. Signatories must adapt their national policies to reduce greenhouse gas emissions enough to hold warming to “well below” 2°C above pre-industrial levels. India signed the Agreement in 2016, pledging to cut emissions intensity of GDP by 33 to 35 percent from 2005 baselines, by the year 2030.²⁰ But the legal framework of the Agreement, in specifying that targets and pathways be set nationally, underscores its national foundation. Describing the system, he said it does not have any binding enforcement mechanism; compliance relies on periodic review and peer pressure. This displays ongoing sovereignty anxieties, mainly from developing countries resistant to binding commitments to reduce emissions.²¹ The framework therefore prioritizes state discretion above global environmental sustainability.

Importantly, the Paris Agreement does include language around environmental justice through Article 7 that acknowledges loss and damage stemming from climate impacts as well as creation of a Warsaw International Mechanism on Loss and Damage.²² But the meat of this mechanism is still thin. Financial commitments \$100 billion annually from wealthy nations for climate finance to developing nations have been woefully inadequate and delivered in a piecemeal manner.²³ Rhetorics of justice but no actual transfer of resources. Another light within the UNFCCC framework is that it acknowledges Common but Differentiated Responsibilities (CBDR): climate change is a global issue, however historical emissions were carried out mainly by developed countries.²⁴ India operates CBDR arguments to avoid binding reduction commitments that limit development. However, this stance conflicts with domestic calls for environmental justice: India’s poor are already experiencing direct harms from climate change, independently of the justice arguments on global development equity.

6. Judicial Approaches and Contemporary Case Law

Indian courts are starting to meaningfully grapple with climate aspects of constitutional rights. Deforestation and Ecological Degradation as Violations of the Environmental Component of Article 21, *Hari Singh v. State of Himachal Pradesh* (2020).²⁵ The ruling cited intergenerational equity to contend that environmental destruction wrongly imposed ecological costs on future generations. But most importantly, it was environmental civil society that took PIL (Public Interest Litigation) to the Delhi High Court to deal with air quality in the National Capital Region. The judicial willingness to impose huge economic costs to enforce environmental rights is evident from the series of orders that were subsequently made by the Court (curtailing vehicular movement, shutting down industrial activity during pollution episodes, forbidding construction)²⁶. However, the redistributive implications of the measures are underanalysed, for they mainly hit poor workers reliant on construction jobs and informal transportation.

A little more nuanced, *Arjun Lal Sharma v. Delhi University* (2013)²⁷ is one of those judgments where the Court begins to gradually accept that environmental protection cannot be disassociated with socio in some respect welfare issues. The judgment

highlighted that when it comes to environment regulation, livelihood impacts on vulnerable groups must be a part of legitimate existing assessments. Yet persistent limitations emerge. Participatory procedures making sure a voice for marginalised communities in environmental decision-making feel dismayingly like an obligation that Indian courts will rarely issue. Judgments usually carry out top-down solutions without engaging the people who are affected. Call for Justice: No judicial opinion to date also recognizes the volume of indigenous knowledge with regards to ecological wisdom in the form of customary practices and community-based conservation.²⁸

Table 2: Judicial Climate and Environmental Justice Determinations (India)

Case	Year	Court	Primary Issue	Justice Dimension	Limitation
<i>Subramaniam Balaji v. Karnataka</i>	2007	Supreme Court	Environmental degradation and Article 21	Recognition (life quality)	Limited climate specificity
<i>Sachidanand Pandey v. West Bengal</i>	1987	Supreme Court	Pollution rights; PIL standing	Procedural	Narrow implementation
<i>Delhi Air Quality (PIL)</i>	2015-ongoing	Delhi High Court	Air pollution and public health	Distributive	Inadequate livelihood protection
<i>Hari Singh v. Himachal Pradesh</i>	2020	Supreme Court	Deforestation; intergenerational equity	Distributive	Limited enforcement mechanisms
<i>Arjun Lal Sharma v. Delhi University</i>	2013	Delhi High Court	Environmental protection and livelihoods	Procedural/Distributive	Limited recognition justice

7. Contemporary Legal Challenges: Structural Deficiencies

Several structural inadequacies undermine the ability of existing legal systems to address inequitable social impacts and environmental justice dimensions of climate change more generally.

Fragmentation across regulatory domains.

There are laws on the environment, such as the EPA, Forest Conservation Act (1980)²⁹, Wildlife Protection Act (1972)³⁰, Water Pollution Control Act (1974)³¹, Air Quality Act (1981)³² all of which disperse climate governance across multiple statutes with multiple institutional actors and procedural requirements. This fragmentation creates coordination failures. A mega-infrastructure project with simultaneous impacts on forests, wildlife habitat and water resources is faced with multiple overlapping regulatory processes that do not assess cumulative impacts in concert. In turn, those with current or potential disadvantage in pursuing their claims across repeated challenges to what could amount to a series of parallel proceedings are likely unable to muster additional capacity or resource.

Weak participation mechanisms.

Nominally, Public participation is provided during EIA procedures, however it has not been effectively realized in most cases. Research shows that public hearings take place after core decisions have been made, expert knowledge is not accessible for non-experts, and the wheel turns in favour of dominant communities.³³ Therefore, procedural justice entails early good faith engagement, access to technical information and a commitment to respond at decision-making level to matters raised.

Inadequate intergenerational justice frameworks.

Although intergenerational equity rhetoric is invoked by courts, mechanisms that substantively protect the interests of future generations remain in their infancy. The standard cost-benefit analysis (CBA) frameworks which are nowadays used for policy analyses utilise discounting mechanisms that systematically undervalue anticipated future environmental harms. A project that provides immediate economic return, but

also causes climate damages unfolding over thirty-year timelines appears economically rational when evaluated by standard accounts. However, this temporal bias is at odds with intertemporal justice.³⁴

Insufficient climate specificity.

Indian climate law continues to be scattered over its general environmental statutes and the National Action Plan on Climate Change (2008).³⁵ With no single Climate Act authoritative integrated governance framework can be compared better to statutory schemes in the UK or EU available instead.³⁶ This fragmentation has precluded coherent transition planning addressing both mitigation (emissions reductions) and adaptation (resilience building).

Recognition justice deficiencies.

Indigenous peoples and traditional knowledge holders possess a fierce ecological intelligence built up over thousands of years. However, Indian environmental law, is still inherently embedded in Western modes of scientific paradigms. Statutory frameworks provide very little recognition to practices of community-based forest management, traditional water harvesting systems and indigenous agricultural practices.³⁷ This exclusion embodies injustice and inefficiency as marginalising relevant knowledge systems results in worse environmental states.

8. Sectoral Analysis: Coal Transition and Labour Justice

The complexity of environmental justice is illustrated with coal power generation. It is estimated that around 700,000 workers work in the coal industry in India, with hundreds of thousands more in dependent communities.³⁸ Because of decarbonisation imperatives to phase coal-fired generation, but the current legal frameworks offer little in terms of protections for workers. There are some protections provided by the Industrial Disputes Act, 1947,³⁹ but whether it would be relevant to the sectoral decline of coal remains an open question. The Act or any supportive form of jurisprudence does not envision an institutionalized sector transition. Judicial involvement in coal closure is still episodic and not planned. Pit closure threatens workers with harsh financial loss due to a lack of retraining, income support or job relocation guarantees. In contrast, the environmental costs of coal mining are increasingly borne by adivasi and tribal communities whose land are earmarked for exploitation by the state. While the Fifth and Sixth Schedules of the Constitution give tribes limited self-governance powers,⁴⁰ mining projects often go ahead in the face of community resistance. Meaningful tribal consent systems are needed for environmental justice, yet countries are only mandated to consult Indigenous Peoples ineffective as they often do not comply.⁴¹

9. Recommendations and Legal Reform Pathways

Climate change litigation will have a variation of the legal reform agenda that needs to be driven arguably most prominently for environmental justice dimensions.

- **Establish a comprehensive Climate Act:** Climate governance in India needs to be statutorily consolidated across mitigation, adaptation and justice dimensions. An Act like this should include legally binding emissions reduction targets, define institutional responsibilities, require integrated adaptation planning and enforce procedural safeguards for vulnerable communities. Lessons learned from the UK Climate Change Act (2008)⁴² show that comprehensive statutory frameworks promote consistent policy outcomes while allowing courts to fully assess government performance against climate targets.

- **Strengthen participatory mechanisms:** Meaningful reform of EIA and other decision-making processes is necessary to ensure that early involvement of the public occurs, that technical information about proposed development plans is accessible, and

that genuine responsiveness to expressed concerns by the public is demonstrable. Free Prior and Informed Consent (FPIC) procedures increasingly recognised in international law⁴³ should apply as standard for development projects impacting on indigenous or tribal lands.

- **Develop sector transition frameworks:** Generating explicit laws or regulations that protect workers and communities affected by the phaseout of coal and renewable energy transition. Those could be income support through statutory instruments and retraining funds backed by Just Transition mechanisms,⁴⁴ economic diversification planning bottom-up rather than top-down.

- **Integrate recognition justice:** Environmental policy needs to formally consider indigenous and community-based ecological knowledge. Such approaches may comprise of acknowledgment of customary rights to natural resource management, support for community-based conservation efforts, and the inclusion of traditional ecological knowledge in environmental impact assessment (EIA) and policy.

- **Implement intergenerational impact assessment:** In addition to the standard cost-benefit analysis, important decisions must be evaluated on their intergenerational impact based on distributional effects among future generations. This demands adjusted discount rates based on intergenerational equity and not solely market preferences.⁴⁵

10. Conclusion

Where climate change and environmental justice intersects there are legal systems that lack the capability to adequately address this intersection. Strong legal principles established by Indian constitutional jurisprudence in recognition of environment protection as a fundamental right does not find sustainable legislative backing. International legal architectures, on the other hand, privilege principle over enforcement while giving nation-states flexibility but leaving marginalised communities with little say. Taking on this challenge means accepting several uncomfortable facts. First, climate transition must involve cost and benefits transfers; justice demands that we design these so costs are borne by those who are responsible for emissions rather than on those disadvantaged or harmed already. Second, marginalised groups do not just need a seat at the table, they are the table: they have knowledge and perspectives that would lend far greater weight to effective environmental governance; excluding them is therefore both unjust and inefficient. Third, legal systems cannot possibly keep environmental protection separate from the spheres of employment, development and social welfare; meaningful reform must come with substantive coherence across those realms.

What lies ahead is not just more incremental changes to the law, but a reconception of environmental law's basic commitments. Thinking regenerative means having to grapple with foundational questions that center justice: who knows what matters? Who bears transition costs? Where Next generation is protected under the legal systems What does genuine participation mean? These questions are not just about technical legal expertise, they engage democratic theory, economic justice, and intergenerational responsibility. Yet law remains indispensable. Courts have shown that with creativity, they can safeguard environmental rights; legislatures can be empowered to create comprehensive climate governance systems; and procedural innovation can meet local needs for meaningful participation. That needs mitigating the shortcoming of law by generating political will to subordinate myopically conceived market interests to broader environmental and social justice imperatives.

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