Pragyaan: Journal of Law

From the Chief Editor

In this issue of Pragyaan: Journal of Law, we turn our focus to the imperative topic of climate justice. We have gathered an exceptional collection of articles that shed light on the intricate relationship between law and the pursuit of a just and sustainable future.

The theme of this issue, climate justice, resonates deeply with the urgent need for transformative action. As the planet continues to experience the far-reaching consequences of climate change, the call for justice grows louder. We witness the disproportionate burden faced by vulnerable communities, the degradation of ecosystems, and the alarming loss of biodiversity. It is within this context that we examine the role of law in fostering equitable solutions and addressing the injustices borne out of environmental degradation.

The articles presented in this volume offer a wide-ranging exploration of the intersection between law and climate justice. Our esteemed contributors delve into topics such as environmental governance, climate-related litigation, the rights of indigenous communities, and the responsibility of governments and corporations in combating climate change. Through their rigorous research and insightful analysis, they illuminate the pathways that can lead us towards a more just and sustainable future.

We would like to extend our heartfelt gratitude to the authors and peer reviewers whose expertise and commitment have shaped this issue. Their contributions have been instrumental in ensuring the intellectual rigor and quality of the articles presented. We also extend our appreciation to the editorial team whose dedication and meticulous efforts have brought this volume to fruition.

As you engage with the articles in this issue, we encourage you to reflect on the implications for policy, advocacy, and legal practice. Climate justice requires collective action, and it is through informed discourse and collaboration that we can effect meaningful change. We hope that the insights shared in this journal will inspire you to take up the mantle of climate justice in your own spheres of influence.

On behalf of the Pragyaan: Journal of Law team, I invite you to immerse yourselves in the knowledge presented within these pages. Let us harness the power of the law to protect our planet, safeguard the rights of the vulnerable, and pave the way for a future where justice and sustainability are intertwined.

Thank you for your readership and unwavering support. Together, let us strive for a more equitable and resilient world.

Prof (Dr) Ashish Verma

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Revitalizing the Role of Education in Sustainable Development and Environment Protection

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ABSTRACT

Education has always been a tool for bringing changes in the society. Education is instrumental in developing skills and knowledge among citizens. The societies have always benefited from the labor of educated citizenry. Education has played vital role in sustainable development. The sustainable development principle of the United Nations is based on utilizing the resources in such way as preserving them for the future generation. This can be achieved by inculcating principles of sustainability through education. In this regard the education at the primary and higher level can be helpful for building environment friendly attitude. The United Nations aims to achieve the 17 Sustainable goals by the year 2030. These goals are a sum total for protecting environment, empowering women, alleviating poverty, increasing health and happiness among citizens. All these goals consistently provide that education is the key factor through which these can be implemented. The United Nations in the year 2007 adopted Principles of Responsible Management Education (PRME). The purpose of these principles is to inculcate sustainable behavior among the business and management students. The PRME focuses on business and management schools to be socially responsible. The curriculum may be designed in such manner that the students develop a culture for the sustainable development of the environment. The present research aims at analyzing the role of education for the protection and sustainable development of the environment. The paper will cover and analyze the Principles of Responsible Management education and how these principles can be adopted by other educational institutions to develop environment friendly behavior. The analytical and explorative methodology will be used for conducting research. The research will add new innovative tools for developing environ-culture by the educational institutions. The research will be useful in the future for the sustainable development of the environment.

Keywords: Education, Environment, Sustainable Development

Prologue

The world today is engulfed in the changing moods of weather. The climate change and heat strokes have made the survival of the human beings difficult. In such circumstances, the globe is revisiting the environment. The term environment is of wide connotation encompassing the flora and fauna. The term 'environment' is not of recent origin and has been in existence much before the homo sapiens came on the planet earth. The protection, preservation and improvement of environment are the major issues, facing the world community.[1] The concern about environment was raised for the first time in the year 1968. Sweden for the first time submitted proposal before the United Nations for dealing with the problem of environment at the international level. To deal with the issues of environment at the international level, the United Nations Conference on Human Environment popularly known as the Stockholm Conference was held in 1972 at Stockholm, Sweden attended by 114 member countries. The conference went on for 9 days from 5th June -16th June, thus prioritizing the concern for environment at the international level. The main stress of the conference was on the common need and common principles to guide the nations in the preservation and enhancement of human environment.[2]

The Stockholm Conference set the background for international activities on environmental protection at the regional and global level.[3] The different nations unanimously agreed that protected environment is a panacea for all development related issues. As the name itself suggests 'Human Environment' reflects the need for the cumulative efforts of the humans for the protection of environment. The issue of environment can be solved, if the humans adopt sustainable life style. The conference consists of 26 principles to be followed by member countries. The conference led to the formation of the Action Plan and the creation of the United Nations Environment Programme (UNEP).

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1 Dr. Bimal N. Patel & Mamata Biswal et.al (edts.) 4 (1st ed. 2012).

2 Dr.G.Indira Priya Darshni & Prof. K. Uma Devi , Environmental Law and Sustainable Development 191 (2nd ed. 2013)

3 Dr. Annamalai Murugan, International Regime of Environmental Law, 4 (2016).

Sustainable Development: Conceptual Framework

The Stockholm conference assimilated that economic activity, pollution; poverty and expanding population are all interrelated and causing harm to the environment. The degrading environment was seen as a global problem and the world at large was looking for one solution for all the environmental problems. The deliberations for the protection of environment led to the emergence of the concept of 'Sustainable Development'.

The traditional concept that development and ecology are opposed to each other is no longer an acceptable argument. Sustainable development has countered the traditional notions of development and ecology as incongruous concepts.[4] The concept was explained for the first time in Brundtland Report which is also known as 'Our common future'. The concept of sustainable development refers to the use of earth's resources by the present generation as to preserve for the future generation. The Brundtland Report has defined the concept of sustainable development in the most simplified manner. The report defines it as, 'development that meets the needs of the present without compromising the ability of future generations to meet their own need'. Thus it emphasized on balanced requirements both for the present and future generations. The sustainable development further led to the Rio Summit in the year 1992 and laid the foundation of the UN Commission on Sustainable Development.[5]

The United Nations conference on Environment and Development Rio Summit, 1992 was held at Rio de Janeiro popularly known as 'Earth Summit'. The summit marked the two decades of Stockholm conference and deliberated the impacts of socio-economic human activities on environment. The Earth Summit further gave impetus to the concept of sustainable development. It was debated that sustainable development is the key solution for tackling problems related to environment. It also recognized that the environment and social, economic and cultural activities are interdependent. To meet all the challenges posed by environment, sustainable development has to be a way of life for every person on the globe irrespective of their status. Agenda 21 was the major outcome of the Earth Summit. It was a dynamic programme aimed at meeting the different needs at the different times, thus to meet the existing exigencies the policies can be framed accordingly. It provided a roadmap for sustainable development in the 21st century. It gave reassurance that global cooperation is required for the meeting the goal of sustainable development. Thus the concept of sustainable development was given impetus for future challenges. The Earth Summit gave a holistic approach to the concept of sustainable development.

Role of United Nations Commission on Sustainable Development

To give shape to the action plan taken at the Earth Summit, the United Nations Commission on Sustainable Development was established in the year 1992. The purpose was to give practical shape to the different promises made at international forums to combat the problems of environment. It was a step that the policies regarding are not mere formalities but are followed in letter and spirit. It was a follow up framework for the working of the environmental policies. The commission has till date has held many meetings focusing on the collaborative efforts of the members. It established that CSD is a high level platform for Sustainable development. The commission on sustainable development was replaced by High Level Political Forum in the year 2013.[6] This forum plays a crucial role and follow up and 2030 Agenda for Sustainable development. The forum in 2015 held United Nations Sustainable Development Summit 2015 to deliberate on the achievement of sustainable goals post 2015 and for achieving SDGs the idea is that no one should be left behind.

The High Level Political Forum (HLPF) has held many sessions to evaluate the achievements of the sustainable development goals till 2030. In the year 2022, the HLPF will meet in the month of July and the theme for the same is "Building Back Better from the Coronavirus disease while advancing full implementation of the 2030 Agenda for Sustainable Development". The purpose is to evaluate the implementation of the sustainable development goals till 2030.

Sustainable Development vis-à-vis Education

The term sustainable development is always associated with environment. The international concern for saving environment has transformed the concept of sustainable development. It is not limited to environment but has become synonymous with every human activity. For achieving sustainable development as a tool for protecting environment, education plays an important role. The education about environment or environment education, the purpose is to make citizens aware about the need for protecting environment. The various programmes of the United Nations have dwelled on the importance of education for the protection of environment.

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4 Dr. P.B Sahasranaman, Handbook of Environmental Law, 22 (2nd ed., 2012).

5 Dr.G.Indira Priya Darshni & Prof. K. Uma Devi , Environmental Law and Sustainable Development 193 (2nd ed. 2013)

6 Commission on Sustainable Development, United Nations, https://sustainabledevelopment.un.org/index.html (visited on 17 the May, 2022).

Principles for Responsible Management Education (PRME)

The principles for Responsible Management Education were initiated by the United Nations in the year 2007.[7] It provides a platform to provide information about sustainability in schools and specially instilling a feeling of change and better future among the business and management schools. The main idea behind responsible management education is a mission for the achievement of sustainable development goals. The PRME is based on six principles i.e. purpose, values, method, research, partnership and dialogue. The purpose is to provide awareness about the sustainable goals of the United Nations. The idea is to inculcate a sense of responsibility among the young minds so that they can carry the legacy of sustainable development and inspire future generations. The PRME mission is to make business students to tackle with the challenges related to the protection of environment in the 21st Century.

The whole idea of sustainability revolves around taking into consideration the future generations. As of now the students, the young minds are not included in the policies framed for the sustainable development of environment. The Principles of Responsible Management Education helps to achieve this short coming. At the heart of PRME is to build the skills among the students.

The PRME works on the basis of global cooperation. The signatory institutions of Higher education work in close proximity at the global level in implementing the six principles of PRME according to their ability and capability. The working is done through different modes by exchange of technology and ideas. The institutions engage in online platforms, workshops are conducted and PRME working groups conduct research on distinct fields of sustainable development goals. The members of the PRME conducts global forum generally after two years to assess and evaluate the progress undertaken at different forums.

The six Principles of PRME[8]

1. Purpose: The first principle is the purpose of PRME. It implies the development of sustainable behavior among the young students so that they can use their capabilities for the sustainable development of the business and society at large.
2. Values: The second principle deals with inculcating values among the students through the designing of the curriculum and undertaking academic activities. This is in tune with instilling social responsibility values in accordance with international standards.
3. Method: The third principle deals with developing methodologies and pedagogies for inculcating sustainable behavior among students. This can be achieved by developing teaching-learning process in such a way that the potential of the students be developed.
4. Research: The fourth principle deals with the conducting field and empirical research for analyzing the role of different stakeholders in sustainable development.
5. Partnership: The fifth principle dwells on partnership with different stakeholders and corporations and learning about their roles in sustainable development.
6. Dialogue: The sixth principle deals with dialogue among students, educators, government, consumers and any interested person and members of civil society.

These principles can be implemented by the different institutions depending on their capabilities. It is based on knowledge sharing and technology transfer among the member countries.

The PRME Global Forum for Responsible Management Education will take place virtually on 3rd June, 2022 on the theme "Towards the next 15 years: The role for PRME in challenging times". The agenda of this is to evaluate the achievements of the signatories to this forum. It is hoped that this will go a long way in giving practical shape to the achievement of sustainable development goals for the future.

Role of education for protection and Sustainable development of Environment:

The misconception behind the term sustainable development for the common man is that it revolves around promoting the cause of nature and environment. The term sustainable development as defined in Earth Summit also points in this direction. The other side of the coin is that sustainable development is not concerned about environment only but also encompasses and takes into consideration the prosperity of the planet including the flora, fauna and above all human beings. The seventeen sustainable development goals of United Nations incorporate the idea of holistic development of the human beings.[9] For achieving and inculcating the sustainable behavior the education plays an important role.

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7 Dr.Pratibha Pankaj & Dr. Lokesh Vijayvargy , et al (edts.) Envisioning India's Future: Growth, Innovation, Sustainbility, Happiness and Well- being 2 (2022).

8 Ibid.

9 Education for Sustainable Development : Source Book (UNESCO, 2012), https://Sustainabledevelopment.un.org/contents/documents/926/unesco9.pdf

Education as a tool can be used at primary, secondary and higher standards for incorporating the sustainable values among the leaders of tomorrow.[10]

The Second World summit in 2000 also recognized the role of education for sustainability. Keeping the potential role that education can do, the United Nations General Assembly adopted resolution and declared 2005-2014 as a decade for education for Sustainable Development.[11] Educating the present generations about sustainable development will have far reaching impact on the future generations and the present generation cannot be held accountable to the future generation. The education has brought a paradigm shift from protection of environment to human well being. Thus education has drawn the boundaries between economic development and environment. Education at the primary level can help in instilling a feeling about the earth, the planet and environment among the young pupils.

For the holistic role of education as a tool of for protection of environment, the six principles of PRME should not be limited to the field of management and business students. The concept of environment protection should be incorporated in all streams of education be it sciences, humanities and social science. The PRME principles can be blended and applied at all levels of education i.e. primary, secondary and high level.

Environment education can be a interdisciplinary subject aiming at changes in curriculum and pedagogies for creating awareness among the children, students and society at large. Environment etiquettes and awareness can be created with the help of formal and informal methods. The designing of the curriculum can be done by keeping in mind the local and cultural needs of the people. The education as a tool should be so designed that it brings about attitudinal and behavioral changes for environment.

The education for sustainable development revolves around making people able to participate in community decision making, development of skills and knowledge for environment protection and conservation for improving the quality of life. Education for sustainable development involves the collaboration of number of stakeholders including government, schools, colleges, universities, civil society and non-governmental organizations. The education for sustainable development of environment focuses on inculcating respect towards on and another and foremost towards the environment. The point is improving the quality of life without compromising the resources of the earth.

The Way Forward

Education has played a very significant role and has contributed in the overall development not only of the individual but also in the political, social, economic and cultural development of the nation. Education is a weapon for bringing change in the society.[12] Environmental education and education about environment are all inter-connected. The idea behind is inculcating environment behavior, values among the common man. The environmental ethics can be achieved by making it part and parcel of our lives. The idea of inculcating awareness among citizens can be achieved through the tool of education of sustainable development. The goal of education should not be limited to achieving degrees only but should be value-oriented also. The education can be made more practical and skillful. The syllabus and curriculum be so designed that, children from their ages can be taught about the importance of nature and environment. The uniform model curriculum can be introduced by the government. It's not possible to achieve uniformity. The change can be initiated by taking state as a unit. The particular state depending on the culture in different districts can introduce the subject of environment. The students can be given firsthand information about protecting environment. The environmental NGO's can contribute and give practical training to the students. The students can be involved in planting of trees. This effort can be taken at the school level. Once this behavior is developed among school children, they will carry the same values at the to the college level and further to the university level. At the level of higher studies, the students can be given training and awareness about the protection of environment. The principle of corporate social responsibility fixes the responsibility of the corporate houses in making contribution for the protection of environment. The three R strategy of reduce, reuse and recycle has contributed in the field of environment. The same way the educational institutions can be given social responsibility of building enlightened citizens. The policies can be framed by the government and implemented in the educational institutions. The making of policies is not sufficient, time to time report regarding the implementation can be taken from the educational institutions. Improper environmental management policies can accelerate environmental degradation and in the run will endanger social disruptions and political instability. [13]

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[10] Angela W.Little & Andy Green, Successful Globalisation, Education and sustainable development, 29, International Journal of Education Development, 2 (2009), https://doi.org/10.1016/j.ijedudev.2008.09.011.

[11] UNESCO Strategy for the Second Half of the United Nations Decade for Sustainable Development, 2010, https://unesco.org/education/desd.

[12] Stephen Sterling, A Commentary on Education and Sustainable Development Goals, 10(2), Journal of Education for Sustainable Development (2016), https:// https://www.sustainabilityexchange.ac.uk/files/sdgs_-_stephen_sterling.pdf

[13] Dr. Anand S. Bal, An Introduction to Environmental Management, 157 (3rd ed, 2009).

The technology can create a great help in promoting environmental education. The technology can connect the schools together in the same way as PRME has created a global forum for connecting management and business students at the global level.[14] The same way as a first step the educational institutions at the village level or taluka or district level can be inter-connected. The different stakeholders at this level can be encouraged for proactive role in environmental training and building awareness.[15]

Epilogue

The educated and enlightened citizen contributes wholly and solely in the nation's progress and development. The term environment is not confined to the protection of nature. The technological pace at which development is taking place, has given wide connotation to the meaning of 'environment'. The modern concept of environment encompasses a relationship between ecology and environment. Economic activity has come very closer to development and at the same time protecting environment. Development cannot take place by destroying the natural environment. Thus here lies the importance of education for sustainable development and protection of environment. The environment cannot be protected if the citizens are not aware about the changes taking place in the environment. The terms climate change, carbon credits, marine pollution etc. are beyond the understanding of the common man. For making people conscious and aware about the depleting and deteriorating conditions of environment, it is the need of the day that common people be made to understand in the language which they can easily adapt. Thus education on environment can be imparted in the language easily understood by people. The students for this purpose can take lessons from schools and apply in their homes, then society and at last in country. For the successful working of the policies and laws for protecting environment, Environmental Awareness Campaigns can be organized by the schools, colleges and universities. The students can be torch bearers for such kind of activities. In 2002 UNESCO triggered education as a tool for sustainable development around the globe. Education on sustainable development should not be view as a new curriculum but a new way of thinking and innovation for the sustainable development and protection of education. Thus education should not be limited to adding values but to create awareness, developing competencies and making students participatory in decision making. Education has to be revisited with putting the responsibility on the students for the protection and sustainable development of environment. The educational institutions and students need to walk hand in hand for shouldering the responsibility of environment.

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14 G .Michelsen & P.J.Wells, A Decade of Progress on Education for Sustainable Development : Reflections from the UNESCO Chair Programs, UNESCO (2017),https://www.researchgate.net/publication/344105651_A_Decade_of_Progress_on_Education_for_Sustainable_Development_Reflections_from_the_UNESCO_Chairs_Programme

15 Dr. R.K. Khitoliya, Environment Protection and the Law, 73 (1st ed. 2009).

Ecocide and Basis for Liability and Punishment: Argument for Recklessness and Inverse Deterrence

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ABSTRACT

Modernity has changed the human life. It brought development and prosperity at the cost of unprecedented destruction to environment. While judicious development is essential but it is to be harmonized with protection of ecosystem. To save human existence, there is a growing need to save and protect environment. Harm to environment is harm to present and future generation of mankind. The intervention of law, and particularly criminal law, has become necessary in prohibiting the destruction and damage besides considering environment as an entity in respect of which an offence may be committed. The common law principle of mens rea has been diluted in environmental offences. With growing awareness about environment, the common law principle of criminal liability by incorporating mental element is to be pondered. Recklessness as one of the forms of guilty mind may be invoked for protection of environment. Taking advantage of procedural technicalities, people involved in mass destruction of environment generally escape from criminal liability. The concept of environmental crime and conditions creating criminal liability and penal policy under various legislations has to be analyzed.

Keywords: Environmental crime – Green criminology – Basis of Liability – Recklessness – Punishment – Inverse Deterrence

I. Introduction

The term 'ecocide'[1] refers to destruction of natural environment either by deliberate or negligent conduct. While modernity brought new principles for development but it resulted into unabated destruction of environment arising out of rapid industrialization and changing human behaviour.[2] The need to save and protect environment has become inevitable. It was felt that the human behavior detrimental to environment could be controlled and regulated by making laws imposing punishment. This culminated into a new branch of study called 'green criminology'[3] which is a study of harm to environment - its cause(s), law and treatment. The concept of environmental crime is relatively new to criminal jurisprudence. In fact, it is an unauthorized act or omission violating the law and resulting into punishment. It involves harm to environment by any human destructive activity. Earlier, the environmental crimes were treated as public nuisance and quasi crime. The strict liability principle was applied and penalty was imposed in respect of such crimes. Now the time has come to condemn damage to environment by conferring regular status to crimes instead of calling it quasi. An attempt has been made in this paper to analyse the concept of environmental harm as crime and to introduce mental element as one of the conditions for creating criminal liability along with the analysis of penal policy under various environmental legislation in India.

II. Concept of Environmental Harm

There are two approaches in conceptualizing environmental crimes - anthropocentric and eco-centric. Environmental crimes not only affect the life and safety of human being but affect the environment itself.[4] This concept has two components - harm to man and harm to environment. The definition is anthropocentric where man is at the centre and environment is at the periphery. The other approach is eco-centric emphasizing upon proof of pollution event and proof of criminal intent. It says:

Most of the environment crimes require proof of pollution event . . . and proof of criminal intent. In most cases, the government proves that intent by showing that the defendant acted 'knowingly.' That is the government must show voluntary and intentional conduct, not the conduct that is the result of accident or mistake of fact.[5]

According to US approach, the blameworthiness arises due to intentional and voluntary conduct but in most of the statutes the liability has arisen by invocation of strict liability

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1 The term was used for the first time by the Swedish Prime Minister Mr. Olaf Palme at the 1972 UN Environmental Summit, Stockholm.

2 Rajat Acharya, Trade and Environment, (2013) 1st Ed. Oxford University Press pp. 109 - 128

3 The term 'Green Criminology' was introduced by Michael J. Lynch in 1990.

4 Bell, S. McGillivery, D. & Pederson, O., 8th Edition, (2013) Environmental Crime, Oxford University Press.

5 US Department of Justice (2013) as referred by Matthew Hall in Exploring Green Crime: Introducing the Legal Social and Criminological Contents of Environmental Harm (2015) Palgrave

doctrine because environmental crimes are regarded as breach of administrative directions and are quasi criminal in nature.[6]

The environmental crime in late 20th century was loosely linked with the actions like contaminating water by dumping chemicals into a stream or river or water bodies; releasing pollutants into the air; and, improper disposal, storage, or transportation of hazardous wastes such as pesticides, chemicals, and radioactive materials. Instead of holding the individual liable, the legal proceedings mainly focused on the acts of corporations or businesses that violated environmental laws and thus environmental crime was considered to be white-collar crime though many environmental crimes did not fit in classical definition of white-collar crime. The environmental crimes are harm done either having immediate effect or having potential to cause harm and the offender may be either an individual or a business enterprise.[7] Clifford made an attempt to give a teleological definition of environmental crime as "an act committed with intent to harm or with a potential to cause harm to ecological and/or biological systems" as well as with the purpose to increase business or personal gain. According to Clifford, an environmental crime "is any act that violates an environmental protection statute." Unfortunately,[8] even in twenty-first century the environmentalists and eco jurists are still struggling to define environmental crime with exactitude. Criminal law takes into account consequences which are either direct or proximate to the cause and not the remote one. It may be submitted that environmental crimes involve, on one hand, destruction or damage to ecosystem and, on the other, its adverse effect - direct, proximate or remote, on human existence and thus remote consequences may also be considered in respect of harm to environment - ecocide.

III. Basis of Criminal Liability

Initially there was no distinction between criminal and civil offences. There was 'a viscous intermixture.'[9] The penal law in ancient communities was not the law of crimes rather it was a law of wrongs.[10] The early reference of 'crime' is found in 14th century and it connoted the meaning something disreputable, wicked or base.[11] Though the policy for declaring some conduct as crime and others as civil is devoid of any definite determinant, but it appears that establishment of police as an institution has played a vital role in declaring the conduct a crime.

It was Edward Coke who formulated the principle of criminal liability on maxim 'actus non facit reum nisi mens sit rea.' Since the Classical School of crime causation has deeper impact on criminal law principles thus 'freedom of will' of the wrongdoer has an important place in criminal law while determining liability. This is reflected in principle of mens rea. The principle is based on external physical conduct and internal mental condition. Moreover, motive is value laden and usually irrelevant in the determination of criminal liability. It should, therefore, principle of irrelevancy of motive should be made applicable while deciding criminal liability in environmental crimes also as it will be helpful in making such crimes distict from white collar crime.

The criminal law knows three distinct forms of guilty mind - intention, recklessness and negligence. Intention has variable meaning.[12] Intention is most commonly understood to mean that the accused desired a consequence and pursued a course of conduct and could foresee the natural and probable consequences arising out of the conduct. In cases of environmental crimes, while the accused may not have desire to destroy the environment but could foresee the natural and probable consequences of conduct and this may not create liability on the basis of intention and it paves the path for search of an alternative form of guilty mind essential for ecocide.

IV. Recklessness: Basis for Liability

The strict liability doctrine of criminal liability has hitherto been invoked in holding a person liable for causing harm to environment.[13] It may be difficult for the prosecution to prove intention in such cases. Recklessness may be an alternative form of guilty mind applicable in respect to environmental crimes. Recklessness is such a conduct which involves an obvious risk. The accused is inadvertent towards the consequences or knowingly ignores it.[14] The accused takes unjustified risk. Under English law, there are

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6 See, Sayre, Public Welfare Offences (1933) 33 Col LR 516

7 The scientific uncertainties as to effect of harm immediate or potential have added confusion. The same act done may have immediate harmful effect on environment but done by others may be only potential to cause harm.

8 Mary Clifford and Tarry Edwards, Environmental Crime (2011); See also, Situ, Y. & Emmons, D. Environmental Crime: The Criminal Justice System's Role in Protecting Environment(2000), Thousand Oaks: Sage

9 See, Cecil Turner, J.W. Kenney's Outlines of Criminal Law, (1966) 19th Edition, Cambridge University Press, at 1

10 See, Sir Henry Sumner Maine, Ancient Law, (2006), Omega Publications at 328

11 Supra note 10 at 2

12 See, Smith and Hogan, Criminal Law, (1983) 5th Edn. , Butterworth& Co. (Publishers) Ltd.at 48. Sometimes intention coincides with purpose, dominant purpose, and certainty of consequences, desire and foresight of consequences.

13 Alphacell Ltd. v Woodward (1972) AC 824; See also, Atkinson v Sir Alfred Mc Alpine & Sons Ltd. (1974) Crim LR 668

14 Card, Cross and Jones, Criminal Law (2008) 18th Edn., Oxford University Press at 91

two kinds of recklessness - subjective and objective propounded in case of *Cunnunigham*[15] and *Caldwell*[16] respectively

In subjective recklessness the prosecution is required to prove that the accused took an unjustified risk and there is awareness on the part of the accused as to existence of unjustified risk. In other words, the accused knowing the consequences took the unjustified risk. The foresight of the consequence is the gist of subjective recklessness. A person may be said to be reckless with respect to:

(a) circumstances when he is aware of a risk that it exist or will exist;

(b) a result when he is aware of risk that it will occur and, it is, in the circumstances known to him, unreasonable to take risk.[17]

A person thus cannot be held be liable for doing something involving a risk or injury to person or damage to property unless such person genuinely perceived the risk. Thus, the subjective recklessness takes into account both awareness of circumstances and consequences. Moreover, it takes within its purview the commission and not the omission. Where a person closes his mind to the risk involved he is reckless within the subjective definition. Thus, where the accused due to self induced state of temper, smashed down a telephone hand set on to the dialing box of a public telephone damaging it was held to be reckless.[18] It has been pointed out that knowledge or appreciation of risk of proscribed harm must have entered the accused's mind though he might have suppressed it or driven out.[19]

The British Court at one point had discarded the subjective recklessness.[20] Lord Diplock[21] observed that a person is reckless as to whether any property is damaged or destroyed, if:

(i) he does an act which in fact creates an obvious risk that property would be destroyed or damaged; and

(ii) when he does the act he - (a) either has not given any thought to the possibility of there being such risk or (b) has recognized that there was some risk involved and has nonetheless gone to do it.

In view of the aforesaid principle laid down by Lord Diplock, there may be two types of recklessness, namely, inadvertent and advertent. The common point in both is that the act involved an obvious risk and second must fulfill either the accused failed to give thought whether act involved such risk (inadvertent recklessness) or the accused had the knowledge there was a risk (advertent recklessness). Thus failure on the part of a reasonable man to give thought as to act involved risk was brought in the category recklessness.[22] In cases subsequently decided it was suggested that subjective test would apply in cases of body offences and objective test may be made applicable to property offences.[23]

Over a period awareness as to consequences of environmental damage has increased and has trickled down in society. Every individual or a business enterprise is aware of the consequences of environmental degradation and thus it may be submitted that the general principle of mens rea having mental element of recklessness in crime in offences causing harm to environment be invoked and given the status of full crime and not to treat it as mere a quasi crime while imposing liability.

V. Punishment under Domestic Legislations

While the premise for punishment to sociological criminologists lies in reformation and solidarity, the classical believe in deterrence. Society is formed by perpetual and costly sacrifices. These sacrifices exist in the collective conscience of the members of society. Punishment plays role in maintenance of social solidarity. Punishment thus acts as a cohesive force in the society and it is the cost which the members have to pay for perpetual survival.[24] The classical believe that it is the right of the

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15 (1957) 2 All ER 412. This case involved as to meaning of the word 'maliciously' mentioned in Section 23 of the Offences against Person Act, 1861 which was held to be a condition of mind before the commission of offence - aforethought and not limited only to wickedness.

16 (1982) AC 341. The case was under the Criminal Damage Act, 1971 where Section 1 (1) used the term 'recklessly' The Court propounded objective test.

17 R. v G (2004) 1 AC 1034

18 R. v Parker (1977) 1 WLR 600. The accused who was, an irrational and schizophrenic man, charged with arson. He was sleeping in a haystack in a cold night and set twigs on fire in haystack. The accused was acquitted as he could not appreciate the risk involved.

19 Stephenson (1979) QB 895 Lord Lane at 704

20 Supra note 13

21 Caldwell v Metropolitan Police Commissioner (1982) 1 AC 341

22 Caldwell recklessness has invited criticism on the ground that for creation of criminal liability culpable state of mind has to be proved. It has the potentiality to criminalize a blind person who damaged the property as he was unaware of risk involved in the act. Further, inadvertent recklessness blurred the distinction between negligence and recklessness.

23 Such an approach was also criticized in view of W (A Minor) v Dolbey (1983) Crim LR 681, where a minor wounded a man and could not be held liable due to subjective test but in case he would have damaged spectacles also, he could be held liable for damaging property but not for causing wound. See, Smith & Hogan, Criminal Law (2008) 12th Edn. Oxford University Press at 97 - 98

24 George, B. Vold, Theoretical Criminology, (1978) 2nd Edn. Oxford University Press pp.205 -207; See also, Emile Durkheim, Division of Labour,

sovereign to punish and pleasure and pain is the basis of human motivation and thus there should be a scale of crimes and punishments.[25] The environmental crimes are based on classical premise of punishment and deterrence pervades throughout. The tariff system of punishment is like any other crime. The repeat crime or continued violation of the provisions, directions or orders under the legislations invite enhanced punishment and at times minimum mandatory punishment have been provided. Therefore it is essential to delineate the punishment provisions under various environmental legislations in India.

(a) Water Act, 1974

The Water (Prevention and Control of Pollution) Act, 1974 was passed with a view to prevent and control water pollution and maintaining or restoring the wholesome nature of water. Chapter VII of the Act, inter alia, deals with penalties and punishment.[26] Punishment is infliction of pain or suffering for violation of law. The relevant provisions of the Water Act in respect of penalty and punishment may be analyzed under following heads:

(i) Failure to comply with Directions

The violation of the provisions for the first time is dealt with some leniency but continued violation attracts enhanced penalty. Tariff system of punishment as argued by Classical penologist has been invoked. Failure to comply with the directions given under section 20 (2) or (3)within such time as may be specified in the direction, shall on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both. In case of continued failure with an additional fine and this may extend to five thousand everyday during which such failure continues after the conviction for the first such failure.[27]

The concept of minimum mandatory punishment has been used where one fails to comply with any order issued under clause (c) of subsection (1) of Section 32 or any direction issued by a court under Section 33 (2) or any direction issued under Section 33A shall in respect of each such failure and on conviction shall be punished with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine and in case the failure continued an additional fine which may extend to five thousand rupees for everyday during which such failure continued after the conviction for the first failure.[28] In both the above mentioned conditions, the deterrent effect may be on an individual but not on the giant companies running with huge profit.

(ii) Penalty for Certain acts

Whoever destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed of place by or under the orders or directions of the Board - Central or State commits an offence punishable with imprisonment for a term which may extend three months or with fine which may extend to ten thousand rupees or both. Whoever obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under the act is punishable with the same quantum of punishment. Further who damages any work or property belonging to the Board is punishable. Failure to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer, or other employee, for the purpose of Air Act is punishable act. Whoever fails to intimate occurrence of the accident or other unforeseen act or event under Section 31 to the Board or other authorities or agencies as required by that section is liable for punishment. Giving any information which is required under the Act knowingly or wilfully or making a statement which is false in any material particular is an offence. Making a false statement in respect of any material particular for the purpose of obtaining consent is equally punishable.[29]

Further, where for the grant of consent in pursuance of section 25 or section 26 the use of meter or gauge or other measure or monitoring device are required and such device is used for the purposes of those provisions, any person who knowingly or wilfully alters or interferes with that device so as to prevent it from monitoring or measuring correctly is punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or both. [30]

(iii) Penalty for Contravention of provisions of Section 25 and 26

The contravention of Section 25[31] or section 26[32] is punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.[33]

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25 Id. at pp.22 -25
26 See, Water Act, 1974, Sections 41 to 50
27 Id. Section 41 (1)
28 Id. Section 41 (2)
29 The Water Act ,1974, Section 42(1)
30 Id. Section 42(2)
31 Section deals with restriction on new outlets and new discharges.
32 Section deals with existing discharge of sewage and trade effluent.
33 Id. Section 44

(iv) Enhanced Penalty after previous Conviction

A person who was convicted on previous occasion for having contravened section 24, 25 or 26 and has again found guilty of an offence involving the contravention of the same provision, he shall, on the second and on every subsequent conviction, be punished with imprisonment for a term which shall not be less than two years but which may extend to seven years.[34] However, the cognizance under this provision shall not be taken if the previous conviction occurred two years before the subsequent conviction.[35]

(v) Penalty for Contravention of certain of provisions Act

There exists a residuary penalty provision contained in Section 25A. The contravention of any of the provisions of the Act or failure to comply with any order or direction given under the Act for which no penalty has been made anywhere in the Act shall be punished with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both and in case of continuing contravention or failure, with an additional fine which may extend to five thousand for every day during which such contravention of failure continues after the first such contravention or failure.[36]

(vi) Publication of Name of the offender

Where a person committed an offence under the Water Act, 1974 and a like offence is committed afterwards, the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence and the penalty imposed to be published in newspaper or in some other manner at offender's expense. The expense of such publication shall be deemed to be the part of cost attending the conviction and shall be recovered in the same manner as a fine.[37]

(vii) Offences by the Companies

Section 46 of the Water Act imposes liability on the company and the person in charge of the company. It provides that where an offence under the Act is committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business of the company as well as the company shall be deemed to be guilty of the offence.

In Rajendra Kumar Wadhwan and M/S Daawat Foods Limited v M.P. Pollution Control Board[38] the petitioner, the director of the Company Daawat Food Ltd. was prosecuted under Section 43 and 44 read with 47 of the Water Act. The company was having a rice processing plant and the petitioner mainly responsible for the work in the company, purchase of raw material and marketing of the finished products. Before the commencement of operation the company sought consent from the respondent and it was granted on the conditionally that fulfillment of treatment of effluents. The effluent was found to be non - compliant of the standard as it flow through storm water drain and notice was issued accordingly. The company stated in its reply it had installed treatment plant. It was argued on behalf of the petitioner that in what manner the petitioner could be held responsible for the affairs of the company. The case of SMS Pharmaceutical Ltd. V Neeta Bhalla[39] was referred where under Section 141 of the Negotiable Instrument Act, 1881 (materially at par with Section 47 of the Water Act, 1974) was in issue. In this case the Supreme Court held that it is necessary to specifically aver in the complaint that at the time the offence was committed, the person - accused was in charge of and responsible for the conduct of the business of the company. Absence of such averment would be deficient to the requirement of Section 141 of the N.I. Act, 1881 the Court clarified that merely being a Director of a company is not sufficient to make a person liable and a director cannot be deemed to be incharge of and responsible to the company for the conduct of its business. The second limb of the argument was the offence requires mens rea of knowledge. Section 43 of the Water Act provides for the prosecution of a person who violates Section 24 of the Water Act. Section 43 provides for imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine. Section 43 prohibits use of a stream or well for disposal of polluting matter. It provides no person shall knowingly cause or permit any poisonous, noxious or polluting matter to enter directly or indirectly into any stream, well, sewer or land. It is clear that the legislative intent reflects mens rea in the form of knowledge in respect of forbidden act. Further, it was also argued that Section 24 is not a strict liability offence where the mere act is prohibited and would create liability in absence of knowledge on the part of the doer. The Court observed:

The very wordings of the section make it apparent that the mens rea of knowledge had to be manifested in person violating the said provision. The complaint case does not reflect or have any allegation that the company had the

[34] Id. Section 45
[35] Ibid Proviso
[36] The Water Act, 1974 Section 45A
[37] Id. Section 46
[38] M. Cr. C. No 5675/2011
[39] (2005) 8 SCC 89

requisite knowledge of contamination that was taking place . . . the pipeline bringing the contaminated water to collection tank was passing underground and, therefore, a rupture in that pipeline not something that was detectable easily….the requisite knowledge for violation of section 24 itself is absent …and therefore, the offence under section 43 of the Water Act is not prima facie constituted.[40]

It appears to be difficult to hold the head of the Department or other person responsible for running the company. The company cannot be imprisoned and the Directors cannot be held responsible. The penal provision is thus favours industrial organization and other ordinary individual may be punished.

(viii) Offences by the Government Departments

Section 48 of the Water Act deals with offences committed by any department of the government. In such a situation the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, the Head of the Department shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent commission of such offence. While applying the provisions of Section two arguments have been very common. First, no prosecution of Public Servant without sanction under Section 197 of the Criminal Procedure Code, 1973 and secondly, the public servant was not the Head of the Department. For the purpose of Section 48 of the Water Act, sanction required for public servant under section 197 of the Criminal Procedure Code is not applicable. In V.C. Chinappa Goudar v Karnataka State Pollution Control Board[41] the High Court had denied the protection of Section 197 of the Criminal Procedure Code, 1973. It was contended on behalf of the State Pollution Control Board that under Section 48 there was a rebuttable presumption in so far as guilt is concerned as against the Head of the Department of the Government and if Section 197 is held to be mandatory the same would be in conflict with Section 5 of the Criminal Procedure Code, 1973 and consequently Section 60 of the Water Act get attracted If the application of Section 197 is held to be attracted and in the event of sanction being refused by prosecution that by itself would be an impediment for the operation of the deemed fiction contained in Section 48. In such a situation there would be a direct conflict between Section 48 of the Water Act and Section 197 of the Cr PC. and consequently Section 60 will come into play which has overriding effect on any other enactment other than the Water Act. 1974. Accepting the contention, the Court observed:

…under Section 48, the guilt is deemed to be committed the moment offence under the 1974 Act is alleged against the Head of the Department of a Government Department. It is rebuttable presumption and under provisions of Section 48, the Head of the Department will get the opportunity to demonstrate that the offence was committed without his knowledge or that in spite of due diligence too prevent commission of such an offence the same came to be committed. It is far different from saying that the safeguard provided under the proviso to Section 48 of 1974 Act would in any manner enable the Head of the Department of the government department to seek umbrage under Section 197 Cr PC and such a course if permitted would certainly conflict with the deemed fiction power created under Section 48 of the 1974 Act. [42]

Section 5 of the Criminal Procedure Code, 1973 provides that in the absence of specific provision to the contrary, nothing contained in the Criminal Procedure Code would affect any special or local laws providing for any special form or procedure prescribed to be made applicable. There is no specific provision providing for any sanction to be secured for any proceeding against a public servant under the 1974 Act and in that process if the sanction is refused by the State by invoking Section 197 Cr PC that would virtually negate the deeming fiction provided under Section 48 by which the Head of the Department of a government department would otherwise be deemed guilty of the offence under 1974 act. In such a situation the outcome of application of Section 197 Cr PC by resorting to reliance placed on Section 4 (2) of the Cr PC would directly conflict with Section 48 of the 1974 Act and consequently Section 60 of 1974 Act would automatically come into play which has an overriding effect over other enactment other than the 1974 Act.[43]

In Noorulla Khan v Karnataka State Pollution Control Board[44] the issue was whether the Commissioner of City Municipal Council can strictly be called as Head of the Department and it was held that he cannot be held to be Head of the Department for the purpose of Section 48 of the Act but such persons will be covered under Section 47 of the Act. The issue of liability however could not be decided due to other technical reasons.

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40 Supra 22 Para 7
41 (2015) 14 SCC 535
42 Id. Para 7
43 Id Para 8
44 Cri Appeal No 599 of 2021; See also, Karnataka State Pollution Control Board v B. Heera Naik (20200 16 SCC 298

(b) Air Act, 1981

Chapter VI of the Air Act, 1981 deals with penalties.[45] The relevant penal provisions relating to offences may be analyzed as under following heads:

(i) Failure to comply with the provisions of Section 21 or 22 or directions under Section 31A

Failure to comply with the provisions of Section 21, 22 or with the direction issued by the Board under section 31A is punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine. In case of continued failure, additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure. Further, if the failure continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine. On one hand the punishment is based on tariff system (where maximum is prescribed without mentioning the minimum punishment) and punishment increases for continued failure and, on the other hand, also provides for minimum mandatory punishment in such a situation.[46]

(ii) Penalties for Certain acts

Whoever destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed of place by or under the orders or directions of the Board - Central or State commits an offence punishable with imprisonment for a term which may extend three months or with fine which may extend to ten thousand rupees or both. Whoever obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under the act is punishable with the same quantum of punishment. Further who damages any work or property belonging to the Board is punishable. Failure to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer, or other employee, for the purpose of Air Act is punishable act. Whoever fails to intimate occurrence of the emission of air pollution into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence to State Board and other prescribed authorities or agencies as required under Section 23(1) of the Act. Giving any information which is required under the Act or making a statement which is false in any material particular is an offence. Making a false statement in respect of any material particular for the purpose of obtaining consent is equally punishable.[47]

(iii) Penalty for contravention of certain provisions of the Act

Section 39 is residuary in nature. The contravention of the provisions of the Air Act, 1981 or order or direction issued for which no penalty has been provided elsewhere in the Act is punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or both. In case of continuing contravention, with an additional fine which may extend to five thousand every day during which such contravention continues after conviction in for the first such contravention.[48]

(iv) Offences by companies

Section 40 of the Air Act imposes liability on the company and the person in charge of the company. It provides that where an offence under the Act is committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business of the company as well as the company shall be deemed to be guilty of the offence. However, such person shall not be liable to punishment if it is proved that the offence was committed without his knowledge or that he exercised due diligence to prevent commission of such offence. Further, where an offence has been committed by a Department of Government and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(v) Offences by Government Departments

Section 41 of the Air Act, 1981 deals with offences committed by any department of the government. In such a situation the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, the Head of the Department shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent commission of such offence. Further, where an offence has been committed by a Department of Government and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any officer, other than the Head of the

[45] Sections 37 - 48
[46] The Air Act, 1981 Section 37
[47] Id. Section 38
[48] Id. Section 39

Department, shall officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly While applying the provisions of two arguments have been very common. First, no prosecution of Public Servant without sanction under Section 197 of the Criminal Procedure Code, 1973 and secondly, the public servant was not the Head of the Department.

There exists no provision as to publication of the name of the person convicted subsequent to the previous conviction and his residence in newspaper at the expense of the convicted person and the cost of publication is to be recovered as fine.

(c) Environment Protection Act, 1986

The Environment Protection Act, 1986 was passed with an object for protection and improvement of environment. It is a kind of umbrella legislation.[49] There are only three sections dealing with punishment. The provisions are as under:

(i) Penalty for contravention of the Provisions of the Act and the rules, orders and directions

Failure to comply with or contravention of the provisions of the Environment Protection Act, 1986 or rules made or orders or directions issued shall in respect of such failure or contravention is punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees or with both.[50] In case the failure or contravention continued, additional fine which may extend to five thousand rupees for everyday during which such failure or contravention continued after the conviction for the first such failure or contravention. The punishment may increase if the failure or contravention continued beyond the period of one year after the date of conviction; the offender shall be punished with imprisonment for a term which may extend to seven years.[51]

(ii) Offences by Companies

Where any offence under the Environment Protection Act, 1986 has been committed by a company, every person who, at the time offence was committed, was directly incharge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.[52] However, he shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.[53] Further, where an offence under the Environment Protection Act is committed by a Department of the Government and it is proved that the offence was committed with the consent or connivance of or is attributable to any neglect on the part of any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.[54] The companies cannot be punished by imposition of imprisonment and only fine can be imposed on them.[55]

(iii) Offences by Government Departments

Where an offence has been committed by any Department of the Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.[56] However, the Head of the Department shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.[57] Further, where an offence under the Environment Protection Act is committed by a Department of the Government and it is proved that the offence was committed with the consent or connivance of or is attributable to any neglect on the part of any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.[58]

It has been observed that those who are involved in causing harm to environment deliberately for the business and trade purpose are exempted either by invocation of due diligence clause or due to absence of knowledge. The conditions of penal liability tilt in favour of industry. Industries may pay any amount of fine if it is profitable to them. The punishment must have an impact on the accused and thus the element of pain or suffering is

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[49] See, the Environment Protection Act, 1986 Section 24
[50] Id. Section 15 (1)
[51] Id. Section 15 (2)
[52] Id. Section 16 (1)
[53] Id. Section 16 (1)Proviso
[54] Id. Section 16 (2)
[55] Standard Charter Bank v Directorate of Enforcement 2006 Cri LJ (SC)
[56] Id. Section 17 (1)
[57] Id. Proviso to Section 17 (1)
[58] Id. Sub- section (2)

necessary. If penalty can be paid easily, without qualms, such punishment lacks necessary ingredient. It will result into unabated environmental destruction. Since the poor suffer by imposition of fine and rich by imprisonment, t herefore, inverse punishment should be resorted to have a real deterrence.

VI. Conclusion

In the era of industrialization, development and pollution has to be judiciously dealt with. The eco- centric concept of harm has to be considered instead of anthropocentric. The offences against environment are not quasi crimes instead it is a typical crime in which liability has to be created on the fulfillment of two conditions, namely, guilty conduct and guilty mind. Any act done deliberately resulting into harm to environment has to be made punishable despite there being no desire to cause harm to environment. The recklessness should be the basis of liability. The penal provisions in various enactments protecting and improving the environment are empty and pretentious. There is a need to consider the concept of inverse deterrence.

International Legal Mechanisms for Regulating Green Bonds Market: A Dispute Resolution Perspective

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ABSTRACT

To tackle the adverse impact of climate change, it is the need of the hour for both developed and developing nations to come together and promote sustainability. Raising green finance is of utmost necessity as the impact of climate change in various parts of the world is crystal clear. Therefore, one such source of green finance which has been developed lately developed is green bonds which are a relatively new and growing financial instrument that aims to finance environmentally friendly projects and it encourages sustainability. However, as with any financial instrument, disputes may arise with the issuance of green bonds as well. Given that, the issuance of green bonds is quite new, the legal mechanisms to ensure its proper implementation is limited both domestically and globally. This paper aims to explore the relationship between green bonds and dispute resolution in the context of international finance and sustainable development. The study will first provide an overview of the green bond market, including its history, purpose, and current state. Then, the paper will analyze the potential disputes that may arise in relation to green bonds, such as disputes over the use of proceeds, project performance, and creditworthiness. The potential solutions to disputes in the green bond market, including the use of alternative dispute resolution mechanisms, such as mediation, and the role of international financial institutions in promoting sustainable development and dispute resolution shall also be examined in the study.

Finally, the study will conclude by highlighting the need for further research on the relationship between green bonds and dispute resolution and the need for effective mechanisms to resolve disputes in the green bond market.

Keywords: Alternative dispute resolution; International finance; Green Bonds; Sustainable development; Mediation; Green bonds Market .

1. Introduction

Climate change is a pressing issue that shall necessarily be addressed effectively at the earliest both domestically and globally. Over time, various conventions, treaties, and agreements have emerged to combat environmental deterioration seeking commitment from nations all around the globe to come together and play a pivotal in the conservation of the environment. Considering the rising carbon emission, carbon intensity, and lack of carbon sinks to make the environment healthy enough for future generations, the concept of sustainable development goals has emerged, and approximately 195 countries have asserted to make sustainability a priority.[1] High-end goals such as reducing carbon emissions to zero, and generating large chunks of renewable energy, etc., have been determined and set as a standard to be attained in the coming years. However, when put into practice, the establishment of these goals demands colossal financial investment. Green financing at a global scale is required to boost financial flows from both the private and public sectors that prioritize sustainable development. A significant portion of green finance entails enhancing environmental and social risk management, seizing possibilities that provide both a satisfactory rate of return and sustainable use of natural resources, thereby enhancing environmental protection. This is when green bonds as a form of green finance come into the picture. The green bonds market is global in nature, and international disputes continuously rise, which suggests the development of arbitrational forums to address the challenges that come with the green bonds market.

1.1 What are Green Bonds?

Green bonds are pretty much similar to regular bonds however, they are specifically dedicated to environmental sustainability and financing projects that are green in nature. These are fixed-income debt securities, which could be both taxable or tax exempted. The funds or the proceeds raised through green bonds are utilized to finance the projects or activities that particularly promote environmental sustainability and climate mitigation. The bonds follow an identical structure as that of standard bonds, carrying similar characteristics.[2]

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[1] DANIELA RUPO, SUSTAINABILITY AND LAW 45-109 (Springer, 2020).

[2] Varsha Banta, Growing Green Finance in India: A Review of Green Bond Principles, Indian Green Debt Securities and ESG, JSA LAW (Jan 30, 2022, 17:08) https://www.jsalaw.com/banking-financial-services/growing-green-finance-in-india-a-review-of-green-bond-principles-indian-green-debt-securities-and-esg/.

1.2 Growing Green Bonds Market

The issuance of green bonds originated in 2007, and the European investment bank emerged as the first body to issue a green bond as the climate awareness bond. Following the footsteps, the World Bank largely gave rise to the green bonds market and since then there is no looking back as the market has considerably grown.[3] The green bond market is expanding massively. The growing market has a beneficial effect on the environment. Governments and corporations utilize the bonds to fund significant sustainability initiatives. Efforts to combat deceptive marketing set up as greenwashing are intensifying. As nations worldwide intensify their efforts to decrease carbon emissions, the business of green bonds is flourishing. This explosive growth was outlined in October 2021, when the European Union issued approximately $14 billion in bonds which is the largest transaction in history.[4] The booming green bond markets act as a tool to bridge the SDGs established as global green initiatives. Major investors, including investment firms, insurers, and pension funds, are eager to purchase green bonds, contributing to the market's expansion.

2. Current Regime Governing The Green Bonds Market Globally

The green bonds market is governed as per the principles of green bonds established by the International Capital market association, which makes the framework standard for all nations around the world. The guidelines issued are mandatory for all the participating countries to follow which are listed below:[5]

- Use of proceeds: The party issuing the bonds is required to develop and properly disclose the criteria following which the eligibility of the proposed project, assets, or activities be determined. There shall be criteria identification for various kinds of projects.
- Project evaluation: Complete details and checklist following which a project would be evaluated for using the proceeds from the Green Bonds. The information concerning the process which shall be followed to examine the sustainability of specific projects or activities shall be disclosed.
- Proper usage of funds: Specifics regarding the procedures and checks that will be carried out to guarantee that the allocated cash will be put toward the green projects only such as:

1. Projects that promote renewable energy using clean technology.
2. Projects endorsing clean and green transportation contributing to pollution reduction such as mass transportation.
3. Projects including sustainable water management such as water recycling, and clean water.
4. Projects mitigating climate change.
5. Projects promoting energy efficiency and the development of green buildings.
6. Projects endorsing sustainable waste management which further includes waste recycling, energy generation, and efficient disposal of wastage;
7. Sustainable use of land further including sustainable agriculture, forestry, and afforestation.
8. Protection of Biodiversity.

- Reporting: It entails the examination of the progress made on the projects or assets to which Green Bond monies have been allocated, with respect to both its sustainability and finance utilization.

Since there is no restriction on foreign investment, with the issuance of green bonds, a number of challenges come into the picture such as greenwashing, disputes regarding the proper allocation of funds and its usage, etc. Given the fact that an identical model is required to govern the issuance of green bonds all around the globe, the conundrums associated with the green bonds market can easily be settled through an international arbitration mechanism.[6]

3. Green Bonds Market and Sustainable Development Goals

United Nations is constantly encouraging nations to come together and has been supervising the financial regulators and markets to align themselves with the sustainable development agenda for 2030.[7] The ultimate objective of this effort is to direct the financial flows to aid the achievement of Sustainable Development Goals. Stock markets are at the center of today's globalized economy. These marketplaces are the primary means by which

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3 The World Bank, What Are Green Bonds?, WORLDBANK.ORG (January 22, 2022, 21:14) https://www.worldbank.org/en/topic/climatechange/brief/what-are-green-bonds.

4 European Commission, European Commission raises €7.05 billion for SURE and MFA programs in its last syndicated transaction of the year, EUROPEAN COMMISSION, (Jan 31, 2022, 08:09) https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7536.

5 Sustainable finance, Green Bonds Principles, International Capital market Association (Jan 21, 2022, 17:34) https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/green-bond-principles-gbp/.

6 A target of installing 175 GW of renewable energy capacity by the year 2022 has been set, PRESS INFORMATION BUREAU, MINISTRY OF NEW AND RENEWABLE ENERGY (JULY 19, 2018, 3:45 PM) https://pib.gov.in/Pressreleaseshare.aspx?PRID=1539238.

7 World Bank, Green Bonds, IBRD FUNDING PROGRAM (JAN 22, 2022, 11:35 PM) https://treasury.worldbank.org/en/about/unit/treasury/ibrd/ibrd-green-bonds.

investors and other financial bodies distribute capital to various industries. The allocation of capital that takes place today will have an effect on the ecosystems as well as the patterns of production and use that emerge in the future. The following are the primary focuses of the work being done in the field of green financing:

- Providing assistance to the public sectors of various nations to combat climate change.
- Increasing the number of public-private partnerships used to finance various mechanisms.
- Building the capabilities of community businesses through the use of international microcredit.

4. Challenges in the Green Bonds Market and International Dispute Resolution Forums

Though the issuance of green bonds is a relatively new concept, the market has boomed exponentially to mitigate the adverse impact of climate change. With the growing conscience of investors and issuers, the challenges of the green bonds market also continue to grow with each passing year such as embezzlement of funds in the form of greenwashing, delay in project implementation, and unclear allocation of proceeds and credit worthiness.[8] The green bond market all around the globe is governed by the Green Bonds Principles which makes arbitration the most efficient mode of dispute resolution in cases of conflict. There is an absence of proper standardization, a lack of transparency in the allocation of funds and proceeds, greenwashing, etc. Due to the failure of standardization, the market is failing to achieve its goal within the set time limit. Therefore, a revision in the regulatory framework is required to tackle the issues that act as obstacles to mitigating climate action. When the green bonds market is discussed, the environmental issues, rights of the investors, and the credibility of the issuers are the major aspects that shall be addressed effectively. Various international forums exist that deal with it individually, however, an effective regulation seeks collaborated efforts.[9]

4.1 From the environmental point of view, the challenge of greenwashing is the most alarming issue that exists in the green bond markets. The possibility of greenwashing is one of the primary obstacles that must be overcome before the financial markets are witnessed as the green bonds market boomed. Greenwashing is the practice of channeling funds from green bonds into projects that have minimal positive consequences. It poses a significant threat to the public image of socially conscious investors who intend to expand their investment strategies by purchasing practices that are environmentally friendly, socially responsible, and democratically accountable.[10] Despite the practice being very real, several countries have still failed to acknowledge its existence. Due to the absence of country-wise dedicated laws, it is of high importance for international forums to come up with a standard principle to address greenwashing internationally since it is an emerging phenomenon that is highly practiced all around the globe. Nations like France, and Singapore are effectively dealing with greenwashing, however, since it involves international finance and investment, the development of dispute resolution forums to address international trade and manipulation in the form of greenwashing. The permanent court of arbitration provides assistance and advice to the nations, international organizations, private parties, etc., that are involved in the administration and development of novel dispute settlement procedures specifically dedicated to environmental welfare. The PCA is committed to the advancement of international environmental law and governance, and it takes an active role in both of these processes. In the past, the PCA has worked closely with the United Nations Environment Programme (UNEP) to organize a joint Advisory Group for the purpose of discussing recent advancements in the industry of environmental conflict resolution. In accordance with the United Nations Convention on Biological Diversity and the Intergovernmental Committee for the Biosafety Protocol, the PCA has been active in the discussions and negotiations regarding the creation of liability and redress mechanisms.[11] In addition, the PCA has made a contribution to a report on the design of treaty-based environmental arbitration and conciliation procedures that was compiled by the Secretariat of the United Nations Convention to Combat Desertification (UNCCD). Recent events include the PCA's participation in multilateral negotiations held under the United Nations Framework Convention on Climate Change (abbreviated as UNFCCC) and a presentation given on matters relating to climate change dispute resolution and compliance.[12]

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8 Mondrian Investment Partners, The Case for Investing in Green Bonds, MONDRIAN (Feb 2, 2022, 17:16) https://www.mondrian.com/the-case-for-investing-in-green-bonds/.

9 Torsten Ehlers, "Green bond finance and certification", IV BIS (17 September 2017) https://www.bis.org/publ/qtrpdf/r_qt1709h.pdf.

10 Roman Ferrer, "Are green bonds a different asset class? Evidence from time-frequency connectedness analysis" Vol 292 Journal of Cleaner Production (April 2021).

11 James Harrison, "Reflections on the Role of International Courts and Tribunals in the Settlement of Environmental Disputes and the Development of International Environmental Law" 25 Journal of environmental law 501-514 (2013).

12 Abdul Haseeb Ansari, "ALTERNATIVE DISPUTE RESOLUTION IN ENVIRONMENTAL AND NATURAL RESOURCE DISPUTES: NATIONAL AND INTERNATIONAL PERSPECTIVES" 59 Journal of Indian Law Institute (2017).

4.1.1 International Scenarios of Greenwashing

Greenwashing can be found in both large and small businesses, but it has the same detrimental effect in either setting. It lowers customer confidence in sustainable practices and opens the door to unfavorable effects on the environment. It is imperative that a few of the most recent examples be examined and comprehended in order to improve one's ability to combat the spread of fake news.[13] The environmental effects that people cause by their actions are starting to register in the consciousness of consumers. Because of this, global markets and businesses are actively shifting towards taking action to combat the negative effects that they have on the environment. In order to reap the benefits that are associated with an environmental claim, the claim needs to be backed up by action. Despite the fact that the shift towards a more environmentally friendly future is well underway, greenwashing is unfortunately still a problem. Greenwashing is actively practiced by a wide variety of businesses, industries, and government agencies, each to a varying degree.[14] Frequently, this is an attempt to satisfy the demand for environmentally responsible solutions while maintaining the status quo in its current form. Certain business sectors may be more obvious than others. For instance, the fossil fuel industry often rebrands itself as "green" and environmentally friendly by pushing the concept of "clean coal" or promoting natural gas as a sustainable energy source. This is done in order to appeal to consumers who are concerned about their impact on the environment. In a similar vein, it is generally accepted that the carbon offsets that aviation companies offer as a payment option for their customers have a negligible effect on the surrounding environment.

- **Royal Dutch Shell Concerning their Carbon Footprint**

As a global powerhouse in fossil fuels, Shell has been forced to defend itself in multiple court cases in the Netherlands due to allegations of greenwashing. The gas and oil company has launched multiple campaigns and given numerous interviews in which it describes itself as being committed to global net-zero programs, reducing carbon emissions, and assisting the world in the fight against global warming and the transition to renewable energy. Despite this, a number of recent reports indicate that Shell has been actively looking into fresh prospects for the production of oil and gas. Furthermore, it has only allocated 1% of its long-term investments to the development of low-carbon renewable power. The company has also been ambiguous about its real plans for reducing its carbon emissions and has refused to provide details on how its economic portfolio conforms with global net-zero goals. In addition, the company has refused to provide details on how its financial portfolio lines up with global net-zero goals. According to the opinions of a number of climate change specialists, this demonstrates that Shell has no plans to take effective climate action beyond the scope of its advertising campaigns.

- **Walmart's Claim Regarding Its Model of Being an Environmentally Responsible Business**[15]

Walmart has just recently proposed plans to transition to a business model that produces less carbon emissions. This change comes after similar moves were made by other competitors, as businesses have become more aware of the impact their carbon emissions have on the environment. Walmart was eager to demonstrate its commitment to preserving the environment by announcing that it would work to reduce the amount of carbon emissions produced by its store locations. Nevertheless, the framework that the company put forward lacked essential components. The retail company's supply chains, which include the stages of processing, manufacturing, and transport, are responsible for the vast majority of the company's emissions, rather than its physical locations. Walmart has not shown any interest in reducing the indirect emissions that their business produces. Even though Walmart has decided to follow in the footsteps of its rivals, the company has not created a successful plan to reduce emissions. The actions of this major corporation are seen as greenwashing by many individuals.

Greenwashing is one of the major environmental challenges that are prevalent all around the globe. To address international environmental issues, it is necessary the development of a dispute resolution forum that is specifically dedicated to it. As a result, there is a need for initiatives to be taken toward the establishment of an international court of environment that usually deals with environmental conflicts.[16] The demand for the establishment of an ICE is nothing new; in the 1980s, Justice Postiglione was the first person to suggest a framework for the establishment of such a court. Another attempt was made in 1994 to establish an international forum for the conciliatory resolution of environmental

[13] Mary Menton, "Environmental Justice, and the SDGs: from synergies to gaps and contradictions, Sustainability Science", 1621-1636 International Journal of Environmental Justice (2020).

[14] Ana Regina Bezerra Riberio, Concepts and Forms of Greenwashing: A Systematic Review, 19 Environ Sci Eur 32 (2020).

[15] Walmart's quest for low-cost and environmentally friendly food, THE GUARDIAN, (Feb 04, 2022, 17:16) https://www.theguardian.com/sustainable-business/2014/oct/08/walmart-food-farm-animal-welfare-monsanto-pepsi-health-sustainability.

[16] Bharat Desai, "International Courts and Tribunals - the New Environmental Sentinels in International Law" 50 Environmental policy and law 17-33 (2020).

disagreements. This one was given the name International Court of Environmental Arbitration and Conciliation.

4.1.2 Limitations of the International Court of Justice with respect to the environment

- Limited competence and jurisdiction: According to Article 34 of the Statutory provision for the International Court of Justice, only states are allowed to petition the Court. Therefore, in the event that there is no transboundary effect of environmental damage caused by the nation, there is no possibility of legal action being taken against these activities. If, on the other hand, the nation is the one who committed the wrongdoing, then no non-state performer can take legal action. Now, just this rationale, namely the inability of non-state actors to prosecute the case, was thought to be the main reason why the Chamber for Environmental Matters was closed down. In accordance with the Article 36 of the Statute of the Court, the Court only has authority in two situations, firstly when the disputed party comes to an agreement and when the parties are required to sign a treaty or make a declaration that gives them compulsory jurisdiction. This limits the Court's context of jurisdiction.[17]
- Absence of specialized body: One more factor that the International Court of Justice is lacking is a specialized body. In the landmark case of Gabcikovo-Nagymaros, it was stated by the court that environmental disagreements inevitably elevate trying to compete for factual findings. This was stated in the court's own opinion. These claims involve many thousands of pages of documentation, all of which must be reviewed by the court. In order to accomplish this, the courts will often convene as ad hoc bodies; however, there is no permanent body that is able to handle such claims. However, it is not a problem that is exclusive to the field of environment, but it does require a body that is specifically dedicated to addressing it.

4.2 From the investor's point of view, there are several challenges such as the absence of regulating body to address international disputes in cases of foreign investment. Lack of transparency with reference to allocation of funds, timely completion of projects, lack of standardization, embezzlement of funds, etc. The investor-state dispute settlement also known as investment arbitration is a legal mechanism that resolves the disputes between investors and the hosting states.[18] However, this regime is in dire need of reforms. Even though the SDGs have been internationally recognized and govern certain global initiatives via the green bonds market, they still have not received much consideration in international domains that is international finance. The ISDS makes it more difficult to incorporate the Sustainable Development Goals into a global foreign investment because its dispute resolution system is limited to certain areas of the law. In order to bring the ISDS up to date and take into account the growing significance of the SDGs in the international business environment, a number of different reforms have been proposed. These propositions range from the incorporation of human rights clauses to the establishment of new permanent courts; however, none of these have been put into practice as of yet.[19] It's possible that the smoothest transition will occur from the inside out: the system itself should give more importance to sustainable development principles in order to accommodate new values, which is essentially the same thing as prioritizing public interests over investment interests. ISDS is a framework that only applies to international investments, and both the dispute resolution mechanisms and the rebuttals that are used represent the predominance of a financial and investment-based perspective. Nevertheless, foreign investment will always have some impact on the Sustainable Development Goals (SDGs), such as the provision of energy (SDG 7), protection of the environment (SDG 13), rights of workers (SDG 8), access to water (SDG 6), and reduction of inequality (SDG 10). Legal battles between investors and states often ignore important Sustainable Development Goal commitments because they focus exclusively on the limited domain of investment when resolving disputes. Proposed reforms in the existing regime are a complete overhaul, incorporating an appeal mechanism, and wholehearted integration of SDGs in the multilateral and bilateral treaties.

5. Role of Arbitration in Settling International Market Disputes

Robust international commitments have been asserted by nations across the globe, promising to mitigate climate change at any possible cost. These vast goals have led to the emergence of the market generating green bonds globally. However, with each rising financial transaction and commitment, it is natural for disputes to emerge. Given the importance of Sustainability and the accomplishment of goals determined during the Paris

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17 Daniel Bodansky, "The Role and Limits of the International Court of Justice in International Environmental Law" Cambridge Companion to the international court of justice (June 2020).

18 International finance corporation, Green Bonds, IFC (Feb 6, 2022, 14:18) https://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc_new/investor+relations/ir-products/grnbond-overvw.

19 Christian Kroll & Anne Warchold, Sustainable Development Goals (SDGs): Are we successful in turning trade-offs into synergies?, 5 Palgrave Comnum 56-109 (2020).

Agreement, it is of utmost importance to align with the set standards and timeline. Arbitration is perceived as the most effective form of dispute resolution and since the green bonds market involves commitment towards sustainable projects, it is required to resolve the issues arising in these markets at the earliest preventing environment from any further degradation. Issues such as project evaluation, allocation of proceeds, timely completion of the projects, and preventing the issuers from engaging in greenwashing calls for an international platform that regulates and resolves the conflict that acts as obstacles in the fulfillment of SDGs and the role that green bonds market could possibly play in its achievement.

International arbitration with respect to trade and commerce has grown exponentially and is widely accepted. As the world economy is tilting towards the achievement of green growth, the conflicts associated with it are becoming evident in various forms. To address these issues, it is essential to form a global forum that possesses the power to resolve disputes that arises particularly in the aspect of green finance. There are several reasons why the international green bond market shall opt for arbitration as a source of dispute resolution instead of standard litigation:

- A Neutral Party: A preconceived notion exists that the courts may favor the home country leading to a biased judgment. An international forum remains unbiased and further possesses the expertise of several arbitrators of a particular field.
- Confidentiality: Arbitration in the bonds market also has the benefit of being confidential and private. This prevents the conflicted party from media trials and regular "name and shame" procedures, bringing unwanted attention to the particular case.
- Co-ordinated dispute resolution: The concept of the green bonds market is relatively new, therefore making it novel to various kinds of exposures. The challenges that are associated with it are also less dealt with which requires a coordinated dispute resolution.

Conclusion and Suggestions

The green bonds market is rising tremendously and with the issuance of green bonds around the world, certain disputes have emerged which are required to be addressed effectively by the states that unanimously thrive towards the attainment of sustainable goals. The world is suffering from a lack of an adequate international body for resolving environmental disputes, the significance of the environment and the requirement that it be preserved is growing ever more important. In circumstances like these, the argument in favor of forming a body to fulfill this requirement has merit and should be considered. Hence in order to effectively regulate the international green bonds market, it is essential to set up international dispute resolution forums to address the issues of SDGs and dispute resolution forums. Not only the states but private parties and institutions shall also have the liberty to raise their concern before this particular forum. The SDGs shall necessarily be integrated into the upcoming bilateral and multilateral treaties and forums dedicated to addressing the disputes that arise out of such agreements and international green bond markets.

Dispute Resolution Mechanisms and Environmental Issues

Achor Philemon Adejoh *

ABSTRACT

The history of human race right from the stone age is characterized with the struggle for survival leading to the quest for power and dominance, the same can be said of the 21st century. This has always stirred up dispute and conflict amongst individuals, communities, states, regions and nations of the world. So long as the human race exist, dispute cannot be totally eradicated; there can't be anything such as absolute peace in the world. Hence, as we resolve one dispute, another will arise and we will yet again have to resolve them. Dispute and its resolution are a never-ending circle, a never-ending phenomenon among the nations of the world.

Furthermore, in recent century up until now, international dispute is on the increase threatening life globally and the environment due to the emerging changes in geopolitics (international relations and geographic elements.) This, therefore, calls for the need to understudy and transform dispute resolution mechanisms. Thus, this paper explores the various methods of dispute resolution, the causes of climate change and how to combat against it in order to curb some environmental issues that may lead to dispute or conflict internationally.

Keywords: Human race, power and dominance, international dispute, dispute resolution mechanisms, geopolitics, climate change, environmental issues.

Introduction

According to the Permanent Court of International Justice,(1924) in Mavrommatis Palestine, "international disputes is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons [States]" In a simple sense, it can be said to be the existence of any form of disagreement or clash of interest between two or more nations. It is expressed in form of a complaint, litigation, disagreement or conflict acknowledged by the law through factual evidence.

International dispute can either be political or legal depending on the behavior of the parties involve. Disputes are multi-dynamic and can be understood by identifying the causal factors which are always a combination of interrelated factors such as political, economic, territorial, and cultural, ethnicity and religious factor.

- Political factors; these explain global struggle for power, political exclusion, policy formulation and enforcement, corruption and so on.
- Economical factor; reflects in marginalization, desire of a nation to control more resources, fight for survival and superiority, trade route control and technology advancement. Some nations instigate dispute internationally threatening global peace and security but to their own advantage.
- Territorial factor; seen in dispute over land, natural resources, water body, air space, and the willingness of a nation to surrender or defend its territory.
- Cultural, ethnicity and religious factor; play out as a set of beliefs or ideologies that create a wrong perception and alter the way cultural, ethnicity and religious groups think of another group. It possesses the potential of uniting a people to act in defense of their common interest and against others. Once this ideology is set, it is difficult to change.

It should be noted that dispute will surely arise and its cause cannot just be a factor. The understanding of these factors can help us to know the area of intervention in a dispute and the resolution mechanism to employ.[1]

Amidst all these, climate change acting with other environmental issues such as pollution (poor air quality,) water scarcity, indiscriminate solid waste disposal, among others are not without significance in global peace and security as well as international dispute. Their impact has directly affected man's ecosystem and the global environment causing global tension.[2]

Several factors such as deforestation, oil and gas exploitation, the use of fossil fuel, intensive agriculture, industrialization, urbanization among others contribute to the continuous emission of carbon increasing the

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[1] Adinoyi Adavize Julius; Scofield Muliru; and Florence Wambuigichoya, (2015) Causes of International Conflicts and Insecurities: The Viability and Impact of Conflict Management Mechanism in International Relations

[2] Charter of The United Nations and Statute of The International Court of Justice, San Francisco 1945.

concentration of greenhouse gases in the atmosphere causing climate change. Consequentially, global temperature continues to rise leading the melting of polar ice, rising of sea level, desertification, drought and so on. This menace has forced people to migrate even to uninhabitable places and caused dispute over resources and territory.[3]

Climate Change and Conflict The problem of climate change is now an age-long issue, worsening as years go by and causing a ripple effect. As this phenomenon persists, it heightens the possibility of violence. The physical and environmental impact of climate change interacts with some socioeconomic and political factors such as poverty, corruption, bad governance and marginalization resulting in dispute or conflict both domestically and internationally. This makes it difficult to formulate and enforce policies and also to embark on development that can aid adaptation to climate change. It only catalyzes hostility and conflicts.[4]

Socioeconomic Consequences of Climate Change It is necessary to establish the fact that it's the socioeconomic consequence of climate change such as food and water scarcity, mass migration and prevalence of climate-related diseases in the face of poverty, corruption, bad governance and marginalization that leads to dispute and not just the physical and environmental consequences.[5]

There is a consensus agreement that the developing nations that contribute little to climate change are more vulnerable to its blunt consequence than the developed nations that contribute much to the emergence of this global problem. The poor individuals of the state are more likely to suffer the problems. Everyone has contributed to the problem of climate change, but it can't be effectively addressed as individuals, societies or the government of nations acts in isolation. And so, a corporate effort must be taken to solve this problem.

When social services are not able to meet international needs and expectations by providing a solution to these problems due to these socioeconomic and political factors, it breaks trust and leads to a lack of confidence in social institutions. This raises tension and eventually disputes.

In fighting climate change, we must divert from the use of non-renewable sources of energy and embrace the use of renewable sources of energy (green energy) to cut carbon emission, encourage the preservation of forest trees, and practice afforestation. But solving climate-related disputes and conflicts is an entirely different case. It requires taking a step further to solve or prevent the problems emanating from the socioeconomic consequence of climate change. Some of these steps are highlighted below;[6]

1. Policy formulation; design public policies that are sensitive to climate change and its consequences, especially the socioeconomic ones, to regulate the production and emission of carbon and release of other pollutants. And also, to guide the modality in releasing funds and how the funds are distributed. There is a need to understand what will be the possible impacts of projected climate changes over the next century and beyond. Policy formulation and enforcement are the number one drives to achieving a desired outcome.
2. Institutional restructuring; through public institution policies are implemented. security, financial, health, and disaster management institutions need to be restructured in such a way that they will be capable of handling climate change crisis. They must be accountable for their actions and transparent in their activities.
3. Funding and financial support; provision of financial support to help developing nations and poor individuals successfully adapt and combat the problems of climate change. The government agencies and non-governmental organizations must always play their roles which are vital in financing project initiatives that have the potentials of preventing or solving the problems of climate change.
4. Project impact assessment; some projects are of a global impact because the nations of the world are interconnected through transportation, communication, and geographical elements (territorial waters, land territory, and airspace.) The success of a nation's project may be to the detriment of other nations. The interest of an individual nation may adversely affect other nations. This then brings about the need to carry out an impact assessment on national development projects that have an international impact before they commence. This relationship creates a geopolitical system.
5. Humanitarian service; humanitarian services are of great help during a crisis and should be encouraged. When they intervene during a crisis to meet some needs in areas such as health, clothing, feeding, and shelter, they reduce tension and reinstall hope.

Resolving International Dispute International disputes can lead to war outbreaks or other forms of violence as a result

[3] Ibid
[4] Ibid
[5] Charter of The United Nations and Statute of The International Court of Justice, San Francisco 1945.
[6] Ibid

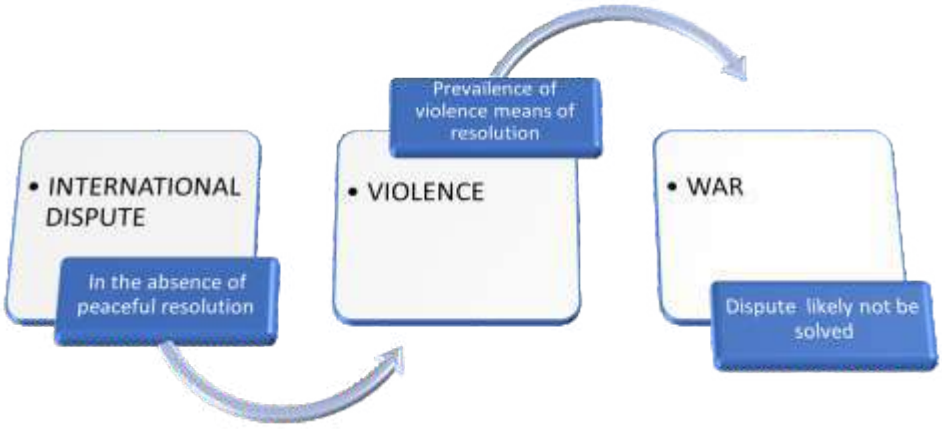


Fig.1; Relationship between international dispute, violence and war

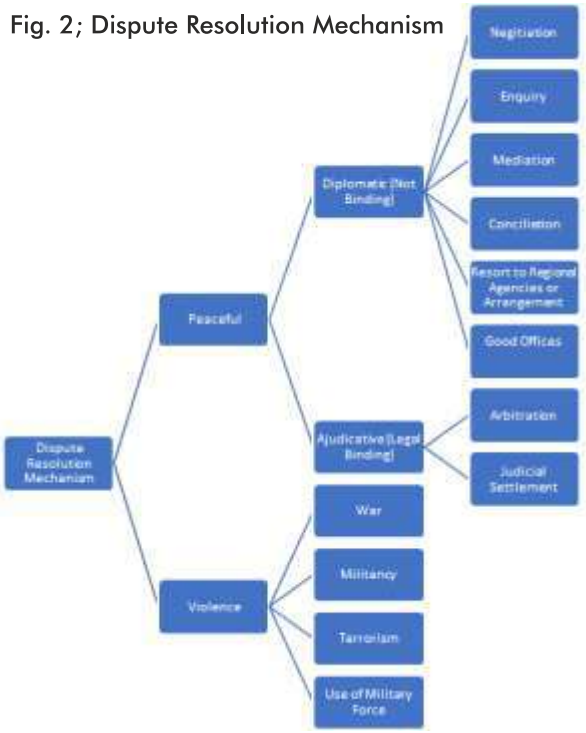
of the rational decision of national leaders in the attempt to resolve the dispute in their favor. Violence is one of the major hindrances or setbacks to a successful dispute resolution. The occurrence of violence during the peacemaking process can lead to different outcomes, while it can push one or both parties to the dispute to agree on a peaceful resolution, it can also put on hold the peacemaking process or in a worse scenario, it may raise tension and escalate to war, which its adverse impact can never be overemphasized.[7]

To resolve disputes among conflicting nations in a way that international peace and security are not threatened, diplomacy must be employed. In most cases, it is not necessarily a task for the court of justice. The individual nation in conflict must be allowed to express their grievance and judgment before reaching a consensus agreement.

It is stated in the United Nations Charter, article 2(3) "principles of resolving international disputes by peaceful means" that all members shall resolve their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered. It is necessary and cheaper to always resolve disputes by peaceful means. Violence should not be seen as a means of resolving dispute because, in most cases, it worsens the situation.[8]

Dispute Resolution Mechanisms Dispute resolution mechanisms are tools or approaches used to end or prevent the escalation of disputes. They are, on a general note, categorized into either peaceful or violence means of resolving disputes. The United Nations Charter, article 33

Fig. 2; Dispute Resolution Mechanism



(1) "pacific settlement of disputes" itemized some peaceful means of dispute resolution while stating that "the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other

[7] International centre for dispute resolution, (2021) International dispute resolution procedures (including mediation and arbitration)

[8] Adinoyi Adavize Julius; Scofield Muliru; and Florence Wambuigichoya, (2015) Causes of International Conflicts and Insecurities: The Viability and Impact of Conflict Management Mechanism in International Relations

peaceful means of their own choice." Some of these mechanisms are of judiciary proceedings and are legally binding on the parties to dispute while some are diplomatic in nature. On the other hand, some violence means of dispute resolution are war, the use of military force, militancy, and terrorism.[9]

- Negotiation The process of negotiation is when the parties to a dispute settle their dispute by discussing and adjusting their differences without the third party's involvement. It's the simplest form of dispute resolution mechanism, and there is a mutual consideration of consent by the parties.

Negotiation requires a high level of tolerance to accommodate excesses. In this method, real facts may be overlooked or concealed, and the will of the stronger party may prevail over that of the weaker party when there exists any form of inequality.[10]

- Good offices This method employs the help of a third party who can be an individual, a state, or group of states. The third-party advises and suggests to the parties to dispute to settle their dispute on favorable ground without been part of further settlement processes.

The advice and suggestions are subject to the acceptance or rejection of the parties and not compliance does not constitute a breach of the law as it is not legally binding. The main aim of good office is to encourage the parties to dispute to resolve their dispute by peaceful means.[11]

- Mediation Disputing parties settle their dispute by negotiation through the help of a third party actively involved in the settlement process. The third party lowers the tension of the disputing parties as they discuss and deliberate together.

The aim of mediation is that a third party gets to help disputing parties come to an agreement on their own without imposing a solution on them. Mediation creates the avenue for parties to express their feelings. This helps the third party to fully explore the complaints of parties to dispute. The mediator works with the parties in conflict to understand their interests and positions before making proposals on how to resolve the dispute, helping them to reach a workable, voluntary, and nonbinding resolution.

Mediation is the most efficient form of dispute resolution. But in a situation where the proposal of the third is rejected, the third party will need to make another proposal.[12]

- Inquiry This is a fact-finding method of resolving disputes. the dispute facts are investigated with the aim of finding a solution to the dispute. This process uncovers relevant truth about the dispute and dispel wrong information or ideology that may have led to dispute.

However, inquiry or fact-finding is not an independent dispute resolution mechanism. It combines with any other peaceful resolution mechanisms like mediation and negotiation to achieve its aim.[13]

- Conciliation Conciliation as a tool for dispute resolution combines the method of fact-finding and mediation. A commission is employed to investigate and to clearly set out basis facts about a dispute and to write a report containing a proposal on how the parties to dispute may resolve their dispute. The proposal is not legally binding, and the parties have the liberty to either accept or reject. It uncovers hiding truth about the dispute and to find out if there is any violation of the treaty.

Conciliation does not afford the disputing parties the opportunity to come together for any form of negotiation.[14]

- Arbitration This is the most important method of dispute resolution. The value is embedded in its judicial characteristic, which has made it a step higher than every other resolution mechanism. In arbitration, a judge who is responsible for resolving the dispute listens to each party argue their case and presents relevant evidence. The disputing parties can negotiate virtually at any point of the arbitration process on standards of evidence be used.

Disputes are resolved according to the existing international legal standard. One of the United Nations major successes was the establishment of the Permanent Court of Arbitration (PCA) in the 1899 peace conference. The resolution by arbitration is binding and must be obeyed by the parties involved. Although, it's first their agreement to submit a dispute to the court of arbitration to decide their fact. The resolution can be appealed if the arbitrator has gone beyond his power or on the ground of corruption.[15]

- Judicial settlement This is the second of the judiciary means to resolve international disputes peacefully. Judicial settlement is conducted by the International Court of Justice, an organ of the United Nations.

[9] Ibid
[10] Jeff Turrentine, (2022) What Are the Causes of Climate Change?
[11] International centre for dispute resolution, (2021) International dispute resolution procedures (including mediation and arbitration)
[12] International centre for dispute resolution, (2021) International dispute resolution procedures (including mediation and arbitration)
[13] Adinoyi Adavize Julius; Scofield Muliru; and Florence Wambuigichoya, (2015) Causes of International Conflicts and Insecurities: The Viability and Impact of Conflict Management Mechanism in International Relations
[14] Ibid
[15] International centre for dispute resolution, (2021) International dispute resolution procedures (including mediation and arbitration)

The court consists of 15 judges who are elected by the general assembly and the security council separately.

The judgment of the court is based on the decision of the majority of the judges. The court's decision is final and binding on the disputing parties; it cannot be appealed.[16]

- Resort to Regional Arrangements or Agencies Regional agencies refer to the international organizations with regional jurisdictions, some of which are the United Nations, African Union, European Union, American State, and Arab League. The United Nations Charter article 52 (1) established resort to regional arrangements or agencies as a means of dispute resolution and encourages that if the disputing parties are state members of the same regional organization, they should make an effort to resort to regional arrangements or agencies to resolve their dispute under three conditions in article 52 (1) and article 54 saying that;
- The matter relating to the maintenance of international peace and security is appropriate for regional action.
- The arrangements or agencies and their activities are consistent with the Purpose and Principle of the United Nations.
- And lastly, the security council must at all times be kept fully informed of the activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of peace and security.

Unlike resort to regional arrangements or agencies, there is no explicitly conditional requirement for the choice of any other peaceful dispute resolution mechanisms outlined by the United Nations.[17]

- Other Peaceful Means of Their Own Choice This statement implies that there is no constraint as to the choice of dispute resolution as far as international peace and security are not endangered. This means that the United Nations member states and non-member states involved in any form of international dispute can explore any other peaceful means of international dispute resolution. For instance, the use of consultation or organizing a conference to resolve their dispute. It must first be the agreement of the disputing parties to resolve their dispute by such means, which may not be of legal proceedings and nor binding but must be able to guarantee justice and the satisfaction of the parties to dispute.[18]

Conclusion

International disputes progress through different stages and conditions to result in violence if they are not resolved in good time by any of the various peaceful resolution mechanisms outlined in Article 33 (1) of the United Nations Charter.[19]

While there are several conferences and discussions being held on how to combat and mitigate the adverse impact of climate change, it's of great necessity to pay attention to the socioeconomic and political consequences of the impact of climate change and how to prevent or keep them in check through humanitarian services, institutional restructuring, policy formulation, project impact assessment, and funding and financial support.

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[16] Adinoyi Adavize Julius; Scofield Muliru; and Florence Wambuigichoya, (2015) Causes of International Conflicts and Insecurities: The Viability and Impact of Conflict Management Mechanism in International Relations

[17] Adinoyi Adavize Julius; Scofield Muliru; and Florence Wambuigichoya, (2015) Causes of International Conflicts and Insecurities: The Viability and Impact of Conflict Management Mechanism in International Relations

[18] Ibid

[19] Ibid

[20] Charter of The United Nations and Statute of The International Court of Justice, San Francisco 1945.

Climate Justice and Equity in International Climate Funding: A Study of Legal Impact and Ensuring Fair Allocation

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ABSTRACT

In the modern world, climate change poses a significant threat to global ecosystems, human livelihoods, and social justice. Its impacts disproportionately affect vulnerable populations and exacerbate existing inequalities. While the concept of climate justice has gained recognition and prominence over the years, a significant milestone occurred in December 2015 with the adoption of the Paris Agreement at the United Nations Framework Convention on Climate Change (UNFCCC) Conference of Parties (COP 21). Although the Paris Agreement does not explicitly mention climate justice, it emphasizes equity and the needs of developing countries in addressing climate change. In simple terms, climate justice refers to the fair and equitable distribution of the burdens and benefits of climate change and climate action. The paper will corelate it with climate funding refers to allocating financial resources to support climate change mitigation (reducing greenhouse gas emissions) and adaptation (building resilience to climate change impacts). It is crucial for implementing climate action plans, transitioning to low-carbon economies, and assisting developing countries in dealing with the adverse effects of climate change. The paper is relevant as the role of climate funding in advancing climate justice objectives has not been extensively explored.

This research paper aims to: understand the concepts of climate justice and climate funding; evaluate the ethical and equitable principles underlying climate justice; discuss the disproportionate impacts of climate change on vulnerable populations and the intersectionality of climate change and social inequities; examine key agreements such as the Paris Agreement (2015); explore various national funding mechanisms used to address climate change; analyse the effectiveness, challenges, and potential solutions related to climate funding for achieving climate justice goals; evaluating notable case studies of climate funding initiatives; and conclude by summarizing key findings and suggesting future directions.

Keywords: Climate Justice, Climate Change, Climate Funding, Vulnerable Populations, Sustainable Development.

1. Introduction

Climate change has emerged as one of the most pressing global challenges of our time, with far-reaching implications for ecosystems, economies, and social well-being. Its effects are not evenly distributed, and vulnerable populations, including marginalized communities and developing nations, bear the brunt of its impacts. The concept of climate justice has gained prominence as a framework for addressing the unequal burdens and promoting equitable solutions to climate change.

Through this paper, the researcher will provide an overview of climate justice, highlighting the ethical and equitable principles that underpin the concept. It also discusses the disproportionate impacts of climate change on vulnerable populations and the intersectionality of climate change and social inequities. Further, it will focus on climate funding, presenting an overview of various funding mechanisms used to address climate change challenges which will highlight the role of climate funding in advancing climate justice and discusses the challenges associated with its implementation. Further, to present case studies of notable climate funding initiatives, such as the Green Climate Fund, Adaptation Fund, and Global Environmental Facility, examining their objectives, strategies, and impacts on climate justice. It will also assess the effectiveness of climate funding for achieving climate justice goals, including impact evaluations of funding initiatives, identification of lessons learned, and strategies for addressing gaps and limitations.

It will also delve into overcoming challenges and enhancing climate justice through climate funding, discussing measures such as strengthening governance and accountability, promoting transparency and participation, mobilizing additional climate finance, and ensuring local ownership and empowerment. Finally in conclusion the paper will summarize the key findings, providing policy recommendations, and suggesting future directions for research.

Therefore, the primary aim of the paper is to explore the intersection of climate justice and climate funding, shedding light on how financial resources can be allocated in an equitable and just manner to address the

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multifaceted issues presented by climate change. By providing valuable insights and recommendations, this study aims to support policymakers, researchers, and practitioners in their endeavors to promote climate justice and work towards sustainable development goals amidst the evolving climate landscape.

2. Climate Justice and Climate Change

2.1 The Concept of Climate Justice

The term "Climate justice" is a multifaceted concept that encompasses the ethical, moral, and political dimensions of addressing climate change.[1] At its core, climate justice emphasizes the fair and equitable distribution of the costs and benefits of climate change and climate action. It recognizes that the impacts of climate change are not uniform and that certain groups, particularly marginalized and disadvantaged communities, bear a disproportionate burden of the consequences.

In 2015, the United Nations Framework Convention on Climate Change adopted the Paris Agreement, which is termed as a landmark international treaty, aimed at addressing climate change. While the agreement acknowledges the importance of climate justice, it does not explicitly define or address the concept. However, it provides certain key provisions which are relevant to climate justice. For instance, the concept of mitigation and adaptation[2] which emphasizes the need to limit global warming to well below 2 degrees Celsius above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5 degrees Celsius. This goal recognizes the disproportionate impacts of climate change on vulnerable and marginalized communities, particularly in developing countries. Further, the Paris Agreement recognizes the different capacities and responsibilities of nations in addressing climate change[3]. It calls for developed countries to provide financial resources, technology transfer, and capacity-building support to assist developing countries in their climate actions, which is a good initiative, thereby acknowledging the historical and current emissions disparities between developed and developing countries and recognizing the principal of Equity and Common but Differentiated Responsibilities (CBDR).

Another key clause of the agreement includes the establishment of the Warsaw International Mechanism for Loss and Damage[4], which addresses the impacts of climate change that go beyond adaptation. It recognizes that some climate-related impacts may result in irreversible losses and damage, particularly in vulnerable countries and communities. It is pertinent to mention that though the agreement acknowledges the issue but fails to provide specific legal liability or compensation mechanisms for loss and damage, leaving room for further research and development in this area.

Although, the researcher thinks that there is a need for recognizing the effective implementation strategies for countries to meet their mitigation and adaptation commitments. On the Climate Finance (which will be discussed later), the Paris agreement though recognizes the importance of financial resources for supporting climate actions in developing countries[5] but not provides any solution regarding the innovative funding mechanisms, how to improve the transparency in climate finance flows and assess the adequacy of financial resources while addressing the needs of vulnerable countries and communities. Also, there is a need to ensure the just transition for shifting to a low-carbon economy is equitable and protects the rights and livelihoods of workers and communities affected by the transition. In this study, further research will be done on the climate funding which different jurisdictions.

2.2 Ethical Principles of Climate Justice

Climate justice is guided by several ethical principles that serve as a framework for addressing the unequal impacts of climate change.[6] These principles include:

a) Equity: Climate justice seeks to address historical and ongoing social inequalities by ensuring that those who have contributed the least to greenhouse gas emissions and climate change are not disproportionately burdened by its consequences. It recognizes the need to allocate resources and support vulnerable communities in adapting to and mitigating the effects of climate change.

b) Inter- and Intra-generational Equity: Climate justice acknowledges the intergenerational impacts of climate change and the responsibility to protect the rights and well-being of future generations. It calls for actions that do not compromise the ability of future generations to meet their own needs.

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1 T. E. Randall, Climate Justice: A Literary Review, International Journal of Feminist Approaches to Bioethics, Vol 9 (1) JSTOR, SPRING, UNIVERSITY OF TORONTO PRESS, (2016).

2 Art. 5, The Paris Agreement, United Nations. 2015.

3 Art. 9, The Paris Agreement, United Nations. 2015.

4 Art. 8., The Paris Agreement, United Nations. 2015

5 Id.

6 Understanding Human Rights and Climate Change, UN Office of the High Commissioner for Human Rights to the 21st Conference of the Parties 21 (COP21), United Nations Framework Convention on Climate Change, October, 2015, available at https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf (accessed June 8, 2023)

c) Human Rights: Climate justice is closely linked to the protection and promotion of human rights. It recognizes that climate change threatens various human rights, such as the rights to life, health, food, water, shelter, and cultural identity.[7] It emphasizes the importance of upholding these rights while addressing climate change impacts.

d) Participation and Inclusion: Climate justice emphasizes the meaningful participation of affected communities, particularly those on the frontlines of climate change, in decision-making processes. It recognizes that their knowledge, perspectives, and experiences are vital for developing effective and just climate policies and strategies.

2.3 Disproportionate Impacts on Vulnerable Populations

Climate change disproportionately affects vulnerable populations, including indigenous peoples, low-income communities, women, children, people with disabilities, and marginalized groups.[8] These populations often have limited resources, inadequate infrastructure, and limited access to social services, making them more susceptible to climate-related risks.[9] Regarding impacts of climate change on vulnerable populations, it includes increased frequency and intensity of extreme weather events, sea-level rise, water scarcity, food insecurity, displacement, health risks, and loss of livelihoods. These impacts exacerbate existing social inequities and can further marginalize and disadvantage already vulnerable communities.[10]

2.4 Intersectionality of Climate Change and Social Inequities

Climate change is interconnected with various social inequities, such as poverty, gender inequality, racial discrimination, and unequal access to resources and opportunities.[11] These intersecting dimensions of social inequality amplify the vulnerability of marginalized groups to climate change impacts.[12] For instance, women often face disproportionate burdens as they are responsible for household water and food security, and they may have limited access to resources and decision-making processes. Similarly, indigenous communities, who often have strong cultural and spiritual connections to their land, are particularly vulnerable to the loss of traditional livelihoods and the destruction of their ecosystems due to climate change.

Therefore, recognizing and addressing the intersectionality of climate change and social inequities is essential for achieving climate justice. It involves understanding and addressing the underlying systemic issues that perpetuate social injustices and creating inclusive and equitable solutions that prioritize the needs and rights of the most vulnerable populations.

3. Climate Funding and Climate Justice

3.1 Overview of Climate Funding Mechanisms

The Climate funding mechanisms play a crucial role in mobilizing financial resources to support climate change mitigation, adaptation, and sustainable development efforts.[13] These mechanisms aim to provide financial support to both developed and developing countries, address the needs of vulnerable populations, and promote equitable outcomes. The following are the Key Climate Funding Mechanisms:

3.1 (1) Multilateral Climate Funds

The Multilateral climate funds are established at the international level to support climate-related projects and programs.[14] They receive contributions from multiple countries and allocate funding based on agreed priorities and criteria. Some prominent multilateral climate funds include:

a) Green Climate Fund (GCF): The GCF[15] is the largest multilateral fund dedicated to climate finance established

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7 The Ethical Principles of Climate Change, The UN Educational, Scientific and Cultural Organization, August 9, 2019, available at https://www.unesco.org/en/articles/ethical-principles-climate-change (accessed June 8, 2023).

8 Climate Change, UN Department of Economic and Social Affairs, 2007, available at https://www.un.org/development/desa/indigenouspeoples/climate-change.html (accessed June 8, 2023).

9 Social Dimensions of Climate Change, The World Bank, 2015, available at https://www.worldbank.org/en/topic/social-dimensions-of-climate-change (accessed June 8, 2023).

10 Poverty and Climate Change, Reducing the Vulnerability of the Poor Through Adaptation, Collegium of Development Banks of Africa, Asian, United Kingdom, European Commission, Germany, Netherlands, OECD, UNDP, UNEP and the World Bank, 2018 available at https://www.oecd.org/env/cc/2502872.pdf (accessed June 8, 2023).

11 S. Nazrul Islam & John Winkel, Climate Change and Social Inequality, DEPARTMENT OF ECONOMIC & SOCIAL AFFAIRS, (October 2016), available at https://www.un.org/esa/desa/papers/2017/wp152_2017.pdf (Last visited on June 6, 2023).

12 Myo Myo Khine and Uma Langkulsen, The Implications of Climate Change on Health among Vulnerable Populations in South Africa: A Systematic Review, INT J ENVIRON RES PUBLIC HEALTH, (15 February 2023), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9959885/ (Last visited on 6 June, 2023).

13 Introduction to Climate Justice, UN Climate Change, available at https://unfccc.int/topics/introduction-to-climate-finance (Last visited on June 5, 2023).

14 The Multilateral Climate Funds are Working Together to Enhance Complementarity and Collaboration, Green Climate Fund, (3 November 2021), available at https://www.greenclimate.fund/statement/multilateral-climate-funds-are-working-together-enhance-complementarity-and-collaboration (Last visited on June 04, 2023)

15 About and Overview on Green Climate Fund, Green Climate Fund (Largest Global Fund dedicated to help fight climate Change), available at https://www.greenclimate.fund/about (Last visited on June 8, 2023).

in South Korea under the United Nations Framework Convention on Climate Change (UNFCCC). It aims to support developing countries in their efforts to address climate change through mitigation and adaptation projects. The fund focuses on balancing the allocation of resources between adaptation and mitigation, and it emphasizes the participation of developing country stakeholders in decision-making processes.

b) Adaptation Fund: The Adaptation Fund[16] was established under the Kyoto Protocol to finance concrete adaptation projects and programs in developing countries that are vulnerable to the impacts of climate change. It provides funding directly to national implementing entities, such as government agencies or accredited organizations, to support community-level adaptation initiatives.

c) Global Environmental Facility (GEF): The GEF[17] is a multilateral fund that provides financial resources for a range of environmental issues, including climate change. It supports projects that promote sustainable development and biodiversity conservation while addressing climate change challenges.

3.1 (2) Bilateral Climate Finance

Bilateral climate finance involves the provision of financial support from one country to another to address climate change wherein the developed countries often provide bilateral funding to developing countries to assist them in implementing climate-related projects and programs. Such bilateral climate finance can take various forms, including grants, loans, technical assistance, and capacity-building support.[18]

3.1 (3) Climate-Related Funds and Initiatives

In addition to multilateral and bilateral funds, there are various climate-related funds and initiatives that focus on specific aspects of climate change. These may include:

a) Climate Investment Funds (CIF): The CIF[19] comprises several funding programs, including the Clean Technology Fund (CTF) and the Strategic Climate Fund (SCF). The CTF supports the deployment of clean technologies in developing countries, while the SCF provides financing for climate resilience and transformational projects.

b) Climate Finance Readiness and Capacity Building Initiatives: [20] These initiatives aim to strengthen the capacity of developing countries to access and effectively utilize climate finance. They provide technical assistance, training, and support to enhance countries' readiness to develop robust climate projects and access funding opportunities.

c) Public-Private Partnerships:[21] The Public-private partnerships play a vital role in mobilizing climate finance. These collaborations involve governments, private sector entities, and other stakeholders working together to finance and implement climate-related projects. It provides leverage to private sector resources, expertise, and innovation to address climate challenges effectively.

3.1 (4) National Climate Funds

Many countries have established their own national climate funds to support climate action at the domestic level. These funds are often financed through a combination of public and private sources and support a range of activities, including renewable energy projects, climate resilience initiatives, and capacity building. For instance, a) National Adaptation Fund For Climate Change (NAFCC)[22] - India, which is India's dedicated fund for climate change. It supports various climate-related activities, including adaptation and mitigation projects, capacity building, and research and development; b) Green Climate Fund (GCF)[23] is a key multilateral climate fund established to support developing countries in their efforts to address climate change. It was established in 2010 under the United Nations Framework Convention on Climate Change (UNFCCC) and became operational in 2015. The GCF aims to promote the paradigm shift

[16] Background and Overview on Adaptation Fund, Adaptation Fund, UN Climate Change, available at https://unfccc.int/Adaptation-Fund (Last visited on June 6, 2023).

[17] About the Global Environment Facility, UN Environment Programme, available at https://www.unep.org/about-un-environment/funding-and-partnerships/global-environment-facility (Last visited on June 6, 2023).

[18] Introduction to Climate Finance, UN Climate Change, available at https://unfccc.int/topics/introduction-to-climate-finance (Last visited on June 6, 2023).

[19] World Environment Day: Nature Based Solutions and the Fight Against Climate Change, Climate Investment Funds (2023), available at https://www.cif.org/ ((Last visited on June 6, 2023).

[20] Smita Nakhooda & Richar Callard, Climate Finance Readiness, Preliminary Approach and Insights from Efforts in Southern Africa, African Climate Finance Hub, FEDERAL MINISTRY FOR THE ENVIRONMENT, NATURE CONSERVATION AND NUCLEAR SAFETY, (2018), available at https://unfccc.int/files/cooperation_and_support/financial_mechanism/standing_committee/application/pdf/odi-giz_climate_finance_readiness_-_approach_and_insights_-_southern_africa.pdf (Last visited on June 6, 2023).

[21] Anandthakrishnan Prasad, Elena Loukoianova, Alan Xiachen Feng and William Oman, Mobilizing Private Climate Financing in Emerging Market and Developing Economies, INTERNATIONAL MONETARY FUND, (July 17, 2022), available at https://www.elibrary.imf.org/view/journals/066/2022/007/article-A001-en.xml (Last visited on June 6, 2023).

[22] About the National Adaptation Fund for Climate Change, National Bank for Agriculture and Rural Development, available at https://www.nabard.org/content.aspx?id=585 (Last visited on June 6, 2023).

[23] Climate Investment Funds (CIF) established under various countries comprising of several funds including the Clean Technology Fund (CTF) and the Strategic Climate Fund (SCF).

towards low-emission and climate-resilient development pathways in developing countries, in line with their national priorities and sustainable development goals.

The key objectives of GCF includes, financing, country ownership, balanced approach, direct access and accredited entities, readiness and capacity building, catalytic role and results-based approach; c) Fondo Clima[24] of Mexico which finance the resources to support projects that contribute to reducing greenhouse gas emissions and increasing resilience to climate change; d) Fundo Nacional sobre Mudança do Clima (FNMC)[25] - Brazil; e) Adaptation Fund[26] - a multilateral fund established under the Kyoto Protocol, an international agreement within the United Nations Framework Convention on Climate Change (UNFCCC).

The fund was established to finance concrete adaptation projects and programs in developing countries that are particularly vulnerable to the adverse impacts of climate change. The objectives include funding, supporting vulnerable and priority based countries, direct access, supports wide range of adaption projects and programs, recognizes the community and local participation, proper governance and accountability, results based approach; f) Climate Resilience Fund (CRF)[27] - United States; g) Climate Change Fund[28] - United Kingdom which provides financial support to projects that help the country transition to a low-carbon, climate-resilient economy; and h) The Global Environment Facility (GEF)[29] which is an international financial institution that provides grants to support projects and programs aimed at addressing global environmental challenges.

It was established in 1991 as a partnership between various international institutions, including the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), and the World Bank. The GEF aims to promote sustainable development by financing initiatives that address biodiversity loss, climate change, land degradation, international waters, and chemicals and waste management.

3.2 The Role of Climate Funding in Advancing Climate Justice

The Climate funding plays a crucial role in advancing climate justice objectives by addressing the unequal burdens of climate change and promoting equitable and sustainable outcomes. Firstly, it reduces vulnerability and builds resilience by supporting projects and programs that increase the resilience of vulnerable communities. The climate funding provides resources for adaptation initiatives like climate-resilient infrastructure, early warning systems, and sustainable agriculture, reducing exposure to climate risks and enhancing adaptive capacity.[30] Secondly, it supports mitigation efforts by facilitating the deployment of clean energy technologies, reducing greenhouse gas emissions, and transitioning to low-carbon economies, contributing to a more sustainable future. Thirdly, it addresses loss and damage by assisting affected communities in recovering from extreme weather events and supporting long-term consequences. Fourthly, climate funding promotes technology transfer and capacity building by facilitating the adoption of sustainable practices and enhancing the capabilities of developing nations to address climate change effectively.

Moreover, it enhances participation and empowerment by prioritizing the involvement of local communities in decision-making processes and empowering them to take ownership of climate action. Lastly, climate funding recognizes historical emissions and differentiated responsibilities, supporting developing countries in pursuing sustainable development and transitioning to low-carbon economies[31], thus promoting equity in global climate action.

3.3 Challenges in Achieving Climate Justice Through Climate Funding

While climate funding has the potential to advance climate justice, the researcher finds certain some challenges which must be addressed to ensure its effectiveness in achieving equitable outcomes. Firstly, there is a significant challenge of insufficient funding and resource gaps, as the current

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[24] Fondo Mexicana Para La Conservacion De La Naturaleza A.C., Green Climate Fund (Feb 28, 2019), available at https://www.greenclimate.fund/ae/fmcn (Last visited on June 6, 2023).

[25] Brazil Government, Fundo Nacional Sobre Mudanca do Clima, (2018), available at https://www.gov.br/mma/pt-br/acesso-a-informacao/apoio-a-projetos/fundo-nacional-sobre-mudanca-do-clima (Last visited on June 6, 2023).

[26] Background of Adaptation Fund, UN Climate Change, available at https://unfccc.int/Adaptation-Fund

[27] Climate Resilience Fund, https://www.climateresiliencefund.org/ (Last visited on June 6, 2023).

[28] United Kingdom, Climate Change Impact in Developing Countries, Guidance on International Climate Finance, (Oct 21, 2022), available at https://www.gov.uk/guidance/international-climate-finance (Last visited on June 6, 2023).

[29] About the Global Environment Facility, UN Environment Program, available at https://www.unep.org/about-un-environment/funding-and-partnerships/global-environment-facility (Last visited on June 6, 2023).

[30] UN Framework Convention on Climate Change, COP26 Outcomes: Finance for Climate Adaptation, UN Framework Convention on Climate Change, (2021), available at https://unfccc.int/process-and-meetings/the-paris-agreement/the-glasgow-climate-pact/cop26-outcomes-finance-for-climate-adaptation (Last visited on June 6, 2023).

[31] Ministry of Environment, Forest and Climate Change, India at COP27 highlighted the Foundational Principles of equity and common but differentiated responsibilities and respective capabilities, (Feb 2, 2023), available at https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1895858 (Last visited on June 6, 2023).

level of climate finance falls short of the estimated requirements. Secondly, there are access and distribution inequities, with limited access to financial resources and technical expertise for vulnerable communities and developing countries. Thirdly, conditionality and burden of proof associated with climate funding create administrative burdens, particularly for countries with limited capacity. Fourthly, lack of local ownership and participation in project design can hinder the effectiveness of climate funding initiatives. Fifthly, monitoring, evaluation, and accountability mechanisms need to be strengthened to track the impact and equity of funded projects. Sixthly, political and policy challenges, as well as changing priorities, can impact the availability and stability of climate finance. Lastly, balancing adaptation and mitigation funding is crucial to ensure the needs of vulnerable communities are adequately addressed. Addressing these challenges is essential for promoting climate justice through climate funding.

Addressing these challenges requires concerted efforts from international organizations, governments, civil society, and the private sector. Although, the different governments have somehow made certain strategies to overcome these challenges and advance climate justice through climate funding thereby strengthening financial mechanisms, such as the European Union Emissions Trading System (EU ETS)[32], the US's Regional Greenhouse Gas Initiative (US RGGI)[33], and China's National Carbon Market (ETS).[34] Additionally, the renewable energy auctions, national climate change strategies, REDD+ initiatives[35], and city and subnational climate initiatives are other strategies which are being adopted at global level by different countries including India.[36] These efforts can drive emission reductions, incentivize clean energy deployment, protect forests, and empower local communities, thereby contributing to climate justice through effective climate funding. These are just a few examples of regional and national initiatives that highlight the diverse range of efforts to address climate change and promote environmental sustainability. If these are implemented in a as a global effort, then it will surely achieve in tailoring the climate action to local contexts and priorities.

4. Assessing the Effectiveness of Climate Funding for Climate Justice

4.1 Impact Evaluation of Climate Funding Initiatives

The impact evaluation of climate funding initiatives is crucial to assess the effectiveness, efficiency, and sustainability of projects and programs funded by climate finance. It focuses on measuring outcomes and impacts, considering attribution and counterfactual analysis, defining appropriate indicators and metrics, collecting and monitoring data, and developing evaluation designs that capture the complexities of climate funding initiatives.[37] Among them, the stakeholder engagement plays a key role in the evaluation process, ensuring diverse perspectives are considered.[38] Further, the impact evaluations provide opportunities for learning, adaptation, and improvement of future interventions, and their findings should be disseminated and utilized to inform decision-making and policy development. Finally, through conduct of robust impact evaluations, the effectiveness of climate funding initiatives can be evaluated, and evidence-based actions[39] can be taken to promote climate justice and achieve sustainable outcomes. Such proper and rigorous impact evaluation will surely access the effectiveness of climate funding, their inform decision-making, and enhance the accountability and transparency of climate finance thereby ensuring that with the help of allocation of limited resources to projects and programs that deliver the desired outcomes and contribute to addressing the urgent challenges of climate change.

4.2 Lessons Learned and Best Practices

For improving the effectiveness, efficiency, and impact of future projects and programs of climate funding, the researcher finds it relevant to point out the lessons learned from climate funding initiatives and best practices for their implementation which may include, country ownership and alignment with national priorities, integration and coherence with development frameworks with existing plans and policies, adaptation to diverse local contexts,

[32] European Commission, EU Emissions Trading System, (2005), available at https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets_en ((Last visited on June 8, 2023).

[33] The Regional Greenhouse Gas Initiative, An Initiative of Eastern States of United States, (2009), available at https://www.rggi.org/ (Last visited on June 8, 2023).

[34] United Nations Climate Change, COP27 Reaches Breakthrough Agreement on New "Loss and Damage" Fund for Vulnerable Countries, (Nov 20, 2022), available at https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries (Last visited on June 6, 2023).

[35] Ministry of Environment, Forest and Climate Change, Government of India, National REDD+ Strategy INDIA, (2018), available at https://redd.unfccc.int/files/india_national_redd__strategy.pdf (Last visited on June 6, 2023).

[36] United Nations Climate Change, Clean Energy and Disaster Resilience, (December 31, 2022), available at https://india.un.org/en/171990-climate-change-clean-energy-and-disaster-resilience (Last visited on June 6, 2023).

[37] Interim Report of World Resources Institute, Evaluating Methods to Estimate Private Climate Finance Mobilised from Public Interventions, (June 2014), available at https://www.oecd.org/env/researchcollaborative/WRI_WS2_Part_B.pdf (Last visited on June 6, 2023).

[38] Id., at 12

[39] Id., at 9

long-term planning and sustainable financing, knowledge sharing and capacity building, monitoring, evaluation and learning, collaboration and partnerships, and flexibility and adaptive management.[40] Therefore, by applying these lessons and best practices, climate funding initiatives can be better tailored to local needs, promote sustainability, enhance knowledge sharing and capacity, foster collaboration, and ensure long-term success in addressing climate change and promoting climate justice.

4.3 Addressing Gaps and Limitations

It is pertinent to address the gaps and limitations in climate funding initiatives for improving their effectiveness and ensuring they deliver meaningful results. According to the researcher, the significant research gap found is regarding the insufficient distribution of finance which is needed to address climate change and the available resources. Therefore, it is essential to mobilize additional financial resources, both from public and private sources[41] and this can be achieved through innovative financing mechanisms, such as green bonds, climate funds, public-private partnerships, and leveraging international climate finance commitments.[42]

Further, many developing countries, particularly the least developed ones, face challenges in accessing climate funds due to capacity constraints and complex application processes, so streamlining and simplifying application procedures for them, providing technical assistance to enhance capacity, and supporting the establishment of national implementing entities can help improve access to funds.[43]

It also needs to be noticed that engagement of local stakeholders, including indigenous communities, women, and marginalized groups, in decision-making processes can help to align the climate funding initiatives with the specific needs and priorities of local communities and vulnerable groups.[44] There has also been a gap when it has come to focusing on adaptation, although there is increased recognition of climate change adaptation, but somehow lagging behind mitigation efforts. Thus, it is necessary to allocate a fair share of climate funding for adaptation initiatives, particularly in vulnerable regions and sectors heavily impacted by climate change. Even the consistent monitoring, evaluation, establishing clear performance indicators may provide improved project design, implementation and resource allocation of climate funding initiatives (already discussed).

Even the transfer of climate-friendly technologies and building local capacity by cooperation and collaboration among developed and developing countries will implement and sustain climate projects.[45] Further the researcher has found that in some cases, even the policy and institutional barriers hinder the implementation of climate funding initiatives,[46] therefore work with governments and relevant stakeholders can address these barriers, develop supportive policy frameworks, and strengthen institutional capacities for effective implementation, coordination, and governance.

Lastly, the inclusion of robust social and Environmental Safeguards[47] can prevent negative impacts on local communities and ecosystems. This includes conducting environmental and social impact assessments, promoting the principles of Free, Prior, and Informed Consent (FPIC), and integrating gender-responsive approaches to enhance the social and environmental sustainability of projects.

5. Overcoming Challenges and Enhancing Climate Justice

In order to overcome challenges and enhance climate justice, a comprehensive and multi-dimensional approach is needed. The strategies[48] to achieve these goals may include:

40 Michael Mullan, Climate Resilient Infrastructure, Organization for Economic Co-Operation and Development Environment Policy Paper No. 14 (2018), available at https://www.oecd.org/environment/cc/policy-perspectives-climate-resilient-infrastructure.pdf (Last visited on June 6, 2023).

41 Financing Climate Action, UN Climate Change, (2022), available at https://www.un.org/en/climatechange/raising-ambition/climate-finance (Last visited on June 5, 2023).

42 Ananthakrishnan Prasad, Elena Loukoianova, Alan Xiaochen Feng, and William Oman, Mobilizing Private Climate Financing in Emerging Market and Developing Economies, INTERNATIONAL MONETARY FUND (July 2022), at 8-9.

43 Accessing Climate Finance: Challenges and Opportunities for Small Island Developing States, UN Climate Change, (2022), available at https://www.un.org/ohrlls/sites/www.un.org.ohrlls/files/accessing_climate_finance_challenges_sids_report.pdf (Last visited on June 5, 2023).

44 Organization for Economic Co-operation and Development (OECD), Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractives Sector, (April 2015), available at https://www.oecd.org/development/oecd-due-diligence-guidance-for-meaningful-stakeholder-engagement-in-the-extractive-sector-9789264252462-en.htm (Last visited on June 5, 2023).

45 OECD, Tracking of Capacity Building and Technology Transfer for Climate Change Adaptation and Mitigation in the CRS, (May 12, 2023), available at https://one.oecd.org/document/DCD/DAC/STAT(2023)24/en/pdf (Last visited on June 5, 2023).

46 Robyn Clark, James Reed and Terry Sunderland, Bridging Funding Gaps for Climate and Sustainable Development: Pitfalls, Progress and Potential of Private Finance, Vol. 71, Elsevier 7 (Feb 2018).

47 United Nations Environment Management Group, Moving Towards a Common Approach to Environmental and Social Standards for UN Programming, (July 8, 2019),available at https://unemg.org/wp-content/uploads/2019/09/INF_2_UN_Model_Approach_ES-Standards_for_Programming.pdf (Last visited on June 5, 2023).

48 Prasad, supra note 39, at 2-6.

a) prioritizing both mitigation and adaptation efforts where mitigation will reduce greenhouse gas emissions to minimize the magnitude of climate change, while adaptation focuses on building resilience to the changes that are already occurring.

b) ensuring equity and inclusion in climate policies as Climate change affects different populations and regions disproportionately, with marginalized communities often being the most vulnerable.

c) implementing a just transition approach thereby to consider the social and economic implications for workers and communities that may be affected by the shift away from fossil fuels.

d) increasing climate finance for developing countries as they face significant challenges in dealing with climate change due to limited resources and capacity.

e) facilitating technology transfer for developing countries to mitigate and adapt to climate change.

f) promoting knowledge sharing and capacity building among countries can enhance their capacity to address climate change effectively.

g) strengthening governance and accountability thereby brining transparent decision-making processes and boosting accountability.

h) fostering international cooperation among nations for sharing responsibilities, co-ordinating efforts and achieving common climate goals.

i) emphasizing nature-based solutions such as reforestation, ecosystem restoration, and sustainable land management.

j) and supporting advocacy and social movements by raising awareness, mobilizing public support and advocating for transformative change.

If the strategies discussed earlier can be implemented, it can remove the underlying causes of climate change, reduce its disproportionate impacts on vulnerable populations, and advance climate justice on a global scale. Hence, it will be interesting to see this year's COP28, which is scheduled to be held in November 2023 at Dubai, UAE[49] and how it can be helpful in shifting the focus to implementation, where the collaboration and cooperation among the corporations will be crucial especially taking UAE as a suitable host and also the CEO of an Oil and Gas company for shift away from the fossil fuels.

6. Conclusion And Suggestions

Climate justice as a concept encompasses several ethical principles, human rights considerations, and the fair distribution of the costs and benefits of climate change and climate action. It recognizes the disproportionate impacts of climate change on vulnerable populations and the intersectionality between climate change and social inequities. By understanding and integrating climate justice principles, policymakers and stakeholders can work towards inclusive, equitable, and sustainable solutions to climate change.

In Conclusion, it can be said that addressing climate justice through climate funding is a critical step in ensuring equitable and sustainable solutions to the challenges posed by climate change. Although climate funding initiatives have played a crucial role in supporting mitigation and adaptation efforts, particularly in vulnerable communities and regions. However, this study has demonstrated certain challenges and limitations that need to be addressed to maximize the impact and effectiveness of the discussed initiatives.

Further this study has shown that climate funding helps in advancing climate justice by addressing the unequal burdens of climate change and promoting equitable outcomes, for instance, supporting adaptation, mitigation, capacity building, technology transfer, and community empowerment, climate funding contributes to reducing vulnerability, building resilience, and ensures that the benefits of climate action are shared equitably. Even by directing financial resources towards vulnerable populations and enabling their active participation, climate funding helps in creating a more just and sustainable response to the challenges of climate change.

However, it is suggested that developed and developing countries should adopt, sustain, and encourage the best practices of the world, such as country ownership, integration, and capacity building, in climate funding initiatives that are better aligned with local needs. This approach will further promote sustainable development and enhance resilience, as discussed in the study. Additionally, robust monitoring, evaluation, and learning processes will enable adaptive management and continuous improvement in these initiatives. Furthermore, collaboration, both at the international and local levels, is essential for mobilizing resources, sharing knowledge, and fostering partnerships that promote climate justice. Additionally, the Paris Agreement needs to be amended, as discussed, keeping in mind the requirements of vulnerable and local communities that are most affected by the global climate issue.

When it comes to overcoming challenges and enhancing climate justice, it is necessary to prioritize equity, inclusivity, and the protection of vulnerable communities. Hence, ensuring access to climate finance for developing countries and marginalized groups will be crucial in this regard. Also, a just transition approach can minimize the social and economic impacts of climate action and

[49] Urmi Goswami, Building Trust Key to Meet Climate Goals: COP28 CEO, The Economic Times (19 June 2023) p 9.

promote fairness in the transition to a low-carbon future.

Moreover, strengthening the governance mechanisms, promoting international cooperation, advocating for the voices of grassroots movements and civil society organizations, nature-based solutions and the transfer of clean and sustainable technologies will be vital steps in achieving climate justice.

Finally, it is important to continue advancing research and knowledge in the field of climate justice and climate funding. This includes further exploring innovative financing mechanisms, evaluating the long-term impacts of climate funding initiatives, and sharing experiences and best practices across regions and sectors.

The upcoming COP28 in Dubai, UAE presents a formidable challenge of fostering global collaboration and trust among nations to achieve the climate goals outlined in the Paris Agreement of 2015. While it is acknowledged that fossil fuels will continue to be utilized for various non-combustion purposes, such as plastics and fertilizers, this does not justify their ongoing use solely based on emissions. The core issue that needs to be addressed is the emissions themselves, which are the root cause of climate change. It is crucial to tackle this problem head-on. It is also important to avoid any double standards, as some countries that are currently urging the designated president of COP28 to step down are themselves oil-producing nations like UAE. These nations seek to increase productivity due to energy insecurity concerns following the conflict in Europe. Additionally, transitioning away from fossil fuels will necessitate the development of alternative energy sources, which, in turn, requires substantial investments through climate funding.

For the future, there are several key areas for research in the realm of climate justice and climate funding. These areas can contribute to a deeper understanding of the challenges and opportunities in achieving equitable and sustainable climate action. These research efforts can contribute to a deeper understanding of climate justice and inform evidence-based decision-making in climate funding and policy development. By addressing these research gaps, we can enhance our ability to tackle climate change in a just and equitable manner, ensuring that no one is left behind in the transition to a sustainable future.

Alternative Dispute Resolution: An Effective Mechanism for Resolving Climate Change-Related Disputes

Ms. Navodita Verma*
Dr. Munish Swaroop**

ABSTRACT

In November 2019, the International Chamber of Commerce's Commission on Arbitration and ADR (the "ICC") released a report. The construction, engineering, and energy sectors alone accounted for over 40% of all new ICC arbitration claims in 2018, making up around 70% of those that originated from industries that are anticipated to be most negatively impacted by climate change. Alternative dispute resolution procedures, in particular arbitration and mediation, are crucial for resolving conflicts with climate change. The research looks at how arbitration and ADR are used to settle international disputes involving climate change. The paper starts with an introduction to arbitration and mediation in general followed by a discussion of climate change issues. Later, brief mention is made of the many forms of climate change, their causes, and their pace of acceleration. The paper also thoroughly explains why ADR should be chosen over conventional legal techniques of conflict settlement.

Keywords: ADR, IDR, Arbitration, Mediation, and Climate Change.

Introduction

Human activities especially in industrialised countries, release a number of gases mainly carbon dioxide, CFCs, and methane that slow the escape of infrared radiation from the surface of the earth into space. It is estimated that due to increasing human emission of greenhouse gases, the earth will warm up at an average of nearly 2 degrees Fahrenheit by 2025 and 5 degrees more by 2100.

Climate change has proved to be a much greater challenge than achieving consensus on the problem of ozone depletion. Climate change is characterized by threats to the global environment that while uncertain, are likely to be severe even if stringent action is taken today to curb emissions.

It is also an issue that is not restricted to one sector of the economy, the global economy is currently built on a foundation of greenhouse gas emissions, and action to change this threatens to destabilize economic development everywhere. Perhaps more worryingly despite the scientific evidence[1] and the economic analysis which strongly suggests that acting now will be more cost-effective than would be dealing with the problems in the future[2], as a global community, we still seem to be in a state of collective denial about the severity of the problem and the need for a rapid and wholesale response.[3]

India ratified the Kyoto Protocol on 26 August 2002, in pursuance of the obligations cast on parties to the UNFCCC; India has undertaken to communicate information about the implementation of the convention. In 2006, India formulated the National Environment Policy, 2006 which outlines essential elements of India's response to climate change .on 30 June 2008; the Prime Minister released India's National Action Plan on climate change (NAPCC). Thus, the goal is development and climate change is a major problem not least because it could hurt development targets.

Alternative Dispute Resolution (ADR) has been adopted by disagreeing parties as a method o setting disputes without entering a courtroom. This judicial method is designed to address issues without trial via the assistance of an impartial third party.

The NAPCC then sets out eight national missions as the way forward in implementing the government's strategy and achieving the National Action Plans Objectives.[4]

1. National solar mission.
2. National mission for enhanced energy efficiency.
3. National Mission on Sustainable Habitat.
4. National water mission.
5. National Mission for sustaining the Himalayan Ecosystem.
6. National Mission for a Green India.
7. National Mission for Sustainable Agriculture.
8. National mission on strategic knowledge for climate change.

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1 IPCC working group 1Report (2007) The Physical Science Base, available at www.ipcc.ch/ipc-creports/ar4-wg1.htm.
2 Stern Review (2006) The Economics of Climate Change, London:HM Treasury (the stern Report).
3 G.Monbiot (2005) 17(2) ELM57.
4 Mission launched as part of NAPCC, press information Bureau (government of India).

Meaning of Environment

The term "Environment" owes its genesis to the French word "environ", which means encircle. Section. 2(a) of the Environment Protection Act, 1986 Environment includes water, air, and land and the inter-relationships which exist among and between water, air, and land and human beings, other living creatures, plants, micro-organisms, and property.[5]

The concept of sustainable development rests on the foundation of equity. It has an equitable basis. Sustainable development is structured on two forms of equity, namely intergenerational equity and intergenerational equity. The principle of sustainable development received impetus with the adoption of the Stockholm Declaration in 1972. The UN Conference on Sustainable Development (Rio + 20) discussed clear and practical measures for implementing sustainable development.

The Brundtland report defines: Sustainable Development means as development that meets the needs of the present generation without compromising on the ability of the future generations to meet their own needs. The document "Caring for the earth" defines sustainability as a characteristic or state that can be maintained indefinitely where as Development is defined as the increasing capacity to meet human needs and to improve the quality of human life.[6]

The concept of inter – relationship an interdependency that exists between human beings, nature, and other life forms is the essence of the well-being of the human race. Lord Krishna declares in Geeta that God is the sweet fragrance on the earth, brilliance in fire, and life force in all beings.

United Nations Framework Convention on Climate Change (UNFCCC), 1992.

Mr Boutros Ghali, the then UN Secretary-General opined that the convention was a "Major step forward and a platform with potential". An international instrument showing international concern for the protection of the global environment was the Convention on climate change, which was signed by 154 countries. The convention requires the states to prevent global climate change, by taking appropriate steps to reduce their emissions of greenhouse gases believed to contribute to global warming.

During the debate on the provisions of the convention, there was a wide divergence between the views of the developed countries and those of the developing countries. There was a major shift from the use of coal and wood for energy, the latter blamed the former for excessive emissions over the past 150 years and wanted them to reduce them considerably.

Under the convention, the developed countries have agreed to provide financial help and technology to the third world nations, to help them deal with global warming. Commenting on the convention.[7]

Alternative dispute resolution techniques

Alternative dispute resolution techniques include negotiation, conciliation, mediation, and arbitration. Arbitration and mediation are the two most popular of them, and they are covered here.

Arbitration

Arbitration proceedings resemble a streamlined trial since they only call for little discovery and use streamlined rules of evidence. The process cannot be set in motion without the existence of a legal arbitration agreement or any other manner of agreement incorporated with an arbitration clause before the development of the dispute. The parties in conflict refer their dispute to one or more people referred to as the "arbitrator". The arbitrator's ruling is binding on the parties. The "Arbitral Award" is the name of the judgement. The primary goal of arbitration is a just resolution of the conflict. The arbitrators are not required to be attorneys; instead, the parties to the dispute are allowed to choose arbitrators from any other profession they deem better appropriate for resolving the conflict. For instance, parties involved in a building dispute may, at their discretion, select an arbitrator with an engineering background. The parties may agree on a single arbiter to make up a panel. Each side chooses one arbitration, and the two arbitrators thus chosen elect the third arbitrator if there is no agreement on the arbitrator's selection. The arbitration panel meets for a few hours a day at hearings, usually may last just days to a week.

Mediation

The most popular form of ADR is mediation, which is also an alternative to courtroom battles. In this process, a third neutral party assists two or more disputants in coming to a resolution. A third party works as a mediator for the amicable resolution of the issues by using the proper communication and negotiating skills. It is a straightforward party-centred negotiation procedure. The process is under the parties' direct control. The mediator does not dictate what should be a fair settlement and does not impose his opinions. The mediation process is of a non-binding nature. It is used for negotiating a wide range of case types. One of the major benefits of mediation is that the procedure is private and totally confidential. It is crucial that the mediator is objective and uses his expertise to encourage the most honest and fruitful communication between the parties.

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5 The Environment Protection Act, 1986, S. 2(a).

6 G.H.Brundtland,Report of the World commission on Environment and Development, our common Future,43(1987).

7 See 31 ILM849(1992).

Institutional arrangements for managing climate change agenda.

To respond effectively to the challenge of climate change, the government has created an Advisory Council on Climate Change, chaired by the Prime Minister. The council has broad–based representation from key stakeholders, including government, industry, and civil society, and sets out broad directions for national actions in respect of climate change. The council will also provide guidance on matters relating to coordinated national actions on the domestic agenda and review of the implementation of the National Action Plan on Climate Change including its research and development agenda.

The council chaired by the prime minister would also provide guidance on matters relating to international negotiations including bilateral and multilateral programs for collaboration, research, and development. The NAPCC will continue to evolve, based on new scientific and technical knowledge as they emerge and in response to the evolution of the multilateral climate change, a regime including arrangements for international cooperation.

Role of Arbitration in resolving climate change disputes

Arbitration is a mechanism of ADR that introduces a neutral third party, known as the arbitrator who conducts a session with the disputing parties with the aim of reaching a fair and amicable resolution. The decision of the arbitrator or the arbitral panel called an award is binding on the disputing parties.

The issue of climate change has affected the world there has been an increase in temperature, variation in rainfall, drought, erosion, and flood and these occurrences greatly affect the economic growth and general security of many countries. As a result of these natural problems, the consequential issues of scarcity of food, jobs, water, money, and other necessities have led to an escalation in insecurity, conflicts, and great competition for these resources.

Climate change dispute resolution

Conflicts that are particularly catastrophic and sudden in nature can sometimes be resolved thoughtfully through mediation. Typically, it deals with issues that are very emotional. Through mediation, the parties can explore "win-win" scenarios in which everyone comes out far better than they would have if they had decided to litigate in court. For thousands of years, mediation has played a significant role in peaceful conflict resolution in a variety of communities all throughout the world. However, over time, this applicability has changed in several nations.

Conflicts are being caused by environmental disasters because they are happening more frequently, farther away, and at a higher cost. Improvements in aid and recovery, a systemic preventative approach to future disasters, and other such reliefs would be ineffective and would be delayed by years, if not decades, without mediation, open dialogue, collaborative negotiation, and a common approach to implementing solutions to these problems.

The potential advantages that expert, unbiased third-party mediation might provide to the peaceful resolution of disputes were noted in the Security Council's report. According to what was said, mediation will be crucial in the fight against climate change. As Copenhagen approaches, it becomes even more essential. It is also true that such a strategy would call for new kinds of leadership and decision-making abilities that go beyond the interests of the country.

ADR and Environmental Law Disputes

ADR has grown significantly in Australia not merely in the footsteps of its international popularity but as a frontrunner in a global push for timely and cost-effective dispute resolution. Environmental law is a dynamic body of law addressing the effects of human activity on the natural environment. It is an area of law that provides the framework and tools for responding to challenges posed by climate change, loss of biodiversity, and planning for sustainable cities. Nevertheless, despite its challenges, significant opportunities exist to utilize Alternative Dispute Resolution (ADR) mechanisms to aid in the resolution of conflict and disputes.

Environmental disputes may comprise diverse and unrelated topics ranging from science, sociology, and economics to history and culture, and legal or regulatory constraints. These disputes may also involve a wide range of parties, from private individuals to the general public and take place in multiple jurisdictions both national and international. One person's environmental dispute may be another person's industrial dispute, health issue, commercial dispute, sacred site or land rights dispute, or a dispute impacting on a nation's sovereignty.[8]

Climate Change and Arbitration

The causes of climate change and its consequential disputes in Nigeria have been researched to be industrial activities that emit greenhouse gases, deforestation, and gas flaring. In the case of Gbemre v Shell Petroleum Development Company, the appellant filed a suit against the defendant for the illegal act of gas flaring. The court held that such an act was unconstitutional and a violation of the right to life and dignity of the people.[9]

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[8] Peter Adler, mediating public disputes(paper presented at the international conference ,Sydney,1989), accessed at, http://classic.austill.edu.au/journals/AdelLawRw/1934/4.pdf.

[9] (2005)AHRLR 151

Climate change disputes could also arise between companies and organisations as a result of business contracts that have been affected by climate change, which would oblige a party to finance the effect of climate change. In a bid to control the cause of climate change and its consequent disputes, the Nigerian government enacted the Change act in November 2021. the aim of the act is to eradicate carbon emissions in the country and to identify climate risks and possible solutions. In the international sphere, the Paris Agreement which is an international treaty sets out a legal framework that aims to lower the carbon emission of every country and move green energy so as to lower the earth's temperature. This global agreement is enforced by the international court of Arbitration.

The flexibility and speed of arbitration make it an ideal forum to achieve swift decisions in disputes relating to climate change when underpinned with the right legislation. Climate change is a global and complex issue that affects every country and while efforts are being made by the legislature to create more policies concerning this issue arbitrators and arbitral tribunals are needed to settle disputes arising from climate change.

One of the roles of arbitration in climate change disputes is the input of expertise in the settlement of disputes. Cost-effectiveness is another factor that plays a huge role in dispute resolution, especially with regard to climate change disputes. Most of these disputing parties have suffered financial losses and are seeking monetary compensation.

It is trite that arbitration offers a faster process of dispute resolution when compared with litigation. Some arbitration rules provide time limits within which to conclude arbitral proceedings. For example, the rules of the Regional Centre Lagos prescribe a maximum of six months within which all arbitral proceedings must be concluded. Most climate change disputes demand immediate legal attention and a delay in settlement could lead to insecurity and conflicts in a society.

Arbitration in climate change disputes not only seeks to enforce swift and simple decisions but also to preserve past relationships commercial or personal. Disputing parties in a litigation process often put an end to any sort of relationship after trial but ADR aims at an amicable settlement and encourages peace after resolution.

Conclusion:

The breadth of environmental law and the diverse range of stakeholder interests add challenge and complexity to resolving environmental disputes. However, the increasing recognition of the flexibility in ADR process design. ADR plays an important role in reducing the workload of the court. It also awards parties a faster means of resolution and the administration of justice. The importance of arbitration cannot be overemphasised as it fosters peace and economic growth in every society. Climate change is leading to new economic realities and emerging legal frameworks to which states and individuals must adapt. Therefore, climate change will inevitably lead to different disputes, and parties are advised to consider arbitration in their dispute resolution.

The Need for Discourse on the Impact of International Investment Arbitrations in Environmental Justice

Ms. Padma Rijal*

ABSTRACT

International Investment Arbitrations under ICSID and other ad hoc forums are accessed by foreign investors under IIAs to adjudicate their legal rights against the host nations. The undemocratic Investor-State Dispute Settlement (ISDS) mechanism in itself suffers from the legitimacy deficit due to pro-investor biases, stringent appeal mechanism, non-transparent procedure, and most importantly indifference towards the obligations of international environmental laws. The proceedings are incongruent with the widely accepted principles of international environmental law including sovereignty, precautionary principles, transparency, public participation, and sustainable development. This paper finds that the retributive nature of arbitral practice has serious implications on environmental justice as it protects otherwise unsustainable development, penalizes the environmental regulations by the host countries, magnifies the intra-generational equity, exploits the distributional inequalities, impedes regulatory rights of the developing countries and disregards the environmental due diligence of the investors.

Introduction

The international economic relations between foreign investors and the host nations are governed by International Investment Agreements (IIAs), Bilateral Investment Treaties (BITs), and other forms of agreements that provide for dispute settlement between those parties. The Investor-State Dispute Settlement (ISDS) is largely conducted through arbitration. International Centre for the Settlement of Investment Disputes (ICSID) is the most used forum while other arbitrations under UNCITRAL rules and ad hoc arbitrations are also available. ISDS functions under commercial (private) arbitration but engages with disputes of public nature.[1] Since the investment laws are pro-investors and prioritize the interest of foreign investors against the regulatory and national interest of the host nation, the nature of disputes arising out of IIAs inevitably causes some friction. Among many controversies it has attracted, the issue of environmental justice is compelling. This research aims to explore the power dynamics between investors and their interest in developing countries through the lens of arbitral practices. Initially, the author sheds some light on the nature of arbitrations and their geopolitical implications. Following the critical analysis of the nature of IIAs, the author will juxtapose the controversies with the principles of environmental law. Eventually, the paper will conclude with the environmental justice-related implications.

The dubious nature of International Investment Arbitrations

Dr. Duncan French identifies the institutional proliferation of dispute settlement in environmental law and finds the incoherence in jurisprudential development. He insists on developing an integrated approach to judicial reasoning.[2] International environment law is based on the framework of fragmented soft laws that are mostly non-binding. International arbitrations on investment treaties hinder the consistent evolution of the principles of environmental law. Moreover, the confidential nature of the arbitration mechanism impedes the publicity of the interpretations. Even the published awards with possibly innovative interpretations do not have the effect of precedent. This impedes consistency as the arbitrators exercise a wide discretion unguided by any previous awards.

On the procedural shortcomings of such arbitrations, Dr. Daniel Barstow Magraw comments that transparency, public participation, access to justice, and accountability characterize the rule of law in a democratic legal system.[3] He argues that dispute resolution under bilateral investment treaties has a democracy deficit as they lack public scrutiny, legitimacy, and credibility.[4]

Fiss argues that in a lawsuit judgment is only the beginning of judicial involvement in the wider picture of continuous involvement may it be vigorous enforcement through the use of contempt power or appeal.[5] The myopic approach

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1 Stephan W. Schill (ed.), International Investment Law and Comparative Public Law (Oxford University Press 2010)

2 UNEP/PCA Advisory Group on Dispute Avoidance and Settlement concerning Environmental Issues convened by the United Nations Environment Programme in cooperation with the Permanent Court of Arbitration Peace Palace, The Hague, The Netherlands, 2-3 November 2006, available at https://docs.pca-cpa.org/2016/01/United-Nations-Environment-Programme-UNEP-PCA-Advisory-Group-Report.pdf last accessed 6 February 2023.

3 See Id.

4 See Id.

5 Owen M. Fiss, Against Settlement, 93 YALE L.J. 1073, 1085-87 (1984) at 1082-1085

of arbitral tribunals is evident in its single moment of dispute resolution disregarding the structural remedies.[6] Such trivialization of remedial aspects of a lawsuit comes at the expense of the social function of the legal invention.[7] Arbitration already undervalues the democratic principle of governance because the public officials (judges) are chosen through democratic public participation. Courts and judges are the authority consented by the people to adjudicate upon their rights. Courts being the reactive institutions, wait for the parties to bring legal disputes in the courtroom so that they can interpret the laws in the spirit of public morality.[8] An arbitration undermines the role of courts as a forum for the public contest of public policy.[9] Settlement may guarantee peace but not justice.[10] As of 2020, scholars like Jill I Gross conclude that arbitration arising out of international investment treaties hinders access to justice[11] due to cost[12] barriers. Furthermore, the international arbitration market has been monopolized by a few elite lawyers and law firms who simultaneously be the lawyer in one case and arbitrators in another (double-hatting)[13] with susceptible conflict of interest.[14] This signifies the transfer of sovereignty upon the corporate elites at the expense of the public interest.

Similarly, the Investor-State Dispute Settlement mechanism allows foreign investors to bypass domestic environmental regulation and uphold their interests at the expense of local interest. Even the arbitrators do not consider domestic laws and do not entertain the claims and counterclaims of states against the investors.[15] This chilling effect is exacerbated by the fact that such arbitral decisions have stringent appeal mechanisms.[16] The practical impossibility of overturning the awards gives the finality of the award. The absence of an accessible appeal mechanism signifies the legal barrier to access to justice.

Furthermore, the investor's "legitimate expectations" have emerged as a new kind of property right that ensures fair and equitable treatment and protects the investors against expropriation.[17] The trend of upholding investor prerogatives at the expense of public interest and regulatory responsibilities of the state has been referred to as evidence of pro-investor bias within the ISDS.[18] However, the repercussions of such protection have gained a lot of academic interest because the legitimate expectations have gone beyond the rationale of such protections. Some scholars like Prof. George K. Foster claim that it is the right time to expect legal developments to limit the expectations of the investors and expect more from them instead.[19] He proposes that some aspects of domestic law that limits investor expectations must be given effect because they may be relevant to determine whether a treaty breach happened.[20] For example, initial approval could be revoked if the actual impacts of EIA exceed than represented or anticipated by the investors because government approvals rely on impact assessment and stakeholder consultation which are inherently uncertain.[21] ISDS should provide states some leeway to correct their errors and use their regulatory powers to deal with violations without the fear of facing liability.[22]

Prof. Foster argues that tribunals should show deference to the application of domestic laws by host states that aims to

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6 See Id.

7 See Id. at 1085

8 See Id. at 1085

9 Deborah R. Hensler & Damira Khatam, Re-Inventing Arbitration: How Expanding the Scope of Arbitration is Re-Shaping its Form and Blurring the line between Private and Public Adjudication, Nevada Law Journal, Vol. 18:381, 2018

10 See Id. at 1085

11 Jill I. Gross, Arbitration Archetypes for Enhancing Access to Justice, 88 FORDHAM L. REV. 2319 (2020).at 2334

12 Susan D Franck, Rationalizing Costs in International Treaty Arbitration,88 WASH.U.L.Rev 769 (2011)

13 Malcolm Lanford et al., ESIL Reflection: The Ethics and Empirics of Double Hatting, ESIL SEDI: Turn to Empiricism Series, European Society of Int'l L. available at https://esil-sedi.eu/post_name-118/ last accessed 6 February 2023

14 Cecilia Oliver & Pia Eberhardt, Profiting from Injustice: How Law Firms, Arbitrators, and Financiers Are Fueling an Investment Arbitration Boom, CORP. EUR. OBSERVATORY & TRANSNAT'L INST. (Nov. 2012)

15 Claire Mac Lachlan, Improving Environmental Protection in Investor-State Dispute Settlement, 46 COLUM. J. ENVTL. L. 179 (2020).

16 See Id.

17 Lise Johnson, A Fundamental Shift in Power: Permitting International Investors to Convert Their Economic Expectations into Rights, 65 UCLA L. REv. DISCOURSE 106 (2018).

18 Mojtaba Dani & Afshin Akhtar-Khavari, Rethinking the Use of Deference in Investment Arbitration: New Solutions Against the Perception of Bias, 22 UCLAJ. INT'L L. & FOREIGN AFF. 38, 39-40 (2018), Francesco Costamagna, Services Of General Interest Beyond The Single Market: External And International Law Dimensions 98 (Markus Krajewski ed., 2015)

19 George K. Foster, Investor-Community Conflicts in Investor-State Dispute Settlement: Rethinking 'Reasonable Expectations' and Expecting More from Investors, 69 AM. U. L. REV. 105 (2019).

20 See Id. at 136

21 See Id.

22 Feldman v. United Mexican States, ICSID Case No. ARB (A-F) / 99/ 1, Award, 103 (Dec. 16, 2002), 18 ICSID Rev. 488 (2003)

protect the environment.[23] The tribunal in S.D. Meyers contended that a tribunal does not possess an open-ended mandate to second-guess the decision-making of the government.[24] They shouldn't act as an appeal body[25] on matters of domestic law and have to instead afford states a margin of appreciation when interpreting their laws.[26] He also suggests that the investor should conduct a pre-investment risk assessment and due diligence on their project's safety, and environmental soundness to avoid their contributory fault.[27] They need to confirm if their expectations are in harmony with the Non-Investment Obligations of the host nations particularly their human rights and environmental obligations.[28]

Not to mention, investment treaties do not necessarily increase the flows of FDI as studies have shown inconclusive results.[29] The positive effect of FDI in developing countries is difficult to identify.[30] Given these uncertainties, the costs to developing countries may outweigh the benefits. Therefore the question is what benefits do low-income countries enjoy in return? Is such indirect regulation upon the right to regulate of a sovereign country valid? Many claims of investors adjudicated through ISDS are disguised as treaty violations while in reality, such claims fall under domestic regulations.[31] The privilege to skip the available domestic remedies and directly approach the international arbitral tribunals with the binding effect of international law aggravates this problem.

Similarly, the confidentiality of the arbitration proceedings has unforeseen legal costs. The reputation of the company and investment related reputation of the host states incentivize both parties to maintain the secrecy of the proceedings. As the facts suggest, out of 2422 treaties, only 50 of them require transparency of the documents and 39 of them require public hearings.[32]

Furthermore, the recent efforts of UNCITRAL rules on transparency [33]do not apply to those arbitrations regarding 3000+ treaties concluded before April 2014.[34] Moreover, the rules still protect the confidentiality of the arbitral process, and such protection has enjoyed liberal interpretation.[35] Another example of such a toothless effort is the Mauritius convention which has been ratified by only five states.[36]

Some ICSID awards have offered less than full awards[37] where investors failed to assess regulatory risks associated with environmental protection. Nevertheless, scholars like Angelos Dimopoulos[38] discern that such awards are rare. Remedies could have been used as a nuanced opportunity for balancing investment protection with justifiable environmental consideration of state measures.[39] Despite having broad discretion to determine the amount of compensation, tribunals are rigidly following the 'all or nothing' viewpoint of liability.[40] Such an approach signals that the arbitrators do not view environmental regulations as valid enough to subside the amount of compensation to be borne by the states. Investment protection always has

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23 See George, supra note 19

24 S.D. Myers, Inc. v. Canada, UNCITRAL, Partial Award (Nov. 13, 2000), at 261

25 RosInvest Co UK Ltd. v. Russ. Fed'n, SCC Arb. V (079/2005), Final Award, 446 (Arb. Inst. Stockholm Chamber Com. 2010) ("The Tribunal... is neither an appeal body for the determination of Russian tax law nor claims that it has expert knowledge of that law."); Waste Mgmt., Inc. v. United Mexican States, ICSID Case No. ARB(AF) /00/3, Award, 129-32 (Apr. 30, 2004)

26 Frontier Petroleum Servs. Ltd. v. Czech Republic, UNCITRAL, Final Award, 527 (Nov. 12, 2010), Micula v. Rom., ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, 94-95 (Sept. 24, 2008) (asserting that the host state should be accorded a "margin of appreciation" in applying its own law)

27 See George, supra note 19

28 See Id.

29 Jonathan Bonnitcha, Assessing the Impacts of Investment Treaties: Overview of the evidence, International Institute for Sustainable Development (2017), available at https://www.iisd.org/system/files/publications/assessing-impacts-investment-treaties.pdf last accessed 6 February 2023.

30 See Id.

31 See Id. at 11

32 International Investments Agreements Navigator, UNCTAD, available at https://investmentpolicy.unctad.org/international-investment-agreements last accessed 6 February 2023.

33 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (2013)

34 Martin A. Weiss et al., Cong. Res. Serv., International Investment Agreements (IIAs): Frequently Asked Questions 19 (2015), available at https://perma.cc/728M-AFYK last accessed 6 February 2023.

35 See Id.

36 United Nations Convention on Transparency in Treaty-Based Investor-State Arbitration, Dec. 10, 2014, Vienna. Available at https://perma.cc/L4FZ-TLGM last accessed 6 February 2023.

37 MTD v Chile, ICSID Case No ARB/01/7, Award, 25 May 2004.

38 Panagiotis Delimatsis (ed.) Research Handbook on Climate Change and Trade Law, Angelos Dimopoulos, Climate change and investor-state dispute settlement: identifying the linkages, chapter 18, Edward Elgar, 2016 at 425

39 See Id.

40 See Id.

been predisposed in their judicial mind which has paralyzed the prospects of acknowledgment of the validity of domestic environmental regulations and related jurisprudential contributions. Such indifference of the arbitrators has intensified incoherent interpretations, unpredictable awards, inconsistent legal approaches, disparate regimes, and normative fragmentation and undermined the interpretative powers.

Even the UNCTAD comments that the balance of rights and obligations of investors and states is a reason for dissatisfaction with the current regime.[41] Some recognized academics are concerned over the overly expansive interpretations of the investment treaties that have prioritized the economic interest of corporations over the right to regulate of states and the self-determination rights of people.[42] A public statement was published after an academic discussion in 2010, in Canada attended by 37 scholars including Prof. M. Sornarajah, Gus Van Harten, Prof. David Schneiderman, Prof. Muthucumaraswamy Sornarajah, Prof. Peter Muchlinski, Kyla Tienhaara, and others. One of the general principles those experts highlighted was that protection of investors is a means to the end of ensuring public welfare and not vice versa, thus the right to regulate in good faith for a legitimate purpose must not be subordinated to the concerns of the investors.[43] They observe that arbitral award as a remedy of first resort threatens innovative policy-making through democratic choice as domestic law is the primary legal framework for investor-state relations.[44] Similarly, the lack of full and equal participation of citizens, local communities, and civil society undermines the right to self-determination and procedural fairness.[45] Therefore, scholars recommend that strengthening the domestic justice system benefits communities as well as investors.[46] The investors and business communities should seek dispute resolution in a cooperative spirit and identify adjudication as a last resort.[47]

Contradictions with the principles of environmental law

Starting with the principle of sovereignty, the oldest principle in international environmental law proclaims that every state has sovereign rights over its natural resources. Modified with the subsequent legal developments of responsibility to not cause any damage or harm, the principle of permanent sovereignty over natural resources is not absolute. This principle reflected in Principle 21 of the Stockholm Declaration, 1972, and Principle 2 of the Rio Declaration 1992 provides …the sovereign right to exploit their own resources pursuant to their own environmental and development policies…

Are the low-income and developing countries able to enforce their own environmental and development policies? The repeated interference by the investors through ISDS has affected and directed the public policies governing environmental regulations. Due to the expansion of the investor's protection and fear of their challenges before international arbitration tribunals, the host states in the BITs find it difficult to strengthen their environmental standards.[48] Such an arbitration mechanism is often criticized as a transfer of sovereignty.[49] Unaccountable decision-makers of such closed-door tribunals have no obligation to balance profit and public interest.[50] MNCs can challenge environmental and health reforms.[51] This is a fundamental shift away from democracy and sovereignty favoring corporate power.[52]

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41 UNCTAD, "IIA Issues Note, Reform of the IIA Regime: Four Paths of Action and a way Forward" (2014), available at: https://investmentpolicy.unctad.org/publications/118/iia-issues-note---reform-of-the-iia-regime-four-paths-of-action-and-a-way-forward , last accessed 6 February 2023, at 1

42 Public statement on the international investment regime dated on 31 August 2010, available at: https://www.bilaterals.org/?public-statement-on-the last accessed 6 February 2023

43 See Id.

44 See Id.

45 See Id.

46 See Id.

47 See Id.

48 Protect, Respect and Remedy: a Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, (2008) un Doc A/HRC/8/5, para. 34

49 Ante Wessels, "Investment tribunals over supreme courts," available at: https://www.vrijschrift.org/serendipity/index.php?/archives/154-Investment-tribunals-above-supreme-courts.html last accessed 6 February 2023

50 Oliver Wright, Nigel Morris, "British sovereignty 'at risk' from EU-US trade deal: UK in danger of surrendering judicial independence to multinational corporations, warn activists," available at: http://www.independent.co.uk/news/uk/politics/british-sovereignty-at-risk-from-euus-trade-deal-uk-in-danger-of-surrendering-judicial-independence-to-multinational-corporations-warn-activists-9057318.html, last accessed 6 February 2023

51 Ante Wessels, "Investor-to-state dispute settlement is a rigged system," available at: https://ffii.org/investor-to-state-dispute-settlement-is-a-rigged-system/ last accessed 6 February 2023

52 Report of the Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Assembly of the Council of Europe (25 January 2017), doc. No. 14255, "Human rights compatibility of investor–State arbitration in international investment protection agreements," para. 13.

Similarly, the scope of application of the precautionary principle in ISDS is quite limited. For instance, in the case of Windstream Energy, Canada had to pay damages to the investors for the ban on wind farms without giving sufficient scientific evidence.[53] On the contrary, principle 15 of the Rio Declaration allows the states to take precautionary steps in absence of scientific certainty.

Likewise, the opaque nature of the proceedings is against the principle of public participation. Those ISDS involving environmental measures is an issue of legitimate interest to the affected parties who mostly are voiceless local communities. Moreover, third-party submissions assist the merit stage to evaluate the appropriateness of the challenged measures. Due to wide criticisms, some IIAs and rules have responded with revisions which still are not quite up to the mark. Illustratively, UNCITRAL Arbitration Rules on Transparency allow submissions from non-disputing parties.[54] Nevertheless, it requires the legal interest of third parties who can submit insights/perspectives different from that of the disputants.[55] Then the acceptance of the amici curiae depends on the opinion of the disputants during consultation.[56] Furthermore, third parties are allowed to make only written submissions and cannot attend the proceedings if the tribunal wishes to protect the confidentiality and integrity of the proceeding.[57] Even when the amici curiae are accepted, the arbitral tribunals have significant discretion on the assessment.[58] Such technical limitations on participation in ISDS are highly perplexing and pose a challenge to the possible reform of ISDS.[59]

The reform attempt by UNCITRAL is still debatable as article 7 (7) of the rules on transparency maintains the confidentiality of information that jeopardize the integrity of the arbitral process. The integrity is believed to be compromised if the disclosure hampers the production of evidence or if it causes intimidation of witnesses, lawyers, and arbitrators.[60] While the exceptions of business secrecy and national security are justifiable, the expansion of those exceptions through an ambiguous word like intimidation seems shady. Such a vague term is always open to interpretations that may defy the rationale of transparency. This rule can offer the legal fallback to the mala fide non-disclosure by the closely knitted elite lawyers and arbitrators who have monopolized the industry of ISDS arbitration. Ultimately, it is the vulnerable communities and public who bear the repercussions of such a generalized exception of transparency requirement.

ISDS threatens the state's response to climate change by protecting investments in mining and transporting fossil fuels.[61] ISDS accelerates climate injustice by affecting water resources protection, the minimal significance of Environmental Impact Assessments, unrepresented communities, and many more.[62] For instance, the tribunals evaluate the environmental impact assessment in favor of the investors.[63]

Bear Creek Mining[64] is another case concerning community conflict. The Canadian company pursued silver mining in a sensitive area of the Aymara-Lupaca Reserve protected for the biodiversity and cultural heritage heavily depended upon by the Aymara indigenous communities.[65] The company convinced the Peruvian authority to resize the Reserve Area to exclude the mining site on the decree of public necessity.[66] Lured by the incentives of tax revenues, the government provided initial support.[67] Before acquiring the land from locals, the

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53 Windstream Energy LLC v. Government of Canada, PCA Case No. 2013-22, award available at https://www.italaw.com/cases/1585 last accessed 5 February 2023

54 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (2013), Article 4.

55 See Id. at article 4 (3) (b)

56 See Id. at article 4 (1)

57 See Id. at article 6 (2)

58 L. Bastin, 'The Amicus Curiae in Investor-State Arbitration' (2012) Cambridge Journal of International and Comparative Law 208

59 E. Levine, 'Amicus Curiae in International Investment Arbitration: The implications of an increase in third-party participation' (2011) 29 Berkeley Journal of International Law 200; B. Choudhury, 'Recapturing Public Power: Is Investment Arbitration's Engagement of the Public Interest Contributing to the Democratic Deficit?' (2008) 41 Vanderbilt Journal of Transnational Law 775

60 UNCITRAL, supra note 54, article 7 (7)

61 Lisa Sachs et al., Enuironmental Injustice: How Treaties Undermine the Right to a Healthy Environment, Wolters Kluwer: Kluwer Arb. Blog (Nov. 13, 2019), available at https://arbitrationblog.kluwerarbitration.com/2019/11/13/environmental-injustice-how-treaties-undermine-the-right-to-a-healthy-environment/ last accessed 5 February 2023

62 See Id.

63 William Ralph Clayton of Delaware v. Canada, Case No. 2009-04, Award on Jurisdiction and Admissibility, at 535 (Perm. Ct. Arb. 2015), available at https://perma.cc/TY9T-RFMC last accessed 6 February 2023

64 Bear Creek Mining Corp. v. Republic of Peru, ICSID Case No. ARB/14/21, Award, 1-2, 123 (Nov. 30, 2017)

65 Brief for Non-Disputing Party Written Submission of DIIIUMA & Dr. Carlos Lopez at,3-4, Bear Creek Mining Corp. v. Republic of Peru, ICSID Case No. ARB/14/21 (May 9, 2016), https://www.italaw.com/sites/default/files/case-documents /italaw7517.pdf

66 Bear Creek Mining Corp., supra note 64, at 149.

67 Ausenco Vector et al., Feasibility Study: Santa Ana Project, Bear Creek Mining Corp. 150 (Oct. 21, 2010) (summarizing anticipated taxes and royalties payable to Peruvian authorities in connection with the Santa Ana Project).

company had to conduct an Environmental and Social Impact Assessment (ESIA) as Peru had obligations under ILO Convention No. 169 to ensure special consultation with indigenous communities.[68] Beer Creek argued that mere consultations were required rather than consent but Peru asserted that community consent was a legal and de facto requirement. The investment was opposed because the company was believed to overuse and hazardously contaminate the water resources. The company excluded key stakeholders and made highly technical presentations in Spanish, though most locals were Aymara speakers. The promised economic benefits were denied leading to escalations and violent confrontations. Following the wide protest the government revoked the mining rights of the company. The tribunal ruled in Bear Creek's favor on expropriation, reasoning that Peru gave Bear Creek the "distinct, reasonable expectation" that it would be able to develop the mine by issuing the declaration of public necessity and authorizing the initial exploratory activity and the ILO Convention 169 imposes direct obligations only on states.[69]

However, the tribunal member, Prof. Philippe Sands (a highly regarded expert in international environmental law) had dissenting opinions. He contended that a company like Bear Creek should be aware of the human rights of the communities affected by their investment, even if they are not directly obligated by the human rights instruments.[70]He asserted that the company made insufficient effort to consult with the affected communities as anticipated by ILO Convention No. 169. [71]

This case is a representative illustration of the insensitive approach of the ICSID tribunal in the matter of legitimate environmental regulations of the host country. Besides, the relaxation of environmental regulation by resizing the Reserve area is an excellent example of regulatory chill by the host state. The pro-investor bias is evident as the tribunal ignored the faults of the investors and considered their expectations to be legitimate without considering the domestic legal, environmental, political, sociological, and anthropological context of the legal claims of the investor. Therefore the ISDS mechanism is in contradiction with the principles of international environmental law.

Environmental justice

ISDS aims to even the playing field for foreign investors by protecting them from the host country but this has increased the privileges[72] of those investors and created unfair outcomes. The existing economic inequalities are magnified because the majority of claims are brought by companies with billions of annual revenue against low and middle-income countries.[73] ISDS ignores the resource disparity between parties and exploits the distributional inequalities. The balance of power has tilted much in the favor of investors mostly from developed countries while developing countries are in constant fear of frivolous claims and resulting damages. This results in the relaxing of their environment-related regulations or regulatory chill.

Reducing intra-generational inequalities has been a major principle of sustainable development. Goal 10 of Sustainable Development Goals in its target 10.6 provides that "Ensure enhanced representation and voice for developing countries in decision-making in global international economic and financial institutions to deliver more effective, credible, accountable and legitimate institutions." All the shortcomings of the ISDS discussed above seem to challenge the prospects of attaining the aforementioned target. The decision-making in ISDS denies proper representation of the affected parties. Since those tribunals do not allow host nations to initiate the arbitration process, the voice and concerns of developing countries remain unheard as only the investors enjoy the privilege. The arbitration tribunals already suffering a legitimacy deficit do not promise a credible and accountable institutional mechanism envisioned by the SDGs 2030.

The ISDS mechanism is too intimidating for developing countries who are committed to fulfilling their international obligation arising out of environmental law. They're unable to attain both development and environmental protection at the same time as they're unable to pursue both simultaneously. The investors and investor-biased arbitrators tend to penalize them for pursuing a sustainable development approach. The ISDS tribunals follow retributive and punitive measures. While the principle of environmental justice rests upon the notion of distributive and corrective justice, the arbitration tribunals seem to follow none. They put the vulnerable countries in a difficult position as neither can they escape state responsibility for environmental harm nor they can pursue environment-friendly businesses.

Paralyzing the environmental regulatory rights of low-income countries through privatized adjudication is itself an example of environmental injustice. While the

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68 Bear Creek Mining Corp., supra note 64, at16-29

69 Bear Creek Mining Corp., supra note 64, at 376, 664

70 Bear Creek Mining Corp., supra note 64, see Partial Dissenting Opinion of Philippe Sands QC, 10-12

71 See Id. at 19-22, 25-36.

72 Lise Johnson & Lisa Sachs, The Outsized Costs of Investor-State Dispute Settlement, 16 ACAD. OF INT'L BUS. INSIGHTS 10 (2016), available at https://perma.cc/5EZQ-XJRJ last accessed 6 February 2023

73 Colum. Ctr. On Sustainable Inv., Primer: International Investment Treaties And Investor-State Dispute Settlement 1 (2019), available at https://perma.cc/RL4C-A93X last accessed 6 February 2023

international community has increasingly adopted the principle of Common But Differentiated Responsibilities (CBDR) to attain corrective and distributive justice, the investors, on the contrary, are obsessed with protection and retribution, turning a blind eye to the sensitive issue of social justice. It is agreeable that a business views environmental regulations as a potential risk but it is upon the investors to transform such risk into opportunity through green strategies. For example, pre-investment feasibility studies and impact assessment reports should not be treated as mere formality. Instead of making the weaker countries pay the damages for their legitimate environmental regulations, investors should strategize and continuously update their risk management. Managing the relationship with the local communities and relevant stakeholders like civil society organizations could provide safeguards that no international arbitration could secure.

In the broader picture of environmental justice, the need for development is significant but not at the expense of the environment and related rights of the host countries and local communities. The investors have all right to pursue development sustainably but the ISDS mechanism should not impede the globally pursued goal of environmental justice and sustainable development. The arbitrations under IIAs are widening the intra-generational inequality gap. The tribunals need to reevaluate the environment-related obligation of the corporations before upholding their legal rights as the seemingly private nature of the ISDS affects a wide range of stakeholders because of the public nature of the dispute. There is a need to rebalance the tilted attitude for the greater goal of environmental justice by assessing the policy implications of the awards.

Conclusion

Thus, the ISDS mechanism with an inherent legitimacy deficit has privatized the public policy realm which has a far-reaching impact on public lives. The dispute settlement through arbitration is incongruent with the widely accepted principles of international environmental law. This has unimaginable implications for environmental justice. The global goal of attaining development sustainably cannot be achieved unless the structural flaws of ISDS are reformed. The IIAs can be used as a means of achieving sustainable development if the legitimacy deficit of the ISDS is addressed along with the environmental and human rights concerns. The ISDS arbitral tribunals should be mindful of corporate environmental responsibility and due diligence before upholding investment-related rights. The investors should adopt a collaborative approach to solve the environmental issues through amicable means instead of resorting to the less environment-friendly ISDS mechanism.

Transformative Climate Justice: An Indian Perspective

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ABSTRACT

This article explores the concept of climate justice, which emphasizes the need to protect human rights and ensure equal and fair sharing of the benefits and burdens of climate change. It highlights the historical injustices of colonialism and its impact on emissions and cultural practices. The article discusses the Indian position regarding climate justice within the international framework and the role of Indian courts in addressing climate-related issues. It also examines the challenges faced, including the withdrawal of the United States from the Paris Agreement and the specific challenges India faces due to its population, water supply, food security, and vulnerable industries. The conclusion emphasizes the importance of equitable regulatory structures, incorporating climate action into domestic legislation, and strengthening justice institutions to achieve climate justice. Recommendations include integrating climate action into other policy areas and ensuring the rule of law and human rights are upheld in climate-related decision-making.

Keywords: Climate Change, Environment, Vulnerable groups, Justice.

Introduction

Climate justice concept is built on the premise of "respecting and protecting human rights" to produce a human-centered response to climate change. At the heart of this approach is the safeguarding of basic human rights in the respect of human dignity. Climate justice emphasises the necessity of sustainable development based on the need to scale up and transfer green technology, and it is founded on the notion of protecting the rights of the most vulnerable by equally and fairly sharing the benefits and burden of climate change. This method requires that all choices involve the participation of all low-income nations, and that the decision-making process be fair, accountable, transparent, and devoid of corruption. It integrates a strong gender justice viewpoint, which empowers women to take action and contributes to bringing a gender perspective to each of the climate change challenges. Furthermore, it emphasises the transformational potential of education in providing future generations with skills and knowledge.

Historical Injustice of Colonialism affecting Climate Justice

When officially established colonialism ended in the 19th and 20th centuries, the world was already split into developed and developing countries. Furthermore, colonialism shaped the fundamental notion of development, a concept that mainly overlooked social as well as environmental costs caused by the western world's progress. As colonies acquired their independence, they continued to bear the burden of colonialism. Several newly constituted nation-states proceeded on the colonial development path, treating ecosystems as simply tools for commercial gain. Under the guise of development, the projects continued to evict and relocate vast communities.[1]

Any tale is incomplete if we just look at the victors and ignore the losers. Even while the entire extent of colonialism's influence is still unknown, it is clear that it transformed cultures, ideologies, landscapes, and international relations, culminating in an exploitative economic model based on natural and human dominance. Colonialism also resulted in the extinction of historic and vital cultural practises that may have aided in containing the natural destruction at the root of climate change.[2]

We need to focus on some statistics to better comprehend the relationship between human growth on the one hand and colonial exploitation of nature and humans on the other. Historically, global emissions have been largely uneven. The United States bears over 40% of the world's pollution debt. However, 'carbon creditor' countries such as Bangladesh, India, China, and Nepal have a bigger percentage of the world population than their contribution of emissions.[3]

In 1825, Britain was responsible for 80% of world carbon emissions from fossil fuels, demonstrating the impact of colonialism on emissions. The world's wealthiest countries are responsible for 80% of historical global emissions, while having only 20% of the world's population. Until the

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1 V. N. Jacob, "Climate Litigation in India : An Overview", ILILR 93 (2020).

2 Ibid.

3 World Bank. 2021a. "CO2 Emissions (Metric Tons Per Capita) | Data", available at: https:// data.worldbank.org/ indicator/EN.ATM.CO2E.PC

year 2000, the United States was responsible for 27.6% of all historical emissions. Brazil was responsible for 0.9%, while Nigeria was responsible for 0.2%. El Salvador's per capita emissions are 45 times lower than a Qatari national's average emissions and 15 times lower than an American's average emissions.[4]

The unfairness generated by the global economic system is also obvious in private corporation emissions statistics (see also Grasso in this book). Just 90 firms have been responsible for two-thirds of all emissions since 1750. After 1988, half of these emissions occurred. ExxonMobil was responsible for 3.22% of all emissions between 1751 and 2010. The issue to emphasise here is that by 1988, mankind had accumulated sufficient information to demonstrate that we were disrupting the Earth's system.[5]

The moral foundation of global climate justice is, in reality, equality between states and individuals. In the contemporary international community, the guarantee of every person's equal right to survival and growth is first and foremost the guarantee of every nation's equal right to survival and development. Those who criticise the "common but differentiated responsibilities" idea on climate challenges have the dilemma of not basing their theory on the fundamental assumption of global equality. In other words, they oppose "equal human rights" and then deny "national equality." Global climate justice based on equality is a morally justifiable justice criterion. Only by building global climate cooperation on the basis of egalitarianism, and only by forming a moral community of universal equality and justice, will we be able to achieve our goals.[6]

The Indian Position vis a vis International Framework Regarding Climate Justice

India has been working to grasp the principles outlined in different international climate change agreements such as the UN Framework Convention on Climate Change (1992), the Kyoto Protocol (1997), and the Paris Agreement (2015). Domestically, the Indian government passed the Energy Conservation Act of 2001, the National Environment Policy of 2006, and the National Action Plan on Climate Change (NAPCC) in 2008.[7] Unfortunately, the policies have yet to achieve their objectives. It is critical for India to implement the IPCC's recommendations since climate change is projected to have an influence on the country's agricultural production, water supply, coastal settlement and deltas, forest and mountain ecosystems, health, and energy security. When the legislative and the administration fail, litigation plays a vital part in the justice delivery system. Climate claims are on the rise as the effects of climate change harm people and property, inflicting irreversible damage.[8]

Indian courts have widely applied international concepts such as polluter pays, precautionary, intergenerational equality, sustainable development, and the theory of public trust in determining environmental matters. Scholars have highlighted the precautionary, public trust, and intergenerational equality principles while citing climate claims among the international norms. The concepts and doctrine of precautionary, public trust, and intergenerational equity will be investigated in this context to understand how Indian courts might handle climate claims in the future.[9]

The courts further emphasised that the common law idea has long been a component of Indian law.[10] Climate change lawsuit can be filed under the umbrella of public trust doctrine, which holds the state accountable for maintaining national public trust resources for future generations. Such claims highlight issues of an individual's fundamental right and intergenerational equality, as well as harmonising the functions of the three governmental branches, namely the judicial, legislative, and executive.

The notion of intergenerational equality was initially recognised in the Stockholm Declaration on the Human Environment. The court decided in Tirupathi v. State of AP that the public trust doctrine and the intergenerational equity principle are part of environmental rights under Article 21 of the Constitution.[11] For the first time, the Indian Supreme Court used intergenerational equity to protect forest resources, stating that "the current generation has no right to deplete all existing forests and leave nothing for future generations." Climate change litigation can be brought with the presumption of being an intergenerational problem, because the current generation has been affected by climate change, and if measures are not taken, the future generation will be burdened as well. The intergenerational concept can also

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4 Matthews, H. Damon, "Quantifying Historical Carbon And Climate Debts Among Nations" 6(1) Nature Climate Change 60–64 (2016).

5 Malm, Andreas. 2016. "Who Lit This Fire?" 3(2) Critical Historical Studies 215–248 (2016).

6 Ibid.

7 Malini Parthasarthy "India for Emission Cut Target with Equitable Burden sharing" The Hindu available at: http://www.hindu.com/2009/11/29/stories/2009112958120 100.htm. (last visited on June 10, 2023).

8 Elisa de Wit, Sonali Seneviratne et al. " Climate Change Litigation Update", available at:https://www.nortonrosefulbright.com/enin/knowledge/publications/7d58ae66/climate-change-litigation-update

9 Lavanya Rajamani and Shibani Ghosh, "India" in Richard Lord, Silke Goldberg et.al. (eds.) Climate Change Liability: Transnational Law and Practice 151 (Cambridge University Press,2012).

10 Reliance Natural Res. Ltd v. Reliance Indus., SCC Civ. App. No. 4273 (May 7, 2010), at para. 85.

11 AIR 2006 SC 1350

bring justice to current generations who are affected by climate change.[12]

In judicial review, the proportionality test has been referred to as the "main foundation of legal adjudication." The proportionality test is of European origin, and it states that a public authority must guarantee that decisions are made in a reasonable way that is consistent with the overall aim of the power placed on them. To establish whether a government action breaches constitutional rights, the judiciary employs the proportionality test. The proportionality test in the judicial review process aids in establishing a balance between people's rights and interests. Courts can utilise the proportionality test to find equity in climate change disputes by examining the government's activities on climate change. Furthermore, if an administrative authority fails to follow the legal procedure for mitigating the effects of climate change, climate litigants can take their case to court. Articles 14, 19, and 21 defend natural justice principles; when administrative judgements are unjust and irrational, judicial review aids in keeping a check on the decision-making process.[13]

Climate litigation challenging government decisions on climate change regulation was addressed in Om Dutt Singh v. State of Uttar Pradesh, where the issue raised was the construction of an irrigational plant that would produce methane emissions, contributing to the country's increased greenhouse gas mission.[14] The National Green Tribunal (NGT) allowed the creation of a waste-to-energy plant project that aided in the reduction of greenhouse gas emissions in the case of Sukhdev Vihar Residents' Welfare Association v. Union of India.[15] Furthermore, the NGT has issued judgements indicating that official announcements violate the Paris Agreement and the Rio Declaration.

One notable case in India was Ridhima Pandey v. Union of India, in which a minor sort for instruction from the court to provide notice to governments to incorporate climate implications before administrative decisions about development were made. Despite the fact that the NGT's final order was not particularly favourable to the petitioner, the tribunal stated that "there is no reason to presume that the Paris Agreement and other international protocols are not reflected in the policies of the Government of India or are not taken into account in granting environment clearances."

In M/S Singh Timber Traders v. State of U.P., the government cited climate concerns as a reason for this ruling, arguing that chopping down trees will increase greenhouse gas emissions while decreasing carbon sequestration.[16] Furthermore, in a case involving the promotion of green energy and the expansion of energy generation, the State Electricity Regulatory Commission of Rajasthan said that its policies were based on the NAPCC and the "need to generate green energy."[17]

For many years, environmental offences in India have been prosecuted under the Indian Penal Code and particular provisions of environmental legislation. Courts have also decided cases imposing criminal liability in environmental cases, such as State of Madhya Pradesh v. Warren Anderson, in which the magistrate imposed criminal liability on eight individuals, including the company's chairman, for violating section 304A of the Indian Penal Code.[18]

Restorative justice has existed in Indian conflict settlement since ancient times, when a neighbourhood-focused redressal method was dominant. Restorative justice ideas have been widely applied in situations involving crimes against women and children. The primary goals of restorative justice are to' repair, restore, reconcile, and reintegrate offenders and victims' into society. In India, the restorative method has not been employed in environmental situations, although it has a lot to offer as a technique.[19] Restorative procedures, which enable change from the bottom up, can provide a better adaptation and mitigation strategy to environmental harm. Environmental victims include indigenous groups, women, children, future generations, and the environment, all of whom typically have little say in decision making. Because it is concerned with needs and roles in a crime, restorative justice can help balance the climate injustices generated by offenders such as organisations, governments, and people.[20]

Incoming and Ongoing Challenges

On 1 June 2017, amid global dismay and frustration, U.S. President Donald Trump explicitly announced his withdrawal from the Paris Agreement, in keeping with his so-called campaign "promise," raising widespread

12 Kai Moller, "Proportionality: Challenging the critics" International Journal of Constitutional Law 709 -711 (2012).
13 Maneka Gandhi v. Union of India, AIR 1978 SC 597.
14 NGT App No. 521/2014 (May 7, 2015).
15 NGT App No. 22 (THC)/2013 (Feb. 2, 2017).
16 MANU/UP/2993/2014.
17 Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission (2015) 12 SCC 611.
18 Cr Case No. 8460/1996.
19 Narita Roy Chaudhary, " Social Movement and Grassroots Discourse of Climate Justice in the Context of Droughts in Semi- Arid Regions: A Case Study in India, 11(1) Onati Socio- Legal Series 69-107 (2021).
20 S. Latha and R. Thilagaraj "Restorative Justice in India" 8 Asian Journal of Criminology 309-319 (2013).

concerns around the world about the "Paris climate process" initiated by the Paris Agreement. What has to be investigated further is why the Trump administration withdrew from the Paris Agreement despite significant public and international condemnation. What effect would the United States' exit from the Paris Agreement have on the Agreement and even on global climate governance?[21]

Although the decision to withdraw from the Paris Agreement was made by the Federal Government of the United States, according to article 28 of the Paris Agreement, the parties to the Paris Agreement may apply for withdrawal only three years after its entry into force and shall enter into force upon the expiration of one year from the date of receipt of the notification of withdrawal, that is, the United States' final withdrawal. Of course, such an act will undoubtedly cast a pall over the "Paris climate process" that the world community is attempting to progress.[22] Although the United States is now the world's second highest producer of greenhouse gases, it is still the world's top emitter in terms of historical accumulation . It leads the globe in terms of economic status, military might, technological and financial advantages. The most immediate impact of the United States' withdrawal from the Paris Agreement is an increase in the global funding gap for climate change, while the indirect impact is a lack of international political will to address climate change and a delay in global innovation in low-carbon technologies.[23]

The Prime Minister of India , Narendra Modi took a moral high ground and reaffirmed its position to comply with the Paris agreement.[24] However , there are numerous challenges before India when it comes to tackling of the issue of climate justice. While generally recognised estimates of temperature rises of 2 to 4 degrees Celsius would have an impact on global security, the consequences will be more severe in India. With a projected population of 2.2 billion by 2100, India would confront major water supply, migration from Bangladesh, and food security challenges. Furthermore, India will have to deal with these difficulties in the face of an increasingly assertive neighbour, China. To compensate for the home security challenges caused by global warming, India must invest more substantially in onshore wind and solar output for domestic consumption. Given the large upfront costs of these green efforts, India may boost its security at the same time by making low-cost investments in military cooperation, access, and even partnership with the US.[25]

India is dealing with a variety of concerns that exacerbate the consequences of global warming. Global warming will have an influence on every part of Indian society, with almost 310 million people living in coastal areas that will be affected by global sea level rise, about 30% of the population living below the poverty line, and over 50% of the population working in the agriculture economy. Not only is over 70% of its people reliant on climate-sensitive industries and natural resources, but many of them lack the ability to adapt to climate change.[26] As a result, "climate change is likely to have an impact on all natural ecosystems as well as socioeconomic systems." These conditions would face Indian policymakers with significant economic and social concerns, which would very certainly be worsened by comparable issues in India's major neighbours, Bangladesh and Pakistan.[27]

However, In India, public mood is shifting in favour of climate change policies. Similarly, India's yearly GDP growth rate of 6-8% makes it an ideal location for investment in green technology, manufacturing, and infrastructure. While green initiatives are sometimes faced with opposition owing to initial outlay expenses and the notion that they stifle development, there is considerable potential for good economic investment that produces enough eco-friendly jobs to balance losses in industries such as petroleum or coal-based power generation.[28]

Conclusion and Recommendations

Though judiciary in India has been a significant contributor when it comes to the development of environmental justice in India, Climate justice necessitates equitable and effective regulatory structures that improve accessibility and accountability. States must be able to incorporate their international climate mitigation and adaptation duties into domestic legislation, as well as

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21 H. Li "Climate Policy Analysis of the European Union in the Context of the Trump Administration's "Declimate" Campaign" 18 European Studies 43-60 (2018).

22 Ibid.

23 X. Yu "Global Common Governance Theory and Chinese Practice" 18, 58(06) Journal of Social Sciences of Jilin University 204- 205 (2018).

24 https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/Paris_Climate_Change_Accord_Recent_Development.pdf

25 J.Williams, " Climate Change in India: A Security Challenge with Political and Economic opportunities", available at: https://www.airuniversity.af.edu/Wild-Blue-Yonder/Article-Display/Article/3385203/climate-change-in-india-a-security-challenge-with-political-and-economic-opport/ (Last visited June 12th, 2023).

26 Ibid.

27 Ibid.

28 Douglas Broom, "What's the Price of a Green Economy? An Extra $3.5 Trillion a Year." World Economic Forum, available at: https://www.weforum.org/agenda/2022/01/net-zero-cost-3-5-trillion-a-year/ (Last Visited on June 12th 2023).

strengthen their institutional ability to confront the most severe implications of climate change and biodiversity loss in accordance with those commitments. Securing prospects for climate-resilient development will require not only the adoption or reform of appropriate laws and policies, as well as the incorporation of a rights-based perspective into climate action strategies and plans, but also the capacity of justice institutions, both formal and informal, to deliver on the promise of climate justice.[29]

Efforts will be required to ensure that the rule of law serves as the foundation of an appealing investment environment for climate finance, and that transformative climate action enabled by a justice and rule of law perspective is integrated across other priority policy areas, particularly health and food security. Rule of law measures can improve cooperation inside and across diverse sectoral entities while respecting human rights, so avoiding some of the unexpected consequences of climate action that may increase social tensions and conflict risks.[30]

Climate justice necessitates transformative climate action based on the rule of law to address inherent inequalities among constituencies and ensure that climate policies prioritise the most climate-vulnerable people, assisting them in claiming and defending their environmental rights.

Gender-transformative approaches to climate mitigation and adaptation are included, as are youth- and child-friendly approaches to public consultation and policy development, recognition of indigenous and customary rights to land and resources, and the establishment of specific justice pathways for climate migrants and other vulnerable groups. The preservation of civic space for grassroots mobilisation and activism, environmental and human rights defenders, and particularly women and indigenous people, should be prioritised.[31]

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29 Supra note 21.

30 Detges et al., "10 Insights on climate impacts and peace: A summary of what we know", adelphi, Potsdam Institute for Climate Impact Research, (2020), available at: https://www.adelphi.de/en/publication/10-insights- climate-impacts-and-peace.

31 Ibid.

Sustainable and Green Arbitration- A New Milestone for Present World

Apoorvi Shrivastava*

The quality of our lives depends not on whether or not we have conflicts, but on how we respond to them.

– Thomas Crum

ABSTRACT

Disputes are inevitable across the globe, but it has become important today that they are not only redressed amicably but sustainably. The United Nations Sustainable Development Goal is an ardent call to all the nations to grow and prosper but also preserve the planet by reducing the carbon footprints along with this evolution curve. Supreme Court of India through its circular has also modified the case filing procedure to opt a greener approach, which has made it even more pertinent to make arbitration greener on a domestic and international level. The researcher through this paper would highlight how transformation in procedural aspect, reform in substantive matters and change in the attitude of arbitrators can lead to a better and greener arbitration. The Green Protocol of Arbitration[1] will be analyzed and sustainable practices for institutional as well as adhoc arbitration will be laid down separately considering the difference in proceedings. It is not only the duty of a state, but the burden also lies on the arbitration community to put its best foot forward to resolve issues of persons and planet.

Keywords: Sustainable, Green Arbitration, Dispute Resolution, Model Procedure, Carbon Footprint

Introduction

There are different ways in which a dispute can be resolved through alternative dispute resolution methods, namely arbitration, mediation, negotiation, Lok Adalat, conciliation (Xavier 2006). These methods are often preferred over traditional litigation because they can be quicker, less costly, and more private. Additionally, ADR can be more effective at resolving disputes because it allows parties to find creative solutions that may not be possible in a courtroom setting.

When disputes are resolved through ADR, the parties are able to find solutions that take into account the long-term impacts on the environment, rather than just focusing on short-term financial interests. This can lead to more sustainable outcomes that benefit both the parties involved and the environment. Green dispute resolution refers to the use of Alternative Dispute Resolution (ADR) methods to resolve conflicts and disputes in a way which does not impact the environment negatively (Mania 2015).

These methods aim to find mutually acceptable solutions that are both fair and environmentally responsible. By finding mutually acceptable solutions in line with environmental well-being, the parties can work towards a more sustainable and healthier environment for all. One of the ways through which parties can resolve disputes taking into consideration the environment is Green Arbitration.

Green Arbitration

One of the major law firms in the world, Herbert Smith Freehills, has conducted a study which revealed that in-person hearing has a greater carbon footprint and entails higher expenses as compared to virtual hearings.

The case study contrasted in-person hearings with procedurally comparable virtual hearings and found that the in-person hearing produced 111 tonnes of CO2 equivalent (CO2e). This is 19 times the carbon footprint of a similar hearing held virtually (estimated to give rise to 6 tonnes CO2e). This CO2e differential is similar to the average amount of CO2 produced by 15 persons in the EU over the course of a year. In-person hearings were also found to be around 6% more expensive than virtual hearings, a difference worth tens of thousands of pounds sterling. For in-person hearings, the top three sources of carbon emissions were found to be travel (92.7 percent of the hearing's overall emissions), substantial hearing preparation (3.7 percent of emissions), and accommodation (2.5 percent of emissions).

The top three sources of carbon emissions for virtual hearings were determined to be substantial hearing preparation (representing 70% of the hearing's overall emissions), virtual counsel attendance (representing 12% of emissions), and virtual participant attendance (2 percent of emissions). The term "substantive hearing preparation" refers to the time that the counsel teams invested in getting ready for the hearing (including, but not

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[1] Greenwood, Lucy (2021) The Canary Is Dead: Arbitration and Climate Change. In Scherer M (ed), Journal of International Arbitration Kluwer Law International 2021 Volume 38 Issue 3

limited to, time spent on drafting submissions and cross-examinations but excludes time invested in getting ready for the hearing logistically).

The study observed that in-person hearing or virtual hearing debate should be decided on each case to case basis. Two important factors need to be considered while making a choice in between in-person hearing and virtual hearing, that is, environmental impact and cost of the hearing. There are other factors which also affect this decision making, namely complexity of the dispute, availability of participants, the amount of evidence involved in the case, number of languages used in the proceedings ("If the international arbitration community is to stay relevant, it needs to address environmental concerns as they relate to international disputes and as they relate to each individual's practice" (Greenwood 2021))[2].

In order to take into account the realities of electronic submissions and virtual hearings, arbitral institutions have likewise modified their rules and guidelines: The Request for Arbitration and the Response are to be filed online, and written communications are to be made by electronic means, in accordance with Articles 4.1 and 4.2 of the LCIA Arbitration Rules 2020. The LCIA Arbitration Rules 2020's Article 19.2 explicitly states that a hearing may be conducted through conference call, videoconference, or other electronic means of communication. The newly revised Article 26.1 of the ICC Arbitration Rules 2021 specifically states that the arbitral panel may choose to hold a hearing remotely. The new arbitrations must be managed in accordance with the Stockholm Chamber of Commercial Arbitrator Guidelines, which mandate that all parties, the arbitral panel, and the SCC all communicate and share files electronically (Section 2, the SCC Platform). The Guidelines also suggest that arbitrators may deduct the cost of their planes' carbon offsets as expenditures (Section 3, Expenses). In addition, a provision (Article 8.2) in the Revision of the IBA Rules on the Taking Evidence in International Arbitration, introduced in December 2020, encourages tribunals to take time, expense, and environmental considerations into account when deciding whether to hold an evidentiary hearing remotely.

These innovative clauses in arbitral rules might be a reaction to the Covid-19 pandemic, but they also highlight the chance to reduce travel and waste in international arbitration proceedings as well as the significant role arbitral institutions and tribunals may play in case management in a sustainable way. After the outbreak, it is anticipated that travel and in-person hearings would partially resume. However, given the widespread and irreversible changes in working habits that will result, as well as given the effectiveness and success of the technology available to conduct virtual meetings and put together e-bundles, it is likely that the use of paper and other single-use materials will continue to decline.

The initiative was started by Lucy Greenwood in 2019 and the vision is to reduce the carbon footprint of the arbitration community.[3] Lucy Greenwood launched green pledge to reduce the effect of environment due to her arbitration practice. According to a study by the Campaign for Greener Arbitrations, approximately 20,000 trees could be needed to offset the carbon emissions from just one international arbitration. This startling number highlights the urgency of implementing more environmentally friendly procedures. The commitment to greener forms of dispute resolution made by law firms, chambers, and other legal service providers across the globe shows the legal sector's concern about its practises' carbon footprint while also pointing to a path forward (Pollard).[4]

The study recommended that the long-haul flights, use of hard copy filings, use of disposable cups can lead to reducing a substantial amount of carbon emissions (Campaign For Greener Arbitrations Impact 2022).[5] In 2021, the Campaign has launched a Framework for the Adoption of Protocols and six associated Protocols namely, Green Protocol for Arbitral Proceedings and Model Green Procedural Order Green Protocol for Law Firms, Chambers and Legal Service Providers working in arbitration Green Protocol for Arbitrators Green Protocol for Arbitration Conferences Green Protocol for Arbitral Hearing Venues Green Protocol for Arbitral Institutions (Campaign For Greener Arbitrations Protocols 2022).[6]

In the Framework, the sustainability measures provides for the use of clean energy, reducing energy consumption, minimising printing and use of paper, encouraging recycling, limiting use of single use items, partnering with "green" organisations, travelling responsibly , incentivising staff, engaging in social responsibility initiatives, offsetting

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2 Inside Arbitration: Whether Virtual or Physical, We Can Do More to Make Arbitration Hearing Sustainable https://www.herbertsmithfreehills.com/insight/inside-arbitration- whether-virtual-or-physical-we-can-do-more-to-make-arbitration-hearings Accessed on 12th Dec 2022

3 Joint Registrar, (Computerization & IT) (2020) Model Rules on Video Conferencing received from Hon'ble Supreme Court of India. https://highcourtchd.gov.in/sub_pages/left_menu/publish/announce/announce_pdf/mo del_rule_04082020_a8f9e.pdf

4 Campaign For Greener Arbitrations Framework (2022) Framework for Adoption of Protocols. https://www.greenerarbitrations.com/green-protocols/framework .Accessed 2nd Jan 2023

5 Campaign For Greener Arbitrations Protocols (2022) Green Protocols. https://www.greenerarbitrations.com/green-protocols . Accessed 12 Dec 2022

6 Campaign For Greener Arbitrations Framework (2022) Framework for Adoption of Protocols. https://www.greenerarbitrations.com/green-protocols/framework .Accessed 2nd Jan 2023

carbon emissions (Campaign For Greener Arbitrations Framework 2022).[7] The Campaign looks to have gained the support of the entire international arbitration community. The Campaign received the 2020 GAR Award for Best Development as a result. The GAR Campaign for Greener Arbitration Award for Sustainable Behaviour, which honours the accomplishments of individuals, law firms, or organisations in promoting sustainability, has been added as a new "Green" award category for the 2021 GAR Awards. With the recent introduction of the Greener Litigation Pledge, the Campaign has also sparked a comparable movement within the domain of litigation, which can be witnessed through a Supreme Court Initiatives of reducing or limiting number of papers used during a case.

Lawyer's Role in Sustainable Dispute Resolution

A lawyer or a practitioner plays a very important role in reaching a sustainable resolution of a dispute. He has the primary responsibility to assess and analyse the issues to determine the aid the stakeholders may need to help them negotiate a sustainable outcome. Lawyers need to develop and learn strategies that will help the stakeholders with deliberation, self-reflection, brainstorming and value assessment while working towards a sustainable dispute resolution. These practitioners would need to be visionaries who can apply the futuristic concept of dispute resolution. They should be efficient at assessment of the conflict, identification of issues involved and analysing the conflict to design appropriate strategies. They should be able to aid stakeholders to change their perceptions about the situation without which it is impossible to dismiss hurt feelings.

A paper published in the Journal of Security and Sustainability Issues detailed several important characteristics of a dispute resolution method for it to qualify as sustainable. Such characteristics include privacy and confidentiality, outcome aiming to preserve the relationship between parties, opportunity for communication, autonomy and control over the procedure and outcome (Kaminskiene et al. 2014)[8]. To begin with, it is important for a dispute resolution process to be private and confidential, at least in cases involving civil disputes which are of private and personal nature. This helps the parties to be able to engage in open communication about their interests, needs, hesitations, etc. When the parties truly know each other's reason for the conflict, they can amicably try to arrive at a mutually agreeable solution wherever possible. Court proceedings, which are generally open to the public and recorded, hinders effective exchange of complete information which is critical in resolving the underlying conflict. Secondly, a sustainable dispute resolution method focuses on preservation and continuity of good relationships while solving the underlying conflict that is causing the animosity between the parties.

Furthermore, an opportunity for direct communication between the parties can be very important in disputes involving family members. The dispute resolution method should make it easier to address the emotional aspects of the case by giving the parties an opportunity to be heard and express their views instead of third parties fighting on their behalf. In some cases, a mere apology or venting out the anger and frustration can help in restoring the bond between warring family members. The parties should be the ones responsible for their future and should be given the control over the procedure and conditions of the settlement agreement. This autonomy encourages voluntary compliance with the agreement reached and reduces hostility between the parties as the outcome is reached. There is greater legitimacy and longevity of the outcome reached by agreement. On the other hand, a court decided legal dispute is often favourable to only one party and disappoints the other party.

A dispute resolution process that is efficient and affordable could also prevent worsening of the relationship between the parties already at loggerheads. A dispute resolution method that is marred by unnecessary delays and excessive costs can never be sustainable. Therefore, this necessitates a method that is cost and time efficient. The resolution should be reached in a timely manner while the conflict between the parties still hasn't grown its roots (Kaminskiene et al. 2014).[9]

Sustainable dispute resolutions are a new way of thinking about ADR practices. They can be seen as agreements which have been negotiated to meet both the present and the future needs of the parties (Odididon 2003).[10] The agreement would be supported with outlines which help in sustaining the outcome. This new field of study can be drawn by a recent spade of scholars looking at the relationship between justice and sustainability. This

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7 Kaminskiene N, Žaleniene I, Tvaronavičiene A Bringing Sustainability Into Dispute Resolution Processes Journal of Security and Sustainability Issues (2014) Vilnius, Lithuania.

8 Kaminskiene N, Žaleniene I, Tvaronavičiene A Bringing Sustainability Into Dispute Resolution Processes Journal of Security and Sustainability Issues (2014) Vilnius, Lithuania.

9 Odididon J (2003) Sustainable Conflict Resolution – an Objective of ADR processes. https://mediate.com/sustainable-conflict-resolution-an-objective-of-adr- processes/#:~:text=Sustainable%20conflict%20resolutions%20are%20agreements,to successfully%20sustain%20the%20outcome . Accessed 2nd Dec 2022

10 Langhelle O (2000) Sustainable Development and Social Justice: Expanding the Rawlsian Framework of Global Justice. Environmental Values:295–323.

includes Langhelle (Langhelle 2000),[11] Barry (Barry (1999)[12], Dobson (Dobson 1998)[13] and Thompson (Thompson 1996)[14]. There are three major works which are more oriented to this work which is Spiroska (Spiroska 2014)[15], Siedel (Siedel 2007)[16] and Kaminskiene (Kaminskiene et al. 2014)[17]. There are means to have a sustainable dispute resolution process.

The Lohman Cabbage Conflict Model is one of the accepted descriptions of a sustainable conflict settlement procedure. Each disagreement is compared to a head of cabbage in this approach. The outer leaves are enforceable legal rights and responsibilities. The inner leaves stand in for the still unresolved and tangled web of feelings, power struggles, unspoken goals, competing interests, and expectations. The conflict's centre or core is where all of the leaves emerge. The young plant's core and inner leaves form it, while the outer leaves that protected it throughout the winter will eventually die. Therefore, a sustainable legal strategy permits the core to develop and the flexible outer leaves to unfold. Judicial judgements only consider the conflict's outermost layers. They obstruct growth that occurs naturally.

Conclusion In a world, where disputes are inevitable, the resolution shall be sustainable in nature. The dispute resolution shall be sustainability in both the ways, environment and relationship. Starting with the environment impact, the courts, arbitral tribunal, arbitration institutes and online dispute resolution platforms are taking steps to major portion of the proceedings to the virtual mode. Moving on to keepings relationship and trust intact, the non adjudicatory methods like mediation and negotiation provide a good platform for the parties to try out keeping their relationship alive and find out a potential solution to the dispute.

Online Dispute Resolution has indicated that majority of the commercial disputes can be resolved through the virtual platform without involving the courts. The Campaign for Greener Arbitrations has been one of the strong steps to work in a green way while conducting arbitrations. Before this initiative, there was no direct guidance to the law firms, law chambers, arbitral tribunal, arbitration institution and other service providers. A major number of law firms, law chambers, independent arbitrators have signed up to this Campaign. There are some pilot projects with respect to virtual courts in traffic challan and cheque bounce cases in Delhi. Also, there has been a constitution of a Green Bench by Hon'ble Justice D.Y. Chandrachud in which paper submission is not allowed. There have been arrangements made with the Registry and IT Cell to get the Senior Advocates trained in technology. The dispute resolution shall not come with a cost to environment. In addition, if the dispute resolution can be done while keeping the trust and relationship in between the parties, that is a more sustainable way of dispute resolution.

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[11] Barry B (1999) Sustainability and Intergenerational Justice, Fairness and Futurity. Essays on Environmental Sustainability and Social Justice. Oxford University Press

[12] Dobson A (1998) Justice and the Environment. Conceptions of Environmental Sustainability and Theories of Distributive Justice. Oxford University Press

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[14] Spiroska E Mediation and Conflict management – creative strategy towards sustainable development of the society' (2014) Journal of Sustainable Development 5(10): 83–98.

[15] Siedel G (2007) The role of business deal making and dispute resolution in contributing to sustainable peace. 44(2) American Business Law Journal:379–389

[16] Kaminskiene N, Žaleniene I, & Tvaronavičiene A (2014) Binging Sustainability into Dispute Resolution Processes 4(1) JSSI:69-77

[17] Kaminskiene N, Žaleniene I, & Tvaronavičiene A (2014) Binging Sustainability into Dispute Resolution Processes 4(1) JSSI:69-77

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PRAGYAAN: JOURNAL OF LAW

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Pragyaan: Journal of Law is a flagship law journal of School of Law, IMS Unison University and is a bi- annual peer-reviewed journal, first published in 2011. It seeks to promote original and diverse legal scholarship in a global context. It is a multi-disciplinary journal aiming to communicate high quality original research work, reviews, short communications and case report that contribute significantly to further the knowledge related to the field of Law. The Editorial Board of the Pragyaan: Journal of Law (ISSN: 2278-8093) solicits submissions for its Volume 13 Issue 2 (Dec 2023). While there are no rigid thematic constraints, the contributions are expected to be largely within the rubric of legal studies and allied interdisciplinary scholarship.

CONTRIBUTION

We seek contributions in the form of:

1. Articles (Maximum 8,000 words inclusive of footnotes and Abstract)
2. Essays (Maximum 4,000 words inclusive of footnotes)
3. Case Comment/Legislative Critique & Notes (Maximum 3,000 words inclusive of footnotes)
4. Book Review (Maximum 2,000 words inclusive of footnotes) besides other forms of scholarly writing

- Place tables/figures/images in text as close to the reference as possible. Table caption should be above the table. Figure caption should be below the figure. These captions should follow Times New Roman 11point.

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1. **Submissions must be in Microsoft Word (MS Word):**

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   Second page: Abstract with Key words (not exceeding 300 words).

4. **The following pages should contain the text of the paper including:**

   Introduction, Subject Matter, Conclusion, Suggestions & References. Name (s) of author(s) should not appear on this page to facilitate blind review.

5. Plagiarism Disclaimer:

Article should contain a disclaimer to the effect that the submitted paper is original and is not been published or under consideration for publication elsewhere. (Annexure I) The signed document must be e- mailed/ posted to The Editor along with manuscript.

6. Citations:

All citations shall be placed in footnotes and shall be in accordance with format specified (Annexure II). The potential contributors are encouraged to adhere to the Appendix for citation style.

7. Peer Review:

All submissions will go through an initial round of review by the editorial board and the selected papers will subsequently be sent for peer-review before finalization for publication.

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Annexure I

PLAGIARISM DISCLAIMER

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Annexure II

PRAGYAAN-JOL - CITATION STYLE

CASES

IN MAIN TEXT:

Jassa Singh v. State of Haryana

IN FOOTNOTE:

Jassa Singh v. State of Haryana, (2002) 2 SCC 481

The full citation should be provided in the footnote even if the case name has been mentioned in full in the main body.

Government to be written in full.

Example: Kesavananda Bharati v. State of Kerala ; M.C. Mehta v. Union of India.

SHORTENED FORM

If the same case is going to be cited subsequently, the full citation used the first time should be followed by the shortened form by which the case will be referred to subsequently, in inverted commas, and in square brackets.

Example: M.C. Mehta v. Union of India, [1997] 2 SCC 353 [Taj Trapezium case] Subsequent references

Taj Trapezium case, [1997] 2 SCC 353

The shortened form should be used every time after the first time a case is cited.

QUOTES FROM CASES

Per Subba Rao J., "a construction which will introduce uncertainty into the law must be avoided. It is conceded by the petitioner that the power to amend the Constitution is a necessary attribute of every Constitution". (Footnote original citation of case or shortened form as per rules stated above)

Single Judge:

S.H. Kapadia J.

Chief Justice of India

Thakkur C.J.I.

More than one Judges

K.G. Balakrishnan C.J.I., S.H. Kapadia, R.V. Raveendran, B.S. Reddy and P. Sathasivam (JJ.)

UNPUBLISHED DECISIONS

Name of the parties, Filing No of Year, Decided on date (Name of Judges) (Name of Court) **Example:**

> BP Singhal v. Union of India, W.P. (Civil) No.296 of 2004, Decided on May7, 2010(K.G. Balakrishnan C.J.I., S.H. Kapadia, R.V. Raveendran, B.S. Reddy and P. Sathasivam (JJ.) (Supreme Court of India).

INTERNATIONAL DECISIONS

Case name, (Party names) Judgement, Year, Publisher, Page No (Court Name) Example:

Case Concerning Right of Passage over Indian Territory (India v. Portugal) Judgment, 1957, ICJ reports, 12 (International Court of Justice)

LEGISLATIVE MATERIALS

When citing Constitution, it should be in Capital letters while other Statutes it should be First letter of the word in Uppercase followed by lower cases.

CONSTITUTION

Art. 21, THE CONSTITUTION OF INDIA, 1950.

OTHER STATUTES

Sec. 124, Indian Contract Act, 1872.

BILLS

Cl. 2, The Companies (Amendment) Bill (introduced in Lok Sabha on March 16, 2016).

PARLIAMENTARY DEBATES

Question/Statement by Name, DEBATE NAME, page no (Date) Example:

- Question by N.G. Iyengar, CONSTITUENT ASSEMBLY DEBATES 116 (August 22, 1947).

- Statement of V. Narayanaswamy, LOK SABHA DEBATES 5 (March 10,2010).

BOOKS

TEXTBOOKS

Name of the Author, NAME OF THE BOOK, Volume (Issue), Page (Publisher, Edition, Year)

Example:

H.M. Seervai, CONSTITUTIONAL LAW OF INDIA, Vol. 3, 121 (Universal Law Publishing Co. Pvt. Ltd.,4th Edn., 2015)

- In the case of a single author,
  M.P.Jain, INDIAN CONSTITUTIONAL LAW, 98 (Kamal Law House, 5th Edn., 1998)
- If there is more than one author and up to two authors,
  M.P.Jain and S.N. Jain, PRINCIPLES OF ADMINISTRATIVE LAW, 38 (Wadhawa, 2001)
- If there are more than two authors,
  D.J. Harris et al, LAW OF THE EUROPEAN COMMUNITY ON HUMAN RIGHTS, 69 (2nd Edn., 1999).
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- If the title of the book includes the author's name then the book should be cited as an author less book.

Example:

Chitty on Contracts, Vol. 2, 209 (H.G. Beale ed., 28th edn., 1999).

EDITED BOOKS

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COLLECTION OF ESSAYS

Name of Author, Name of Article in Name of Collected Book Page No (Editor Name, Year of Publication)

M.S. Ramakumar, India's Nuclear Deterrence in NUCLEAR WEAPONS AND INDIA'S NATIONAL SECURITY 35 (M.L. Sondhi Edn., 2000).

REGILIGIOUS AND MYTHOLOGICAL TEXTS

TITLE, Chapter/ Surar Verse (if applicable)

Example:

THE BHAGAVAD GITA, Chapter 1 Verse46

ARTICLES

Name of Author, Name of Article, Volume (Issue) NAME WHERE ARTICLE IS PUBLISHED page no (Year of Publication)

LAW REVIEW ARTICLES

A.M. Danner, Constructing a Hierarchy of Crimes in International Criminal Law Sentencing, Vol. 87(3) VIRGINIA LAW REVIEW 415 (2001).

MAGAZINE ARTICLES

- **Articles in print versions of magazines**
  Uttam Sengupta, Jack of Clubs and the Cardsharps, OUTLOOK 22 (June 11, 2016).
- **Articles published in a magazine arranged by volume**
  A. Bagchi, Sri Lanka's Experiment in Controlled Decentralization: Learning from India, 23(1) ECONOMIC AND POLITICAL WEEKLY 25 (January 2, 1988).
- **Articles in print versions of newspapers**
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MAGAZINE ARTICLES ONLINE VERSIONS

Name of Author, Name of Article, NAME WHERE ARTICLE IS PUBLISHED (Date of issue)

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- **Articles in online versions of newspapers**

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FORMATTING

- Single numbers do not begin with 0
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- The last name of the author, when available, should be used before the supra. The format for referring to footnote earlier than the immediately prior footnote shall be: Seervai, supra note 6, at 10.

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