

Climate Change: Developing Countries and the Principle of Equity

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Abstract— One of the most pressing problems of the world today is that of climate change and its immediate and subsequent impact on the international community, is immeasurable. A host of treaties at the international level have come into play, which have tried various strategies to tackle the situation of climate change in the world. But the lack of binding value of these treaties, makes it extremely difficult for reaching a consensus on the issue in order to address it effectively. Therein lies the importance of the principles of environmental law which play a very important role in setting forth the general approach of anticipation rather than reaction to environmental problems. One such vitally important principle is that of equity. This paper hopes to look into the specific ‘Principle of Equity’ and what it entails with respect to environmental law. Further, the role of developing countries and their position on this principle has been addressed. Also, under the principle of equity, the concept of ‘common but differentiated responsibility’ which has become the touchstone of climate equity debate has been delved into. The paper aims to develop an understanding of the principle of equity and what it means for the international community as a whole and the developing nations in particular, in addressing the climate change issue plaguing the world of today.

Keywords- Climate Change, developing countries, principle of equity, Clean Development Mechanism, Copenhagen Accord.

I. INTRODUCTION

One of the most pressing problems of the world today is that of climate change and its immediate and subsequent impact on the international community is immeasurable. Our climate is warming at a rate faster than ever before [1] and bringing about drastic changes in the environment, acting as a warning signal for one and all. A host of treaties at the international level have come into play, which have tried various strategies to tackle this situation. But the lack of binding value of these treaties makes it extremely difficult to reach a consensus on the issue in order to address it effectively. Therein lies the importance of the principles of environmental law which put forth the general approach of anticipation rather than reaction to environmental problems.[2] One such vitally important principle is that of equity.

The paper aims to develop an understanding of the principle of equity and what it means for the international community as a whole and the developing nations in particular. In order to do so, the ‘Principle of Equity’ and

what it entails with respect to environmental law, has been looked into. Further, the role of developing countries and their position on this principle has been addressed. Also the concept of ‘common but differentiated responsibility,’ which has become the touchstone of the climate-equity debate.[3] has been delved into.

II. THE PRINCIPLE OF EQUITY: A CONCEPTUAL ANALYSIS

Defining a specific burden-sharing responsibility for the nations of the world has been the primary aim of most of the international agreements that have been debated upon till date. However, the fundamental assumption that has acted as a roadblock to these treaties is that neither history nor philosophy can effectively determine the responsibility of nations in tackling climate change.[4] Countries have historically differed in their contribution to the current state of the environment and also, now differ in their ability to bear the cost of an environmentally sound policy measure. Thus, the principle of equity becomes an important tool in determining the distribution of rights and responsibilities in conditions of scarcity and inequality. [5]

There are two prongs to the principle of equity: the principle of intergenerational equity and that of Common But Differentiated Responsibilities (CBDR). The first principle of equity-Intergenerational Equity-is based on the idea that human beings of today have an obligation towards the future generations for maintaining the integrity of the environment. They are only the custodians or guardians of the environment and have to ensure the survival of the human species.[6] Therefore, the environment is in the form of a heritage for the present generation, who have a right to reap benefits from it but such benefits are limited due to their commitments to the future generations. Another way of approaching at this principle is that the benefits that are being reaped by the present generation are due to the efforts of the past generations. As this debt cannot be discharged in a retrospective manner, it is their duty on to preserve the same benefits for the future generation. Thus, the debt of the past generation is projected forward and discharged in the future.

This principle of intergenerational equity has two implications. Firstly, each generation is posed with an obligation to conserve the resources available, so that they do not unduly restrict the options available to the future

generations. The entire principle of sustainable development is based on this idea that the environment is not only for us, the present generation, but it is to remain so for many more generations to come. Secondly, even the quality of the resources so passed on, should be comparable to that enjoyed by the previous and present generations. This implies that intergenerational equity does not mean just the mere preservation of the environment in a rudimentary form.[7] The present generation needs to maintain the environment in such a way that the future generations can also reap the same level of benefits as they do. The implications were further propounded by the Philippine Supreme Court in the case of *Minors Oposa v. Secretary of the Dep't of Environment and Natural Resources*,[8] where it was held that present generation has a standing to represent the future generation in a large part because "Every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology." [9] The Indian judiciary has also recognised the responsibility of an individual towards the environment [10] in landmark cases like *Vijay Singh Puniya v. State of Rajasthan*[11] where right to a clean environment was given the status of a fundamental right.[12]

The second principle of equity pertains to the issue of 'Common But Differentiated Responsibilities,' which has been in the radar for quite some time. This principle has been an issue for heated debates between the developed and the developing countries. The basic idea of this principle is that the burden-sharing of the developing countries should be different from that of developed countries.[13]

Principles 6 and 7 of the Rio Declaration on Environment and Development, 1992, [14] afford priority to the needs of the least developed and most environmentally vulnerable states, expressing the general principle of CBDR. It encompasses the notion of the historic responsibility of the industrialised North for most environmental degradation used to achieve its wealth. In this sense, it appears to be based on the legal concept involving redistribution of wealth based on notions of restitution or unjust enrichment.[15] Principle 7 of Rio Declaration [16] in particular, speaks of the responsibility of developed countries for the present and future pursuit of sustainable development. Thus, according to this principle, even though all countries should contribute towards the protection of the environment, the degree of involvement of nations should be different. This difference should be made on the basis of the capabilities and responsibilities of the nations, the resources that they command and the environmental degradation that they cause.[17]

This principle is also incorporated in Article 5(5) of the Montreal Protocol [18] discussing the issue of substances that deplete the Ozone Layer. It states that "...developing countries' capacity to fulfil obligation and implement the control measures specified will depend on the developed nations' effective implementation of financial cooperation and transfer of technology." This treaty thus, places the onus of effective preservation of the environment on the developed nations arguing that developing nations can only fulfil their obligations towards the environment if the

developed countries effectively maintain their obligations in the first place. Article 4(7) of the United Nations Framework Convention on Climate Change (UNFCCC) reiterates this very principle, taking into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country parties.

The Center for Science and Environment, a public interest research and advocacy organisation based in New Delhi, India,[19] acknowledged the fact that industrialized countries had set out on the path of development much earlier than developing countries, and have been emitting Greenhouse gases in the atmosphere for years without any restrictions. Since greenhouse gas emissions accumulate in the atmosphere for decades, their emissions are still present in the earth's atmosphere. These industrialized countries owe their current prosperity to decades of overuse of the common atmospheric space and its limited capacity to absorb greenhouse gases. Therefore, the justification given for the principle of CBDR is that the developed nations should compensate for their past activities.[20] This reasoning is further enunciated by the fact that the developing countries now face greater restrictions for development and hence, must be exempted from the same responsibility as developed nations.

The CBDR principle was reinforced in the context of the negotiations for the Kyoto Protocol,[21] which led to the adoption of separate commitments for developed and developing countries. As per the Kyoto Protocol, only one group of countries takes up emission reduction commitments, thereby following this principle.[22] This international treaty is the first of its kind to actually implement this principle in such a substantive manner. It also went on to clarify certain issues regarding the principle stating that while only developed countries take on emission reduction commitments, it did not mean that developing countries would not be doing anything to address climate change under the existing legal regime.[23] Differential treatment constitutes an acknowledgement that the existing status quo is not conducive to achieving the basic fairness and solidarity goals that international law sets for itself. It suggests progressive changes through a system of specific rules that contribute to change in the existing pattern of inequality and bring about substantive equity in inter-state relations. Such a progressive change must be carried in a definite direction.[24] The focus of the change must be two-fold, i.e., to preserve the environment and prevent further degradation while simultaneously focusing on the improvement of the situation of the poorest or most disadvantaged.

However, the regulations made by the Kyoto Protocol were accompanied by compromises. The Protocol introduced the principle of 'flexibility' as a part of the Kyoto mechanisms.[25] Firstly, it provided an escape clause for developed countries that allowed them not to implement the commitments they had taken on at home. This is novel in international law because countries are supposed to implement commitments they take by themselves.[26] The rationale for allowing this flexibility is-what matters most is the global environment.[27] Since emission reduction or emission avoidance has the same impact anywhere on the

planet, flexibility provides a way of achieving emission reduction commitments through the cheapest emission reduction opportunities available anywhere in the world. Secondly, flexibility is novel because it gives much increased prominence to the private sector in the implementation of an international treaty. There is no necessary congruence between the 'outsourcing' of compliance and the private sector, since the former could happen without the latter. Yet, in the context of the Kyoto Protocol, the two are intrinsically linked. This dimension calls for new safeguards to ensure that the focus on finding the cheapest emission reduction opportunities and the involvement of private sector actors in doing so, do not compromise environmental and social objectives.[28]

Thus, the underlying philosophy of the above treaties is a form of corrective justice where the developed nations must take responsibility for their past harms by contributing to a larger extent towards the protection of the environment.[29] Another aspect that needs to be understood in the perspective of the developing nations is that their marginal environmental costs of development have increased, mainly due to the activities of the developed nations. For both climate change and depletion of stratospheric ozone,[30] the global community finds itself at the tipping point because of the conduct of the developed world. Developed nations thus, should pay for any reductions or modifications the developing world has to make in the process of industrialization. This is so because the developed world's industrialization has unfairly circumscribed the ability of the developing world to pass off the negative externalities of development on the environment.[31] The true cost of social and environmental degradation was never accounted for in the past, while developing nations have to face this extra burden in the present. Keeping this in mind, the developing nations claim that the developed nations should bear the burden of their past acts.[32]

The principle of CBDR also has a human rights justification.[33] This is because an equitable international legal order cannot be conceived exclusively in terms of the relations between States. Indeed, equity between States and between individuals, are but different sides of the same coin. Hence, it needs to be understood that if two nation states are not on the same footing, then it follows that even the citizens of those states are not on the same platform. The developing countries have additional responsibilities of dealing with poverty,[34] and basic socio-economic problems that are poised to take up a large amount of their resources. In this situation, they cannot be expected to devote the same amount of resources towards the protection of the environment as the developed countries.

Based on this line of argument, the developing nations primarily insist for resources and technology from the developed nations to help them cope with the climate change requirements made in the process of industrialization. The demand for resources and technology is required to be met urgently by the developed nations because the developing countries often do not have the adequate resources to either invest in the research and development process or to manufacture such kind of advanced technology. Hence, they

pose a demand for such kind of technology to be transferred from developed countries, which have successfully developed such technology.[35]

In light of this discussion, the Clean Development Mechanism (CDM), as a part of the Kyoto protocol, allowed industrialized countries with greenhouse gas reduction commitments to invest in ventures that reduce emissions in developing countries as an alternative to more expensive emission reductions in their own countries.[36] This was meant to be a subsidiary mechanism in achieving the commitments that developed countries had taken up.[37] The underlying logic was that developed countries would be reducing their emissions and that a part of that reduction would come from CDM projects. CDM was used as a means to achieve the formal compliance of the nation states. Had the states approved of such a mechanism in the spirit of global solidarity and to contribute to the ideals of the Convention, the CDM would be noteworthy.[38]

However, the CDM has not been effective because firstly, incentives for the same have not been provided. Secondly, the CDM has been conceived from the point of view of short-term mitigation gains. This is due to the fact that it, in effect, provides an escape route for developed countries unwilling to implement drastic energy policy changes. As a result, significant investments in new or existing alternative technologies are not being undertaken. Additionally, the mechanism does not include a framework that would ensure that projects are prioritised in accordance with their impact on the poor and vulnerable in particular and the environment in general.

In addition to these issues, the CDM has serious long-term side-effects for developing countries. Indeed, the search for the cheapest possible emission reduction opportunities means that developing countries are exhausting these options for the benefit of developed countries' compliance with their own commitments.[39] Such options will no longer exist once developing countries take on commitments, something that is unavoidable in the long term from a global environmental point of view. Also, while the CDM can theoretically be an instrument of the public as well as the private sector, in practice it has largely been conceived as an instrument used by the private sector, which poses another grave concern.

III. THE CBDR PRINCIPLE: COPENHAGEN AND BEYOND

The latest chapter in the principle of CBDR is the Copenhagen Summit.[40] As per the Draft Agreement of the Copenhagen Summit, the Annex I parties had to commit to implement, individually or jointly, the quantified economic emissions targets for 2020.[41] Also, the Annex I countries that were party to the Kyoto Protocol would have to further strengthen the emissions reductions initiated.[42] The main problem with this clause is that it only implements the regulations on the countries that have ratified the Kyoto Protocol with no obligations imposed on those who have not acceded. With respect to the Non-Annex I parties, the Accord requires them to take mitigation actions and allows the Least Developed Countries and Island nations to take

voluntary measures, subject to domestic measurement, reporting and verification.

Thus, an obvious question that arises in light of the issues discussed is whether the present situation is in favour of the developing countries. On the face of it, the answer might undoubtedly be in the affirmative. The reason underlying the CBDR principle is to “favour” one group over another while taking into account certain disparities that exist in international society.[43] However, what needs to be understood is that if the aim of the principle was only to favour the developing countries, then it would have held that they need not have any obligations at all. But this is not the case, thereby ensuring that the developing countries do have responsibilities which are common to that of developed countries, only that the level of responsibility should be different. Also, one cannot fail to notice that the developing countries are only getting a raw deal from the consequences of climate change- they are being disproportionately burdened by the negative consequences of a phenomenon that they neither contributed to nor benefited from.[44] And as David Suzuki, a Canadian environmentalist rightly sums up the situation, “We are all in a giant car and heading towards a brick wall. And it seems people are arguing over who should be sitting where?” [45]

IV. CONCLUSION

Climate change is the defining human development issue of our generation. All development is ultimately about expanding human potential and enlarging human freedom...[C]limate change threatens to erode human freedoms and limit choice. It calls into question the Enlightenment principle that human progress will make the future look better than the past.

-Human Development Report 2007/2008, UNDP, Overview

The issue of climate change has posed itself not just as an environmental problem, but a situation affecting every aspect of human life from international economy, public health, social issues such as migration, loss of livelihood and, ultimately, threatening international peace and security.[46] A lot is to be done in this regard, as according to the Intergovernmental Panel on Climate Change, despite the current mitigation policies and sustainable development practices, global greenhouse gas emissions will continue to grow in the next few decades.[47] However, in this great climate-change debate, the developing countries are being sandwiched between the sceptics and the supporters. As climate realists, one needs to take a middle path in addressing the issue of climate change.[48] The imbalance that exists in society, especially for those nations who would be more vulnerable to any change in the climatic conditions, must be looked into appropriately. The principle of equity has effectively addressed the issue of climate change by affixing responsibilities for member nations but is still being subjected to huge debates.[49] What one needs to

understand is that the ‘common but differentiated responsibilities’ of countries will help in bringing together all nations on a common ground of solving this international crisis, with only different set of obligations, keeping in mind a host of factors that only seem fair. Ultimately, whenever the issue of climate change is to be addressed, every single individual needs to answer three fundamental questions at all levels-personal, regional and at the global scale: If not Earth, where? If not now, when? If not us, who?

ACKNOWLEDGMENT

The authors sincerely extend their gratitude to Dr. Ranbir Singh, Vice Chancellor of National Law University, Delhi for his guidance and support in the completion of this work. We would also like to thank Ms. Ruhi Paul for her valuable insight and her expertise that she graciously shared with us.

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