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Securing Climate Justice Through Distributive Justice And Capabilities Approach And The Making Of An Ecological Citizen: An Indian Perspective

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Abstract
Climate change primarily has three troubling aspects; dispersion of cause and effect, inadequacy of the institution and fragmentation of agency, owing to its polycentric nature. It is one of the greatest issues for mankind not because food security, energy security, poverty, and hunger among others are less important, but because climate change has the capability to aggravate these already existing crises in the world. Hence, the infusion of distributive justice and capabilities approach in the emerging idea of climate justice, has immense potential to mitigate the adverse impact of climate change, mainly on the vulnerable section of the society and help in the making of an ecological citizenship. Distributive justice with respect to climate change is to make sure that everyone can derive the benefits of a reliable source of energy. On the other hand, the introduction of the capabilities approach shall bridge the gap between the idealistic attributes of climate justice with the reality of policymaking. The present paper shall engage with the idea of the fulfilment of environmental needs through the lens of Maslow's Hierarchy of Needs and how these needs can be satisfied through the notion of distributive justice and capabilities approach which will ultimately help in making an ecological citizenship and securing climate justice by actually bridging the gap between the mitigation and adaptation policies of climate change and its efficient implementation. Talking particularly in the Indian context, this shall help India in the fulfilment of its INDC targets under the Paris Agreement which requires them to be based on the "highest possible ambition with progression in each subsequent target.".
KeyWords*: Climate Change, Climate Justice, Hierarchy of Needs, Ecological Citizenship, Distributive Justice, Capabilities Approach*

1. INTRODUCTION

Environmental Problems are both physically and socially complex. They are physically complex because they involve ecosystems. If we put fertilizers on agricultural land and they run off into the rivers, it will have implications on the the natural environment and human health. They are socially complex as environmental problems are often caused by a range of different people not intending to harm the environment but each of their actions contributes to the problem. As a consequence, the modern environmental law which came up in the 1960s all across the world was not just a response to environmental problems, it was also a part of the commitment to make societies more just, fair and democratic. The nation-states within this legal framework play a significant role as they have the authority and capacity to develop collective responses to environmental issues. But what is imperative to note is that the phenomenon of climate change being of a polycentric nature has led to the complexity of the environmental issues in recent times which has rendered the laws and the institutions inadequate to resolve the problem. This raises a question as to how justice should be administered.

This domain comprises interesting ethical issues which have gained popularity in academic discourse for a considerable point of time.[1] What intrigues scholars the most is the surprising fact that the harm which is experienced due to climate change and the contribution to climate change do not line up with each other. Though the disproportionate use of global public good is by the affluent class, ultimately it's the

[1] Stephen M Gardiner, 'A Perfect Moral Storm: Climate Change, Intergenerational Ethics, and the Problem of Corruption' (2006) 15 Environmental Law and Policy 397

poor who will bear the harm.[2] For instance, the Alliance of Small States who are merely emitting around 1% of global emissions, will have to bear the brunt of the most extreme impacts and losses, such as drought, rise in the sea level and increase in the frequency of extreme weather events. [3] This argument of Dale Jamieson has garnered further support from Stephen Gardiner who has identified three troublesome issues pertaining to climate change namely; dispersion of cause and effects, institutional inadequacy and fragmentation of agency.[4] In order to curb the menace which has been created due to the polycentric nature of climate change, various climate justice theorists, organisations and activists of global and local civil societies have formulated a range of legal and policy frameworks to understand the relationship between justice and fairness and the impact of climate change. The dominant approaches include the fair share model wherein there is equal allocation of carbon emissions among the countries, the polluter pays model and the other right-based models. What backs these models is a strong hypothesis that normative theories of climate change and climate justice can help in achieving a sound base for global climate change-related policies. However, the problematic aspect is how to apply these theories, particularly in the area of adaptation and mitigation policies.

This present paper shall primarily try to answer how the concerns arising out of climate change can be dealt with by the infusion of the theory of Distributive Justice given by John Rawls and Amartya Sen's Capability Approach within the idea of Climate Justice. But before delving into the core idea, the idea of environmental needs shall be examined through the lens of Maslow's Hierarchy of Needs. Further, it shall be argued that the broader understanding of ecological citizenship or environmental citizenship which incorporates both the ideas of environmental rights and responsibilities can only be achieved through distributive justice and enhancing the capabilities of the individual as it will ultimately help in the fulfilment and satisfaction of basic needs provided for in the lower strata of the theory of hierarchy of needs. Lastly, the paper shall evaluate India's take on climate change at the Institutional level, particularly the judicial wing.

2. The Nuanced Understanding of Needs

Ecological citizenship or environmental citizenship generally means " the exercise of ecologically related responsibilities, nationally, internationally, and intergenerationally, rooted in justice in both the public and private spheres."[5] Though many scholars have differentiated between environmental citizenship as focusing on the liberal idea of environmental rights and ecological citizenship which is more about fulfilling environmental responsibilities as environmentally aware citizens, but for this paper we will consider both the rights based approach and the duties approach to ecological citizenship as they both form the core of democracy which is allegedly the best suited political system to deal with environmental concerns. Conceiving citizenship solely from a human rights-based perspective makes it quite individualistic or subjective in nature, and it becomes difficult to manage environmental concerns single-handedly. The understanding of ecological citizenship from a duties-based perspective is comparatively objective in nature, but it is based on the level of people's environmental awareness and their capacity and capability to fulfil their responsibilities. This differentiation between the two approaches can be better understood by evaluating them from the "need-based perspective" as needs oblige rights and needs cannot solely be respected unless they are fulfilled through rights. On the other hand, the fulfilment of needs and its relationship with the fulfilment of an individual's environmental duties is based on the fact that when needs are satisfied, then a person is more willing and has the desire to fulfil the duty, as now he will be in a position to do the same. Let us now discuss this in detail by first delving into the concept of needs, particularly through the lens of "Maslow's Hierarchy of Needs."

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[2] Dale Jamieson, *Reason in a Dark Time: Why the Struggle Against Climate Change Failed–and What It Means for Our Future* (OUP 2014)

[3]Intergovernmental Panel on Climate Change, *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation* (IPCC 2012) 1-19.

[4] Gardiner (n 1 above)

[5] A. Dobson, Citizenship and the Environment, Oxford University Press, (2003)

Abraham H. Maslow was a psychologist who used both psychology and philosophy in his research on humans. He introduced this theory of "Hierarchy of Needs" in 1943, which explained how the fulfilment of different levels of needs of a human being helps him to reach his fullest potential. Primarily, there are five levels of needs: physiological needs, safety needs, belongingness and love needs, esteem needs and lastly the need for self-actualisation. Physiological needs mainly consist of the needs which are essential for survival like food, water, sleep and elimination. Without fulfilling this basic need, the person is not able to satisfy their safety or security needs which provide for a sense of stability in life. Some of the occurrences like natural disasters, forced displacement of a whole community from one locality to another, divorce, and death of a loved one among others, have the potential to alter the feeling of safety and stability in life. The sense of stability further motivates an individual to aspire for love and belongingness needs, which is a need to feel loved and accepted by people or a community and a sense of belonging in a reference group like family, neighbourhood, cultural or religious group. Furthermore, belongingness to different organisations and the ability to receive and give love helps an individual to satisfy this need and then further aspire for esteem needs. This need is concerned with the desire to be respected in a given society and also with a sense of self-respect. Those who can satisfy this need are motivated towards self-actualisation. Maslow, in the 1970s differentiated these needs into deficiency needs which consist of the lower levels of needs, and the self-actualisation need as the being need.[6] He further clarified that though these levels of needs are in the form of a hierarchy, there is no strict rule that needs are to be satisfied in a step by step manner. People sometimes aspire for a higher need and sacrifice a lower-level deficiency need. For instance, to gain some personal achievement, an individual might sacrifice his sleep.

Against this backdrop, it is important to locate the environmental protection needs within this pyramid of needs. The environmental protection needs can be broken up into having access to food, clear water, and clear air among others.[7]These elements shall form part of the "physiological needs". Similarly, the "safety needs" include owning land or property, health, and employment (which also relate to a healthy environment) as they provide a sense of stability. A forced displacement or a natural or man-made disaster caused due to climate change will have an impact on such a need.[8] Further, while considering the "love and belongingness needs", the cultural needs of a community become important, and hence, the need for the protection of culture, which is under threat due to environmental degradation, becomes important.[9] Steps taken towards the fulfilment of these environmental needs at the lower level help in achieving higher esteem and self-actualisation needs. This argument will make more sense when it is seen in the context of different awareness levels of citizens in a given society. There are some people whose basic physiological and safety needs in terms of the environment are not fulfilled and hence they are not able to see beyond these deficiency needs. This shows that needs alone, without the force of rights, will not be respected and fulfilled. This issue becomes more prominent in the case of an environmental or a climate crisis as it is a well-settled fact that climate change adversely impacts the poor and the underprivileged the most. Hence, the citizens who are not able to satisfy their basic environmental needs should be in all cases entitled to such needs as a matter of right. However, it is interesting to note that clean water and air is a basic need also for the affluent. The only difference between the poor and the affluent is that the latter has the resources and technology to obtain clean air and water or shift to some area which is healthier comparatively.

Talking of food security, climate change has led to the problem of food shortage. In India, along with climate change-generated food shortage, the lack of infrastructure for proper storage of grains is additionally adding up to the shortage. Now again the rich can have access to food but the poor are still struggling for it. This problem makes it difficult for the people of India or people belonging to developing or least developed nations to think about environmental protection or even thinking of making an ecological citizenship. This differentiation in the level of needs, where the poor are yet to fulfil their basic needs and the affluent who have moved beyond the deficiency needs and are now aspiring to fulfil the

[6] Maslow, A.H. (1970), Motivation and Personality (2nd. Ed.), New York: Harper & Row.
[7] Ibid.
[8] Ibid.
[9] Ibid.

higher needs in the hierarchy, portrays an interesting state of affairs and showcases distinctness in the rights and responsibilities of the two. Hence, it can be argued that in the making of an ecological citizen, particularly in a country like India, the environmental needs of the poor and the affluent should be fulfilled as a matter of basic right, with an additional duty or responsibility of the affluents to fulfil their environmental duties as they are in a better position to do so. This caters to both the conception of environmental citizenship, one dealing with rights, and the other dealing with responsibility. But this is not to argue that at no point in time should the poor have any responsibility towards environmental protection. The next portion of the paper shall discuss how distributive justice and the capabilities approach together help in fulfilling the rights of the have-nots, help them to climb the ladder of the hierarchy of needs and then ultimately secure climate justice.

3. Distributive Justice and Climate Change

The idea of distributive justice is not new. For the first time in his "Nicomachean Ethics", Aristotle used the termed distributive justice, which is "manifested in the distribution of honour or money or other things which fall to be divided among those who have a share in the Constitution."[10] In other words, his idea of distributive justice involved the distribution of benefits and burdens, wealth and honour among the citizens of the society in a fair manner. For this purpose, equals were treated alike and unequal were treated unequally. John Rawl's distributive theory, on the other hand, is premised on the idea of " transcendental Institutionalism" wherein the major focus is on how to achieve perfect justice through the rightful and adequate working of the institutions.[11]Rawls himself quotes that "*the hypothetical original position, behind the veil of ignorance, the people are assumed to not know about their social status, nor do they know about their fortune in the distribution of natural assets and abilities, their abilities, intelligence, strength and the like. This ensures that no one is advantaged or disadvantaged in the choice of Principles by the outcome of natural chance or the contingency of social circumstances*." [12] The liberty principle, the principle of fair equality of opportunity and the difference principle when read together, exemplify the notion of justice which talks about adhering to appropriate distribution of the benefits and burdens of social corporation. [13]

Viewing distributive justice in the context of climate change, it is Peter Singer whose work is worth mentioning. Though he is considered to have a utilitarian approach to resolving ethical issues, his idea of the distribution of benefits and burdens on the nations about the concerns arising out of climate change is somewhat influenced by Rawls's idea of distributive justice when it comes to dealing the "worse off" (in case of climate change, the worse off nations). He argues that the question of distributive justice arises primarily when a particular good is not abundant in nature, and such a public good is distributed amongst the given population unevenly and unjustly. To substantiate his argument, he narrates a simple story in his essay named "One Atmosphere".[14] He states that all of us share one atmosphere. Further, he draws a comparison between the present situation of atmospheric pollution to a village where all the villagers dispose of their waste in a large pit. Initially, the pit seemed so large that the villagers who were better off and their consumption rates were high, used the pit more as compared to other villagers. But as time went by, the excessive usage of pits led to overflowing of waste. This resulted in foul smell and sickness among the people. The overused pit now did not have space to store waste for future generations. In this above-mentioned example, the limited pit space becomes a resource or good that requires monitoring and should be distributed in a more even manner among the villagers. There is a requirement for some sort of redistribution to preserve the health of people and also the pit. Deriving an analogy (not an analogy in the strictest sense as the space in the pit and the waste produced are not similar to carbon emissions) from this story, Singer, in order to deal with the issue of distribution of carbon emissions and the benefits and harms associated with it, delved into the concept of fair allocation of emissions. His idea was supported

[10] WD. Ross, *Nicomachean Ethics*, (Cosmo Publications 2003).
[11] Amartya Sen, *The Idea of Justice* (Penguin Book 2010) 6.
[12] Raymond Wacks, *Understanding Jurisprudence* (2nd edn Oxford University Press 2009) 224.
[13] Dhawal Shankar Srivastava, 'Rawls Theory of Justice Through Amartya Sen's Idea' (2016) ILI Law Review.
[14] Peter Singer, 'One Atmosphere', *Climate Ethics* (Oxford University Press 2010).

by Henry Shue who has given considerable thought to the questions like what are fair allocations of the costs to prevent and cope with climate change effects, what background allocations of wealth would ensure that this International bargaining is a fair process, and finally, what is fair allocation of emissions of greenhouse gases.[15] He has also introduced concepts like " subsistence emissions" and "luxury emissions" wherein producing anything excessive to subsistence emission shall be taxed or punished. Further, Singer formulated strategies like the distribution of tradable carbon credits based on population size, which shall aid in discouraging the prolonged usage of fossil fuels in developed countries while the lesser developed countries will be given bargaining power. The above discussion sharply points out that distributive justice primarily has two aspects, which deal with the allocation of resources and benefits, which is the positive aspect and the other, distribution of harms and contributions to the harms which is the negative aspect. However, the difficulty lies in the determining whether distribution of emissions forms part of the negative aspect of distributive justice or the positive aspect. Undoubtedly, the negative aspect has a compelling case. The benefits which are attached to carbon emissions is the production of electricity, faster methods of travel, and refrigeration among others. Though it is beneficial and points towards the positive aspect, the production of carbon emissions has largely added to the environmental concerns, causing harm to the entire ecosystem. Emissions ultimately harm the environment even if capping is done on the amount of carbon which a country can produce. If a nation exceeds the limit and goes up to luxury emissions, as Henry Shue suggests, will be taxed. The outcome of this conundrum is that though a fair distribution of harm caused due to emissions is taking place, ultimately this is giving rise to environmental degradation. It is of utmost importance to understand that the abovementioned benefits like that of refrigeration, and electricity production can be achieved even through the usage of other reliable and sustainable forms of energy like wind, solar etc. India has currently updated its INDCs under the Paris Agreement, and now it aims to reduce emissions by 45% below the 2005 levels and increase its non-fossil fuel capacity to 500 gigawatts by 2030. This indicates that nations are moving towards using more sustainable forms of energy as it will help in limiting the impact of climate change. Therefore, incorporating the idea of distributive justice within the notion of climate justice, can't afford to only talk about appropriate distribution of carbon emissions. This is not to suggest that a nation-state should completely give away the idea of energy through carbon emissions as there are various nations who cannot afford the cost of installations for other sources of energy. Countries will have to move a very long way to be completely free from carbon emissions.

3.1. Benefits and not Emissions to be the object of Distribution

The idea of distribution, rather than revolving around carbon emissions, should focus on the benefits which have been gained through energy obtained from carbon emissions and any other reliable and sustainable forms of energy. Academic discussions on benefits obtained from carbon emissions, wherein benefits are given primacy over emission are not new as Dominic Roser and Luas Meyer in their article, "Distributive Justice and Climate Change: The Allocation of Emission Rights"[16] have indicated towards benefits derived from emissions.

Putting out a list of benefits which are gained through having an energy source is not a desirable task. Rather the focus should be on such benefits which relate to the overall well-being and general welfare of a person. In other words, benefits which are substantial. The OECD (Organization for Economic Co-operation and Development) has attempted to measure the well-being of a person in terms of Health, available jobs, housing, civic engagement, education, and the health of the environment among others.[17] These types of benefits are somewhat closely associated to the versions of the capabilities approach given

[15] Henry Shue, 'Subsistence Emissions and Luxury Emissions' in Stephen M Gardiner and others (eds), *Climate Ethics: Essential Readings* (Oxford University Press 2010).

[16] Lucas Meyer and Roser Dominic, 'Distributive Justice and Climate Change: The Allocation of Emission Rights'(2006) *Analyse and Kritik* 223-49

[17] Organisation of Economic Co-operation and Development, 'Guidelines on Measuring Substantive Well-being (20 March 2013), < OECD Guidelines on Measuring Subjective Well-being | OECD iLibrary (oecd-ilibrary.org)> accessed 29.10.2024

by Amartya Sen and Martha Nussbaum. This is the point where complete reliance on only distributive justice might fail. The idea of distribution of goods and resources is not associated with benefits which will ultimately enhance the functioning of the people and cater to their diverse needs. Therefore, distributive justice will have to be supplemented by capabilities approach which has a "realization-focused comparison" approach as Rawls's theory has been criticized by Sen on the point that though the basic liberties or goods will be equally distributed among the people, if the people who are at the receiving end are not capable of understanding and realizing the fact that what good can be made out from the utilization of these liberties, the distribution is of no use.

4. Capabilities Approach and Climate Justice

As mentioned above, the most commonly used theories of climate justice are the ones which are based on the polluter pays principle and the per capita approach. The polluter pays principle is founded on the rationale of historical responsibility that some nations bear for the climate-related adversities which have been caused due to their activities. The per capita approach is premised on the equity principle where each country would be permitted to such amount of emission which is equivalent to the sum of its population times the allowable per person emission. The other prominent climate justice theory is the right-based theory which incorporates human rights, developmental rights and environmental rights, along with different responsibilities and duties which flow from them. Steve Vanderheiden combined the ideas given by Simon Caney and Paul Baer who have given rights-based theories. Their approach to climate justice focuses on the idea that human beings have the right not to suffer from or endure the adversities of climate change which undermines their basic interests and hinders with right to life, health and subsistence. [18] Steve Vanderheiden offered a notion that covered both developmental and environmental rights. He rearticulated the right to development as such a right consisting of an environment in which human beings flourish which leads to his development holistically in a stable climate system. Along the line of thought of Henry Shue, he further argues that the combination of environmental and developmental rights acts as a trump to those claims which are trivial or do not hold much significance in the flourishing of a person, and it is for the developed countries not to impede other developing or lesser developed nations from pursuing development.[19] Developed Nations are required to pay full cost for damage which they have caused by their luxury. This approach has shifted the focus from ideal notions of justice and equity to how the reality of climate change makes human lives more vulnerable in specific ways.[20] This right-based approach is compatible with the capabilities approach but it still suffers from two major weaknesses. Firstly, the important conceptions of justice like social and political recognition have been neglected and a very layered and nuanced notion of needs within the rights-based approach has not been discussed. One of the glaring examples is the conferment of community forest rights to the forest-dwelling communities. Though, the Forest Rights Act, 2006 (a beneficial legislation of India enacted to secure the rights of the tribals and other traditional forest-dwelling communities) talks about conferring both individual and community forest rights, many a times the prior and informed consent of the gram sabha of the related village or village hamlets before forest diversion is not obtained. Therefore, forest land is diverted for various developmental projects without any recognition and vesting of rights. This non-recognition of their rights makes them more vulnerable to climate change which may not be a visible phenomenon but certainly a hidden phenomenon. Iris Young makes an argument that lack of recognition gives rise to distributive injustice that further leads to political and cultural exclusion which ultimately makes these groups or communities vulnerable.[21] Also, an aspect which is hardly discussed is that there is a relation between the processes of the social world and nature. Though this link between cultural identities and the environment has been appreciated by UN Agreements like Universal Declaration on

[18] Simon Caney, 'Cosmopolitan Justice, Rights, and Global Climate Change' (2006) 19 *Canadian Journal of Law and Jurisprudence* 225.
[19] Shue (n 9 above).
[20] David Schlosberg, 'Climate Justice and Capabilities: A Framework for Adaptation Policy' (2012) *Ethics & International Affairs* 26.
[21] Iris Marion Young, Justice and the Politics of Difference (Princeton University Press, 1990).

the Rights of the Indigenous Peoples and Convention on Biological Diversity, but this relationship has been largely neglected under the processes of UNFCCC. Secondly, right-based approaches have been used as an argument in international policies only up to the extent of preventing and mitigating the effects of climate change on human rights. The focus of climate justice theories must move from only dealing with mitigation of the impact to also incorporating adaptation strategies to better deal with the adverse effects caused and reducing the vulnerabilities. Recognition and development of adaptative strategies are linked with each other as for climate adaptation, the social and political status which comes from recognition is very important.

The above discussion indicates that the capabilities approach can be linked to environmental concerns. But have Sen and Nussbaum ever directly linked the two concepts? Sen certainly discussed it but in a very limited manner. He addressed the question of existing capabilities which rely on environmental bases. He further acknowledges the fact that "variation in environmental conditions such as climatic circumstances (temperature ranges, rainfall, flooding, and so on), can influence what a person gets out of a given level of income."[22] Hence, environmental circumstances can affect our ability to build functioning lives from the available resources. Nussbaum does not directly link the capabilities approach to the environment but Edward Page, while extending Nussbaum's viewpoint gave a proposal to add the capability of a safe and hospital environment.[23] Breena Holland has further proposed that Nussbaum's list of capabilities directly depends on a stable climate system.[24]

In the context of addressing the vulnerabilities of the communities, unfortunately, the existing theories on the capabilities approach do not have much to offer but what I propose here is broadening the scope of the capabilities approach and incorporating the aspect of enhancing the capabilities of the communities by addressing their vulnerabilities. The proposition raised is in alignment with the "realisation-focussed perspective" of Amartya Sen, which is about the prevention of injustice rather than focusing on the Utopian idea of perfect justice. Hence, the supplementation of distributive justice and the capabilities approach will imply that improving the functioning of the people who have been affected by the injustice caused to them by climate change and catering to their needs, which are very nuanced. This argument further substantiates that by such supplementation, a nation can build ecological citizens whose environmental needs are met as a matter of right and those whose basic needs are already met and are aspiring to achieve the higher levels of needs in the hierarchy, shall consider the fulfilment of their environmental duty as part of their esteem and self-actualisation needs. The next segment firstly discusses India's take on climate change at the institutional level and then elaborates that capability enhancement can lead to the making of an ecological citizen.

5. Environmental Protection, Climate Change and India

5.1. Environmental Jurisprudence and Judiciary

India has enacted various specialised legislations for environmental protection like the Environment Protection Act, 1986, The Wildlife Protection Act, 1972, The Air (Prevention and Control of Pollution) Act, 1981, The Water Act, 1974 among others. The executive wing of the government has implemented a host of projects over the years, including the National Mission for Enhanced Energy Efficiency, National Solar Mission, the National Mission for a Green India and the National Mission on Strategic Knowledge for Climate Change. Apart from this, India is a signatory and has ratified various International environmental conventions. But a significance growth in environmental jurisprudence can be traced through the plethora of decisions passed by the High Courts, Supreme Court and the National Green Tribunal which was established in 2010 through the National Green Tribunal Act, 2010, which makes it a statutory body. The judges and the expert members of NGT, through their judgments, have immensely helped in understanding the nuances of environmental concerns and their impact on human rights.

[22] Amartya Sen, Development and Freedom (OUP 1999).
[23] Edward Page, Climate Change, Justice, and Future Generations (Edward Elgar, 2007)
[24] Breena Holland, 'Justice and the Environment in Nussbaum's "Capabilities Approach"' (2008) 61 *Political Research Quarterly*.

Environmental Laws in India are not merely the black letter laws giving rise to mere statutory rights. Rather, these rights have been given the status of fundamental rights under Article 21 of the Indian Constitution. The Constitution, being the grundnorm, strongly advocates for the preservation of all aspects associated with environmental rights. Before delving into the important judgements related to environmental protection and climate change, it is quite interesting to note that even before the recognition of the right to the environment, Articles 48-A and 51-A(g) were added under Part IV and IV A of the Constitution which deals with the Directive Principle of State Policy and Fundamental Duties through the 42nd Constitutional Amendment. Article 48-A states that "*the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country*"[25] and 51-A(g) reads "*It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.*" [26]This shows that the Supreme Court has derived the right to the environment from these provisions. In the case of *Vellore Citizens' Welfare Forum v. Union of India and Others,* the court referred to the constitutional mandate to protect and improve the environment and recognized the person's right to clean water and pollution-free environment.[27] Such an interpretation is based on the harmonious reading of Articles 21, 48-A and 51-A(g). There are various other judgments as well where the court has opted for such construction.[28] This understanding of the significance of the interplay between the fundamental right, environmental DPSP and the environmental fundamental duty depicts that Environmental Constitutionalism in India has a larger ambit than merely confined to environmental rights. Though fundamental duties were added to the Constitution (in times of proclamation of Emergency) to create a balance and to make sure that the fundamental rights do not become overpowering, the judiciary in India surprisingly used this environmental duty to create the environmental right. [29]Such an interpretation of the court, giving due importance to both the right and the duty, aligns with the rights-based approach and the duty-based approach of environmental or ecological citizenship.

Further, the courts have also considered the procedural aspect of environmental duty, which gives importance to environmental education. The Supreme Court in the two MC Mehta judgments[30] has iterated that the state must impart education about environmental duties to the students in the educational institution. Education helps in the mental development of an individual which helps him to make better choices in life. The enhanced capabilities will help him to produce a valuable functioning which will maximise the utility. Apart from environmental education, the environmental procedural rights incorporated within the legislative framework of India(including the Indian Constitution) have immensely helped in including the say of the affected people who are well informed, and have given their consent for any kind of construction in their vicinity. The failure to incorporate their viewpoint and consent amounts to a failure of justice as the Constitution itself provides for right to information under Article 19(1)(a). Right to Access Justice, the other key procedural aspect is expressly stipulated under Article 32 and 226 and the Right to Public Participation in Article 21, 39(b), 39(c), 47, 48A and 51A(g) of the Constitution, respectively. The reflection of these procedural rights within the Indian Environmental Legislation, can be broadly observed in five kinds of environmental disclosures; the environmental impact of activities to regulatory authorities, regulatory decisions and decision-making processes, specific processes and potential risks at workplaces for the employees and nearby residents, labelling of products and sustainability practices.[31] The Water Act, The Air Act and the EIA (Environment

[25] Constitution of India 1950, art 48A.
[26] Constitution of India 1950, art 51-A(g).
[27] *Vellore Citizens' Welfare Forum v Union of India and Others* (1996) 5 SCC 647.
[28] *MC Mehta v. Kamal Nath and Others* (2000) 6 SCC 213.
[29]Lovleen Bhullar, 'Environmental Constitutionalism and Duties of Individuals in India' (2022) 34 *Journal of Environmental Law* 399-418 (OUP).
[30] *MC Mehta v. Union of India and Others*(1988) 1 SCC 471, see also, *MC Mehta v. Union of India* (1992) 3 SCC 256.
[31] P H Sand, 'The Right to Know: Freedom of Environmental Information in Comparative and International Law' (2011) 20 *Tulane Journal of International and Comparative Law* 203.

Impact Assessment) Notification, 2006(recently amended in 2020) can be used to illustrate the first two kinds of disclosures.[32] Further, the Supreme Court and the High Courts in India have encouraged public involvement in environmental matters and decision-making.[33] In *Narmada Bachao Andolan v. Union of India,*[34] the court had asked for strict compliance to the environmental clearance procedure that has been outlined under Notification dated 24 April 1994 and considered this procedure to be mandatory. One of the important decisions passed by the Gujrat High Court has also issued certain directions with regard to public participation in environmental decision-making.[35]

Access to Justice is another domain which is integral to environmental procedural rights. It springs from the principle of "Ubi Jus Ibi Remedium" which means that where there is a right, there is a remedy. It is a known fact that the Supreme Court has made extensive use of Public Interest Litigation under Article 32, and has made the Locus Standi flexible so that a person who is not directly affected by the wrongdoing has a legal standing before the court. Not only the Supreme Court but also the High Courts have made use of PIL. While dealing with environmental cases, many a time, the judges have felt that there needs to be a tribunal of experts who should make decisions on such matters. Later, in the year 2010, the National Green Tribunal Act[36] was passed and the NGT was established as a tribunal which consists of both Judges and Expert members in the panel. This reflects that environmental issues are not merely seen from a liberal viewpoint which involves only the aspect of human rights and liberty infringement but also from a technocratic viewpoint where scientific knowledge and expertise also help in the prevention of environmental hazards and preservation of rights.

5.2. Climate Litigation

The judiciary's stand on climate change litigation has been profoundly discussed by Gitanjali N. Gill and G. Ramachandran in their work,[37] where they have categorised the climate change-related judgments of NGT and the Supreme Court into decisions which have created climate consciousness, climate accountability and climate futurity. This innovative approach sheds light on the court's vision for tackling the menace of climate change. By climate consciousness, the author means that people are conscious of the environment in two ways; one in a negative way where they fear their own death due to environmental hazards and the other in a positive way where the people are not only concerned about their own protection but also have the willingness to leave no one behind and aim to achieve the sustainable development goals. Certain judgements passed by NGT, like *Ajay Khera v. Container Corporation of India,*[38] wherein the tribunal employed the aspect of the carrying capacity of the earth as a yardstick for raising climate consciousness. While discussing climate accountability, the author discusses the landmark judgement of *Hanuman Laxman Aroskar v. Union of India,*[39] which stipulated that Article 14 guarantees action against arbitrary decision-making and hence ensures the Environmental Rule of Law by holding institutions accountable for arbitrariness and making them effective, efficient and transparent. Recently, the Supreme Court passed an order in the case of *TN Godavarman v. Union of India*[40] (the case is like a continuing mandamus) wherein it laid down guidelines for the effective functioning of environmental

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[32] Gururaj Devarhubli and Alaukik Shrivastava, 'The Advancement of Environmental Procedural Rights in India: An Analysis of Issues, Problems and Prospects' (2024) 10 *Cogent Social Sciences* 1.

[33] *Vedire Vankatta Reddy v. Union of India* (2005) AP 155.

[34] *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664.

[35] *Center for Social Justice v. Union of India* (2001) GUJ 71.

[36] National Green Tribunal Act, 2010.

[37] Gitanjali N. Gill and Gopichandran Ramachandran, ' Sustainability transformations, the environmental rule of law and the Indian judiciary: Connecting the dots through climate change litigation' (2021) 23(3) Environmental Law Review 228-247.

[38] *Ajay Khera v. Container Corporation of India* (2019) SCC Online NGT 1346.

[39] *Hanuman Laxman Aroskar v. Union of India* (2019) SCC OnLine SC 441

[40] *Writ Petition (Civil) No 202 of 1995* (Order passed on 31 January 2024) <http://www.indiaenvironmentportal.org.in/content/476510/judgment-of-the-supreme-court-regarding-the-effective-functioning-of-environmental-regulatory-bodies-and-authorities-31012024/> accessed 29.10.2024

regulatory bodies and authorities.[41] Cases related to climate futurity are those which give due importance to the sustenance of future generations.[42]

The above discussion majorly revolves around how the judiciary as an institution has interpreted the environmental law and principles to not only protect the environment but also to make the people environmentally conscious and make the institutions accountable. At this juncture, it is important to address questions like whether the judiciary alone is self-sufficient to create such a sensibility in the people and the related institutions and authorities. This question becomes crucial in the light of two recent controversial judgements passed by the Supreme Court, Electrosteel Steel Ltd. v. Union of India[43] and Pahwa Plastics Pvt. Ltd v. Dastak NGO and Ors.,[44] which has been criticised for giving more importance to economic growth than environmental concern by the usage of the " proportionality principle". A heavy reliance was made on " ex post facto environmental clearance", which became part of the environmental jurisprudence through its incorporation. The court states that such a clearance should be permitted under "exceptional circumstances", but did not specify those exceptional circumstances. Rather, it provided for a window within which the government should approve of such clearances: "where the adverse consequences of denial of ex post facto approval outweigh the consequences of regularisation of operations by grant of ex post facto approval".[45] An important aspect to understand is whether emphasising prior environmental clearance, which is also a mandate under the Environment Protection Act, and requesting closure can be termed as disproportionate. Giving unfettered discretion to the courts to decide this aspect tends to defeat the whole object of environmental impact assessment and the kind of constitutional importance that is given to environmental laws, the violation of which amounts to the infringement of the right to a healthy environment embedded under Article 21. Nevertheless, based on these two judgments, it cannot be argued that a contradictory jurisprudence has emerged. This is something which time will tell. Also, it must be seen as to how the recent judgment of the Supreme Court which recognised fundamental right against adverse is going to unfold.[46]

The above discussion on the take of Indian judiciary gives the researchers a compelling reason to examine the different understandings of ecological citizens or environmental citizens (which is sometimes used interchangeability as citizens having both rights and responsibilities of protecting the environment) as the courts have itself emphasised on environmental rights and duties and creation of climate consciousness, accountability and futurity. The next segment shall evaluate as to how the "capabilities approach" and the "basis needs-based approach" shall help in dealing with the menace of climate change and in the creation of ecological citizenship

5.3 Capability Enhancement through Environmental Education and the making of Ecological Citizen

Climate change is an issue which is transboundary in nature due to which means it has to be addressed at an international level. This is the reason that while studying the impacts of climate change through a human rights approach, one curates a model which is about human rights at the global level. The important international conventions on human rights like the UDHR or United Nations International Covenant on Civil and Political Rights are looked upon to understand different aspects of human rights and this understanding is applied to explain the relationship between human rights and the right to environmental protection which is also forming part of basic human right. This linkage between the two rights was in focus after 1972 due to the monumental event of the Stockholm Convention and later the Rio Declaration. Once the TWAIL perspective (Third World Approaches to International Law) gained momentum in 1990s, the scholars started deliberations on International Environmental Law and the TWAIL. This goes on to show that instead of talking about environmental human rights in a universalist

[42] Utkarsh Panwar v. Central Pollution Control Board (2021) SCC Online NGT 47, also see Vinay Shivananda Naik v. State of Karnataka (2020) SCC Online NGT 613

[43] (2023) 6 SCC 615

[44] 2022 LiveLaw (SC) 318

[45] Ritwick Dutta, "Pahwa Plastics: The Judgement That Endangers India's Environmental Jurisprudence, The Wire ,6th April 2022

[46] M.K. Ranjitsinh & Ors. v. Union of India (2024 SCC Online SC 805).

sense, it is time to dig deep into the aspect of cultural relativism and appreciate that the understanding of environmental adversities and their impact on the human rights of the people belonging to third world nations are going to . Now that we understand why studying climate change or climate justice at a localised level is important, the role of government and its laws and policies and particularly the role of its judicial wing to combat the menace become crucial. As already indicated above, the environmental fundamental duties in India have an interesting case as it was the environmental rights that were derived from the environmental duties. Though the fundamental duties mentioned in the Indian Constitution are not enforceable, the nature of the environmental duty of both the individual and the state is different from the other duties, as it was through the environmental fundamental duty by the Supreme Court or the High Court that the right of environment protection came into existence. The Constitution of India provides for separate environmental duties for the individuals under Art 51 A (g) and the state under Art 48(a) but the courts have considered them together in various cases.[47] This goes on to show that such duties are indirectly enforceable by the court through the usage of other DPSPs, fundamental rights and established environmental law principles like the precautionary principle or the polluter pays principle. Such an interpretation by the court is contradictory to an established tradition that a nation incorporates a chapter on duties in its Constitution only to impose restrictions on their fundamental rights. Also, the incorporation of environmental duty in 1976 through the 42nd Constitutional Amendment during the proclamation of emergency (that existed during this period when Indira Gandhi was the Prime Minister) made no sense. Such a stance can only mean one thing, the adherence to the international obligation to protect the environment and the zeal of the then Prime Minister to do the same, as she was the only foreign head of government to attend the United Nations Conference on the Human Environment, 1972. One thing that has not been discussed previously is that other fundamental duties apart from the environmental duty have the potential to supplement the single-handed environmental duty. Reference should be made to Article 51 A (f) ie. The duty to value the rich heritage culture, cl(h), which deals with the development of scientific temper, humanism and spirit of inquiry and cl(j), which provides for striving towards excellence. These duties along with the procedural aspect of environmental duties like the access to environmental education and information holistically can change a person at a psychological level and become environment or climate-conscious. Hence, if the state makes the environmental fundamental duty enforceable, it has immense potential to create ecological citizenship. This argument has its limitations as only the enforcement of the duties is not enough for ecological citizenship. One also has to determine or create a theoretical basis for what environmental education for ecological citizenship should comprise. What should be the outcome of such education, and how it can help enhance the capabilities of the individual, are the areas which still require exploration.

For such an exploration, first, it is important to establish a connection or trace the point of commonality in the procedural aspect of constitutional environmental duty, capabilities approach and Maslow's Hierarchy of Needs i.e. access to education and for the purposes of our article, environmental education. Maslow gradually developed his work on the 'need of self-actualisation' The desire to gain education and knowledge is quintessential for creating self-awareness, self-reflection and a moral being who can determine right or wrong. This need has the potential to generate morality of care towards other human beings and the environment. This morality of care can be better understood from the combined understanding of Maslow's theory and Carol Galligan's "care-based morality" (though it is a feministic approach the theory can substantiate environmental justice).[48] Access to education is also an essential element to build the capabilities and the functioning of an individual. Viewing education, particularly environmental education, from a capabilities approach perspective should be beyond an outcome-based education (OBE), which has a pre-determined goal and a fixed method of Assessing the outcome.[49] This

[47] AIIMS Students Union v. AIIMs & Others (2002) 1 SCC 428 (58), Jitendra Singh v. Ministry of Environment & Others Civil Appeal No 5109 of 2019 (Supreme Court of India, 25 November 2019) <https://indiankanoon.org/doc/36215757/>

[48] Carol Galligan, " *In a Human Voice*", Polity Press (2023)

[49] Givheart Dano, " Strengthening Outcome-Based Education: Capabilities Approach Perspective" , Edukasiana: Jurnal Inovasi Pendidikan, Vol 3 Issue 2 (2024), pp 143-155

may include elements like critical thinking, creativity, adaptability, empathy, and other socio-emotional and practical skills that are crucial in navigating the complexities of the modern world. [50] Assessment methods also stand to benefit from this integration. Rather than relying solely on traditional measures of academic achievement, such as standardised tests or grades, educators can incorporate assessments that gauge students' development of capabilities.[51] This may involve performance-based assessments, portfolios, reflective essays, and other forms of evaluation that capture a more nuanced and holistic view of a student's progress and potential.

As education simpliciter is a key element both as a self-actualization need and as a tool to develop capability, the discussion on a well-structured environmental education for an environmental citizen and the reflection of this pedagogy on self-actualization and capabilities is the need of the hour. Andreas Hadjischambis in his work has created an 'Education for Environmental Citizenship' model which consists of the following elements; solving current environmental problems, preventing new environmental problems, achieving sustainability, developing a healthy relationship with nature, practising environmental rights and duties, identifying structural causes of environmental problems, achieving critical & active engagement and civic participation and promoting intra and inter-generational justice. [52] Some of the elements are self-explanatory, but the element of developing a healthy relationship with nature is yet debatable because the relation can be different for different people and communities. According to Schultz, three components constitute the Nature Connectedness construct:

- The cognitive component is the core of nature connectedness and refers to how integrated one understands nature;
- The affective component is an individual's sense of care for nature;
- The behavioural component is an individual's commitment to protect the natural environment;[53]

All the eight elements mentioned above can be achieved through education by integrating them with self-actualisation and capability enhancement. This will also strengthen the decision-making process in environmental governance where the participants are both the state and its citizens. Climate ligitation will thrive as people will be more climate-conscious both for themselves and future generations. What seems problematic is India and other developing and least developed nations are still focusing on the fulfilment of the deficiency needs, and such advanced research on education for environmental citizens and developing a working model is yet a distant reality. Nevertheless, this discussion is important as such nations are majorly bearing the brunt of the climate crisis, and there is a dire need for the effective implementation of climate change-related policies. A self-aware and powerful citizen is what is required in a democracy, and democracy has been considered to be the best-suited political system to achieve environmental or climate justice.

[50] R Murray, "The Capability Approach, Pedagogic Rights and Course Design: Developing Autonomy and Reflection through Student-Led, Individually Created Courses", Journal of Human Development and Capabilities (2023)

[51] N Rajapakse, "Amartya Sen's Capability Approach and Education: Enhancing Social Justice", Open Edition Journals, 14 (1), 1-14 (2016).

[52] A Hadjischambis et. al., " Education for Environmental Citizenship: A Pedagogical Approach", Conceptualizing Environmental Citizenship for 21st Century Education, Environment Discourses in Science Education, Springer Nature (2020)

[53] Schultz, P. W. (2002). Inclusion with nature: The psychology of human-nature relations. In P. W. Schmuck & W. P. Schultz (Eds.), Psychology of sustainable development (pp. 62–78). Norwell, MA: Kluwer Academic.