



Climate Justice and the Global South: Rethinking Equity in International Climate Law

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Abstract

Climate change represents a fundamental threat to humanity; however, its effects are not uniformly felt around the world. The Global South, which includes developing and least developed nations, experiences a disproportionate level of vulnerability, even though it has made minimal contributions to historical greenhouse gas emissions. This article provides a critical analysis of the notion of climate justice within the context of international climate law, emphasizing equity, responsibility, and differentiated obligations. It scrutinizes the effectiveness of current legal principles such as Common but Differentiated Responsibilities (CBDR) and equity in addressing the systemic inequalities inherent in global climate governance¹. The article contends that while frameworks like the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement formally recognize the importance of equity, their execution is often hindered by political compromises and the economic interests of developed nations². Additionally, it underscores the developing jurisprudence from Global South countries—especially India—that merges environmental protection with human rights and constitutional obligations. By analyzing international treaties, soft law instruments, and judicial rulings, this article illustrates the necessity for a transformative approach to climate governance that emphasizes distributive and corrective justice. The article suggests reforms designed to enhance climate justice, which include enforceable commitments for climate finance, technology transfer, and acknowledgment of loss and damage. It advocates for a reimagining of international climate law that prioritizes the lived experiences of vulnerable populations and aligns legal structures with principles of fairness, sustainability, and intergenerational equity³.

Keywords: Climate Justice, Global South, International Climate Law, Common but Differentiated Responsibilities (CBDR), Climate Governance

1. Introduction

Climate change has transitioned from a marginal environmental concern to a pivotal global crisis of the twenty-first century, influencing not only ecological systems but also economic growth, social stability, and legal governance⁴. Its effects—spanning rising sea levels, extreme weather events, food insecurity, and displacement—are no longer hypothetical forecasts but actual experiences across various continents. The escalation of climate-related disasters has highlighted that climate change is not simply an environmental issue; it represents a complex challenge that intersects with human rights, development, and global justice. In this regard, the conversation has gradually evolved from solely focusing on mitigation and adaptation to a more comprehensive normative framework centered on justice, equity, and accountability. At the core of this shift is the notion of climate justice, which aims to tackle the ethical and legal aspects of climate change by emphasizing the unequal distribution of its burdens and advantages⁵. Historically, developed nations have been responsible for the majority of greenhouse gas emissions since the Industrial Revolution, thus playing an outsized role in driving global warming⁶. Conversely, countries in the Global South—such as India, Bangladesh, and many small island developing states—have contributed very little to total emissions yet bear the most severe repercussions. These repercussions include increased susceptibility to cyclones, floods, droughts, and rising sea levels, which jeopardize livelihoods, worsen poverty, and threaten developmental progress⁷. This imbalance has brought to the forefront issues of historical accountability, distributive justice, and intergenerational equity.

The concept of climate justice challenges the conventional state-centric and often technocratic perspective of international environmental law. It advocates for a shift towards a more inclusive and equitable framework that acknowledges the varying capacities and responsibilities of states, along with the rights of vulnerable

¹United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

² Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1.

³ Lavanya Rajamani, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics' (2016) 65(2) ICLQ 493.

⁴ Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2021: The Physical Science Basis* (Cambridge University Press 2021).

⁵ Mary Robinson, *Climate Justice: Hope, Resilience, and the Fight for a Sustainable Future* (Bloomsbury 2018).

⁶ Paul G Harris, *World Ethics and Climate Change: From International to Global Justice* (Edinburgh University Press 2020).

⁷ United Nations Development Programme (UNDP), *Human Development Report 2020* (UNDP 2020).

communities. Crucially, climate justice emphasizes the voices of those most impacted—indigenous peoples, marginalized groups, and developing nations—who have historically been underrepresented in global decision-making processes. It connects environmental protection with human rights by asserting that the negative impacts of climate change can hinder the enjoyment of fundamental rights, including the rights to life, health, food, water, and housing⁸. International climate law, primarily established through the United Nations Framework Convention on Climate Change (UNFCCC) and its subsequent instruments such as the Paris Agreement, seeks to address these disparities through foundational principles like equity and Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC)⁹. These principles recognize that while all states share a collective obligation to combat climate change, their responsibilities are not identical but should reflect their historical emissions, economic capabilities, and developmental needs. In theory, this framework offers a normative foundation for equitable burden-sharing and international collaboration.

Nevertheless, the actual application—or operationalisation—of these principles has continued to be plagued by political disputes and structural constraints. Developed nations have frequently opposed binding obligations that acknowledge historical accountability, whereas developing nations have highlighted the necessity for climate financing, technology transfer, and capacity-building to facilitate effective mitigation and adaptation. The vagueness surrounding essential terms such as "equity" and "fair share" has further complicated negotiations, resulting in compromises that, although politically viable, may not achieve substantial justice. Additionally, mechanisms designed to assist vulnerable countries—such as climate finance commitments and loss and damage frameworks—have often been critiqued for being insufficient, inconsistent, or slow in their implementation¹⁰.

As a result, there is an increasing disparity between the normative goals of international climate law and its actual results. This disparity prompts significant inquiries regarding the efficacy of the existing legal framework in meeting the needs and rights of the Global South. It also encourages a reassessment of how principles like CBDR-RC can be more effectively applied in a swiftly evolving geopolitical and environmental context. In light of this, the current discussion aims to critically evaluate the notion of climate justice within international climate law, particularly focusing on the experiences and viewpoints of the Global South, and to investigate avenues towards a more just and responsive legal structure.

2. Conceptualising Climate Justice

Climate justice signifies a progression in the comprehension of climate change—from being solely an environmental issue to a profoundly normative matter intertwined with law, ethics, and global equity. It transcends the conventional objectives of environmental protection and sustainability by integrating principles of human rights, distributive justice, and historical accountability¹¹. Essentially, climate justice examines not only the methods of addressing climate change but also who incurs the costs, who benefits, and who holds the responsibility for action and remediation¹².

At its essence, climate justice acknowledges that climate change does not affect all individuals and nations uniformly. Vulnerable and marginalized groups—especially in developing areas—confront disproportionate risks due to geographic vulnerability, economic limitations, and restricted adaptive capacity¹³. For example, communities in nations such as India and Bangladesh often endure heightened floods, cyclones, and heatwaves, which jeopardize livelihoods and worsen existing socio-economic disparities¹⁴. These circumstances highlight the necessity for legal and policy frameworks that are not only environmentally sound but also socially equitable and inclusive.

Consequently, climate justice merges environmental law with international human rights law by asserting that the detrimental effects of climate change can impede the realization of fundamental rights, including the rights to life, health, food, water, and housing¹⁵. This intersectional perspective expands the parameters of climate governance, compelling states and international organizations to prioritize justice-oriented outcomes rather than focusing solely on emissions reductions or economic efficiency.

Two essential dimensions shape the concept of climate justice:

2.1. Distributive Justice

Distributive justice pertains to the equitable distribution of both the burdens and advantages linked to climate change and its mitigation. It prompts significant inquiries regarding how the responsibilities for emission reductions ought to be allocated among nations, as well as how resources like climate finance, technology transfer, and adaptation assistance should be disseminated¹⁶. From this viewpoint, equity necessitates those

⁸ Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Understanding Human Rights and Climate Change' (2015).

⁹ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107; Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016).

¹⁰ Lavanya Rajamani, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics' (2016) 65 *International and Comparative Law Quarterly* 493.

¹¹ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC).

¹² Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1.

¹³ Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report* (IPCC 2023).

¹⁴ World Bank, *Turn Down the Heat: Why a 4°C Warmer World Must be Avoided* (World Bank 2012).

¹⁵ United Nations Human Rights Council, *Human Rights and Climate Change* (Res 7/23, 28 March 2008) UN Doc A/HRC/RES/7/23.

¹⁶ Simon Caney, 'Climate Change, Human Rights and Moral Thresholds' in Stephen Humphreys (ed), *Human Rights and Climate Change* (CUP 2010).

developing nations—many of which continue to strive for economic advancement and poverty reduction—should not be held to the same mitigation responsibilities as industrialized countries¹⁷. Rather, they ought to receive sufficient support to shift towards sustainable development pathways. This dimension is also relevant within nations, where impoverished and marginalized communities frequently endure the most severe impacts of environmental degradation, despite contributing the least to it¹⁸. Consequently, climate justice advocates for inclusive domestic policies that prioritize vulnerable populations and ensure that climate initiatives do not exacerbate existing inequalities.

2.2. Corrective Justice

Corrective justice emphasizes accountability and reparation for both historical and ongoing harm. It is based on the notion that those who have significantly contributed to climate change—mainly developed nations—should assume a larger share of the responsibility for mitigating its effects¹⁹. This responsibility encompasses not only the reduction of their own emissions but also the provision of compensation to affected countries through financial support, capacity-building initiatives, and mechanisms addressing loss and damage.

The concept of corrective justice is intricately connected to the historical legacy of emissions stemming from industrialization, especially since the onset of the Industrial Revolution. Developed nations, having reaped economic benefits from carbon-heavy growth, are perceived to have a moral and legal duty to aid those currently facing the repercussions²⁰. This perspective has been persistently advocated by developing countries in international climate discussions, forming the foundation for demands related to climate finance and fair distribution of responsibilities²¹.

In conclusion, understanding climate justice necessitates a transition from a limited, technical view of climate governance to a more expansive, justice-focused framework. It confronts existing power dynamics within international law and advocates for a reallocation of responsibilities that acknowledges historical contexts, current capabilities, and future necessities. By integrating principles of distributive and corrective justice into climate policy, the global community can progress towards a system that is not only effective in addressing climate change but also equitable and inclusive in its results²².

3. Equity in International Climate Law

Equity is fundamentally embedded in international climate law, acting as a key principle for distributing responsibilities, resources, and obligations among nations.²³

It acknowledges that climate change is a shared issue that necessitates global collaboration, yet recognizes that states differ significantly in their historical contributions, economic capabilities, and levels of vulnerability²⁴.

Thus, the principle of equity aims to harmonize fairness with effectiveness by incorporating differentiated obligations into the legal structure of climate governance.

3.1 The UNFCCC Framework

The United Nations Framework Convention on Climate Change (UNFCCC), which was adopted in 1992, lays down the essential structure of international climate law²⁵. It explicitly acknowledges equity and the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) as fundamental to its functioning. Article 3(1) of the Convention states that Parties should act "on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities."²⁶

This formulation recognizes two critical realities. Firstly, all states have a shared obligation to tackle climate change. Secondly, this obligation varies according to factors such as historical emissions, levels of development, and technological and financial capacities. Consequently, the Convention establishes a normative framework that justifies differential treatment between developed and developing nations, particularly through the categorization of Annex I (developed) and non-Annex I (developing) Parties²⁷.

Nevertheless, despite its robust normative language, the UNFCCC adopts a predominantly facilitative and non-binding approach. It does not enforce specific emission reduction targets or stringent enforcement mechanisms. Instead, it depends on broad commitments, reporting requirements, and international collaboration.²⁸ This flexibility was politically essential to ensure extensive participation, but it also led to considerable discretion for states, thereby limiting the Convention's effectiveness in achieving equitable outcomes in practice.

3.2 The Kyoto Protocol

The Kyoto Protocol marks the initial significant effort to implement the principle of CBDR-RC through legally

¹⁷ Kyoto Protocol to the UNFCCC (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.

¹⁸ Amartya Sen, *The Idea of Justice* (Penguin 2009).

¹⁹ Henry Shue, 'Global Environment and International Inequality' (1999) 75 *International Affairs* 531.

²⁰ United Nations Development Programme, *Human Development Report 2020: The Next Frontier* (UNDP 2020).

²¹ United Nations Environment Programme, *Emissions Gap Report 2023* (UNEP 2023).

²² Principles of Environmental Justice (First National People of Color Environmental Leadership Summit 1991).

²³ Philippe Cullet, *Differential Treatment in International Environmental Law* (Ashgate 2003).

²⁴ Lavanya Rajamani, *Differential Treatment in International Environmental Law* (OUP 2006).

²⁵ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

²⁶ *ibid* art 3(1).

²⁷ Daniel Bodansky, *The Art and Craft of International Environmental Law* (Harvard UP 2010).

²⁸ Farhana Yamin and Joanna Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures* (CUP 2004).

binding commitments.²⁹ Adopted in 1997, it established quantified emission reduction targets solely for developed (Annex I) nations, while exempting developing nations from such responsibilities. This unequal framework was a tangible representation of distributive and corrective justice, illustrating the perspective that developed countries held primary accountability due to their historical emissions since the onset of the Industrial Revolution.³⁰ The Protocol also introduced market-oriented mechanisms such as emissions trading, the Clean Development Mechanism (CDM), and Joint Implementation (JI), which aimed to improve cost-effectiveness while fostering sustainable development in developing nations.³¹ In theory, these mechanisms were consistent with equity by facilitating technology transfer and financial resources to the Global South.

Nevertheless, the efficacy of the Kyoto Protocol was considerably compromised by political and structural challenges. Major emitters like the United States did not ratify the Protocol, while others either withdrew or failed to fulfill their commitments.³² Furthermore, the strict separation between developed and developing nations became increasingly disputed as emerging economies gained prominence in global economic and emissions contexts. These elements, coupled with inadequate enforcement mechanisms, led to the gradual deterioration of the Kyoto framework and raised concerns regarding the viability of a strictly divided approach to equity.

3.3 The Paris Agreement

The Paris Agreement signifies a fundamental transformation in international climate law, transitioning from a top-down, legally binding approach to a more adaptable, bottom-up structure.³³ While the Agreement emphasizes the significance of equity and Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC), it does so "considering various national circumstances," indicating a shift towards a more fluid and context-aware understanding of differentiation.

Under the Paris framework, nations present their Nationally Determined Contributions (NDCs), which detail their specific climate objectives and strategies. This method promotes inclusivity and fosters global participation, as every country—both developed and developing—is obligated to engage in worldwide mitigation efforts. Additionally, it establishes systems for transparency, global assessments, and the periodic enhancement of commitments.

Nevertheless, the dependence on self-defined commitments has drawn significant criticism. NDCs lack legal binding force regarding outcomes, and there are no stringent enforcement mechanisms to guarantee adherence.³⁴ This situation raises concerns about the sufficiency and ambition of national commitments, especially given the pressing necessity to restrict global temperature increases. Furthermore, critics contend that the Paris framework undermines the principle of historical accountability by imposing greater mitigation expectations on developing nations without adequate assurances of financial and technological assistance.

From an equity standpoint, the Paris Agreement embodies a compromise between conflicting priorities: the necessity for widespread participation and the demand for justice-oriented differentiation. While it effectively establishes a more inclusive and flexible framework, it also transfers the responsibility for interpretation and execution to individual nations, thereby risking the dilution of clear and enforceable equity standards.

In conclusion, the progression from the UNFCCC to the Kyoto Protocol and finally to the Paris Agreement demonstrates a gradual shift in the conceptualization and implementation of equity within international climate law. Although the normative commitment to equity persists, its practical application has evolved to be more flexible, contested, and reliant on political will—prompting essential inquiries regarding whether the existing framework can sufficiently meet the requirements of climate justice, especially for the Global South.

4. The Global South Perspective

The conversation surrounding climate justice cannot be fully comprehended without prioritizing the experiences and issues faced by the Global South. Developing nations, especially those in Asia, Africa, and small island areas, find themselves in a contradictory situation within the climate framework: they contribute minimally to global emissions, yet they suffer the most significant impacts.³⁵ This imbalance is not coincidental; rather, it is entrenched in historical, economic, and structural disparities that persistently influence global climate governance.³⁶

4.1 Structural Inequality and Climate Vulnerability

Countries in the Global South, including India and Bangladesh, encounter a multifaceted array of vulnerabilities that exacerbate their susceptibility to climate risks.³⁷ These vulnerabilities arise from deep-rooted structural inequalities such as pervasive poverty, rapid population growth, insufficient infrastructure, and constrained

institutional capacity.³⁸ In contrast to developed nations, many of these countries do not possess the financial and technological means required to execute extensive adaptation and mitigation strategies. A considerable segment

²⁹ Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.

³⁰ Henry Shue, 'Global Environment and International Inequality' (1999) 75 *International Affairs* 531.

³¹ Benito Müller, 'The Kyoto Protocol Mechanisms: International Emissions Trading, Clean Development Mechanism and Joint Implementation' (2000) *Oxford Institute for Energy Studies*.

³² Scott Barrett, *Environment and Statecraft: The Strategy of Environmental Treaty-Making* (OUP 2003).

³³ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1.

³⁴ Daniel Bodansky, 'The Paris Climate Change Agreement: A New Hope?' (2016) 110 *AJIL* 288.

³⁵ Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report* (IPCC 2023).

³⁶ Sam Adelman, 'Climate Justice, Loss and Damage and Compensation for Small Island Developing States' (2016) 7 *Journal of Human Rights and the Environment* 32.

³⁷ World Bank, *South Asia's Hotspots: The Impact of Temperature and Precipitation Changes on Living Standards* (World Bank 2018).

³⁸ United Nations Development Programme, *Human Development Report 2020: The Next Frontier* (UNDP 2020).

of their populations relies on climate-sensitive sectors like agriculture, fisheries, and forestry for their livelihoods.³⁹ Fluctuations in rainfall patterns, an increasing occurrence of extreme weather events, and rising temperatures pose direct threats to food security and economic stability. For example, unpredictable monsoons and recurring flooding in South Asia not only harm crops but also disrupt rural economies, further entrenching vulnerable communities in poverty.⁴⁰ Furthermore, urban regions in the Global South are becoming increasingly vulnerable to climate risks due to unplanned urbanization, insufficient drainage systems, and the growth of informal settlements. These circumstances intensify the effects of floods, heatwaves, and water scarcity, disproportionately impacting marginalized groups who frequently lack access to essential services and social protection.⁴¹ Structural inequality is also evident on the international stage. Historical legacies of colonialism, imbalanced trade relations, and uneven development paths have limited the capacity of Global South countries to establish resilient economies.⁴² Consequently, their ability to respond effectively to climate change—through adaptation, disaster preparedness, and recovery—remains significantly constrained. This results in a cycle where climate impacts exacerbate existing inequalities, which in turn heighten vulnerability to future climate risks.

4.2 Climate Finance and Technology Transfer

Against this context, climate finance and technology transfer have become fundamental components of the Global South's requests in international climate discussions. Financial assistance is crucial not only for mitigation strategies, such as the shift to renewable energy, but also for adaptation initiatives, which encompass infrastructure development, disaster risk management, and climate-resilient agricultural practices.⁴³

Developed nations have recognized this necessity through commitments made under the United Nations Framework Convention on Climate Change and subsequent accords, including the Paris Agreement.⁴⁴ They notably pledged to mobilize USD 100 billion each year to assist developing nations. Nevertheless, the provision of this funding has faced widespread criticism for being inconsistent, unclear, and inadequate in addressing actual requirements.⁴⁵ A significant portion of the reported financing consists of loans rather than grants, thereby exacerbating the debt burden on already vulnerable economies.

Moreover, there are considerable concerns regarding the accessibility and distribution of climate finance. Complicated application processes, strict conditions, and institutional obstacles often hinder the most vulnerable nations—especially least developed countries (LDCs) and small island developing states—from effectively utilizing the available resources. This situation raises essential questions about the fairness and efficiency of existing financial mechanisms.

Technology transfer represents another vital element of climate justice. Access to advanced technologies—such as renewable energy systems, energy-efficient infrastructure, and climate-resilient agricultural methods—is crucial for facilitating sustainable development pathways in the Global South. However, this transfer is often obstructed by intellectual property rights (IPR) frameworks, high expenses, and limited technical expertise.⁴⁶ These challenges limit the capacity of developing nations to implement low-carbon technologies and adapt to climate impacts.

In conclusion, the perspective of the Global South emphasizes the structural and systemic aspects of climate injustice. It stresses the necessity for a more equitable international framework that not only acknowledges differentiated responsibilities but also guarantees substantial support through dependable financing, accessible technology, and capacity-building. If these fundamental disparities are not addressed, the quest for climate justice will continue to be incomplete and predominantly aspirational.

5. Judicial Approaches in the Global South

Judicial institutions in the Global South have become essential players in promoting climate justice, especially in situations where legislative and executive measures have been sluggish or insufficient.⁴⁷ Through creative interpretations of constitutional rights, courts have broadened the scope of environmental protection and connected it to fundamental human rights.⁴⁸ This judicial activism has been particularly prominent in nations with robust traditions of public interest litigation (PIL), where courts have taken proactive steps to tackle environmental degradation and, more recently, climate-related issues.⁴⁹ By closing the divide between

international obligations and domestic implementation, courts in the Global South assume a transformative role in actualizing climate justice principles such as equity, sustainability, and accountability.

5.1 India

³⁹ Food and Agriculture Organization, *The State of Food and Agriculture 2021* (FAO 2021).

⁴⁰ Asian Development Bank, *Climate Change Profile of South Asia* (ADB 2014).

⁴¹ UN-Habitat, *World Cities Report 2022* (UN-Habitat 2022).

⁴² Bina Agarwal, 'Climate Change and Gender Inequality' (2010) 45 *UNDP Human Development Reports Research Paper*.

⁴³ United Nations Environment Programme, *Adaptation Gap Report 2023* (UNEP 2023).

⁴⁴ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107; Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1.

⁴⁵ Organisation for Economic Co-operation and Development, *Climate Finance Provided and Mobilised by Developed Countries in 2016–2020* (OECD 2021).

⁴⁶ Keith E Maskus, 'Intellectual Property Rights and Technology Transfer' (2004) *World Bank Policy Research Working Paper*.

⁴⁷ Jacqueline Peel and Hari M Osofsky, *Climate Change Litigation* (CUP 2015).

⁴⁸ Dinah Shelton, *Human Rights and the Environment* (Edward Elgar 2011).

⁴⁹ Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 *Third World Legal Studies* 107.

In India, the judiciary—especially the Supreme Court—has played a pivotal role in shaping environmental jurisprudence that is closely aligned with the tenets of climate justice.⁵⁰ The Public Interest Litigation (PIL) mechanism has empowered individuals and civil society organizations to seek judicial recourse on behalf of affected communities, thus enhancing access to environmental justice.⁵¹ A significant milestone in this development occurred with the ruling in *M.C. Mehta v. Union of India*, where the Court acknowledged that the right to a healthy environment is a fundamental aspect of the constitutional right to life as enshrined in Article 21.⁵² This broad interpretation shifted environmental protection from being merely a policy goal to a justiciable fundamental right. The Court's stance underscored that environmental degradation poses a direct threat to human life and dignity, thereby warranting judicial intervention.

Further reinforcing this framework, the Supreme Court in *Vellore Citizens Welfare Forum v. Union of India* explicitly integrated essential principles of international environmental law into domestic jurisprudence.⁵³ These principles encompass:

- Sustainable Development – achieving a balance between environmental protection and developmental requirements;
 - Precautionary Principle – necessitating preventive measures in the presence of scientific uncertainty;
 - Polluter Pays Principle – holding those accountable for pollution responsible for remediation and compensation.
- By incorporating these principles, the Court effectively aligned Indian law with international environmental standards while tailoring them to local contexts.⁵⁴ This judicial methodology demonstrates an implicit acknowledgment of distributive and corrective justice, as it aims to shield vulnerable communities from environmental damage while placing accountability on polluters.

Furthermore, Indian courts have continued to expand upon this foundation through subsequent judgments that address air pollution, industrial risks, forest preservation, and climate-related governance.⁵⁵ Although these rulings are not always explicitly articulated in terms of "climate change," they collectively contribute to a climate justice framework by protecting ecological integrity and human rights.

5.2 Other Global South Jurisprudence

Judicial involvement in climate justice extends beyond India; courts throughout the Global South have increasingly acknowledged environmental rights and the responsibilities of the state in relation to climate change.⁵⁶ These rulings reflect a rising trend of rights-based climate litigation that enhances accountability and fortifies governance structures. In Colombia, for instance, the Supreme Court in the *Future Generations v. Ministry of Environment* case acknowledged the Amazon rainforest as a rights-bearing entity and highlighted the state's obligation to safeguard it for both current and future generations.⁵⁷ This ruling is significant for its clear connection between environmental conservation, intergenerational equity, and climate change mitigation. Likewise, in South Africa, the judiciary has interpreted constitutional environmental rights to impose duties on the state to factor in climate impacts when making development decisions.⁵⁸ The Constitution of South Africa explicitly guarantees the right to an environment that does not harm health or well-being, thus providing a robust legal foundation for climate-related claims. Judicial rulings in this area have underscored the necessity for environmental impact assessments to consider climate repercussions, thereby embedding climate factors into administrative decision-making. These instances exemplify how courts in the Global South are playing a pivotal role in the advancement of climate justice by:

- Recognising environmental protection as a fundamental or constitutional right;
- Imposing enforceable duties on states and private entities;
- Integrating international environmental principles into national legislation;
- Promoting intergenerational and ecological justice.

In summary, the judicial methods employed in the Global South illustrate the capacity of domestic courts to serve as drivers of climate justice. By interpreting constitutional provisions in the context of changing environmental challenges, these courts facilitate the connection between international legal standards and local circumstances. Their legal decisions not only enhance accountability but also offer a framework for merging human rights with environmental protection in the quest for a more just global climate system.

6. Loss and Damage: A Justice Imperative

The notion of loss and damage has surfaced as one of the most significant—and politically delicate—elements of international climate discussions.⁵⁹ It highlights a crucial void in the global climate framework: while mitigation aims to avert future climate change and adaptation focuses on managing its effects, loss and damage pertains to

the irreversible detriments that cannot be prevented or sufficiently adapted to. These detriments encompass the permanent loss of land due to rising sea levels, the destruction of ecosystems, the loss of cultural heritage, and the displacement of communities.

For numerous nations in the Global South, especially small island developing states and least developed countries,

⁵⁰ Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India* (2nd edn, OUP 2001).

⁵¹ S P Sathe, *Judicial Activism in India* (2nd edn, OUP 2002).

⁵² *M C Mehta v Union of India* (1987) 1 SCC 395 (SC).

⁵³ *Vellore Citizens Welfare Forum v Union of India* (1996) 5 SCC 647 (SC).

⁵⁴ Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (4th edn, CUP 2018).

⁵⁵ *Subhash Kumar v State of Bihar* (1991) 1 SCC 598 (SC).

⁵⁶ United Nations Environment Programme, *Global Climate Litigation Report 2023* (UNEP 2023).

⁵⁷ *Future Generations v Ministry of Environment and Others* Supreme Court of Colombia (STC4360-2018).

⁵⁸ *Earthlife Africa Johannesburg v Minister of Environmental Affairs* [2017] ZAGPPHC 58.

⁵⁹ United Nations Framework Convention on Climate Change, *Report of the Warsaw International Mechanism for Loss and Damage* (UNFCCC 2013).

loss and damage is not merely a theoretical issue but a matter of survival.⁶⁰ Countries confronting rising sea levels face the threat of losing not just land but also sovereignty, identity, and livelihoods. Likewise, nations like Bangladesh and India endure frequent cyclones, floods, and heatwaves that result in extensive economic and non-economic losses—many of which fall outside the realm of traditional adaptation measures.

At its essence, the call for loss and damage is rooted in the principle of corrective justice.⁶¹ Vulnerable nations contend that those who have historically contributed the most to greenhouse gas emissions—mainly developed countries since the onset of the Industrial Revolution—should be held accountable for compensating those who bear the brunt of the repercussions. This assertion is closely linked to broader concepts of equity and Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC), which form the foundation of the international climate framework.⁶²

Nonetheless, the matter has been a source of contention in international negotiations for an extended period, particularly within the framework of the United Nations Framework Convention on Climate Change. Historically, developed nations have opposed the notion of compensation or liability, apprehensive that it may result in indefinite legal and financial responsibilities. Consequently, advancements regarding loss and damage have been sluggish and limited for numerous years, frequently restricted to technical discussions rather than definitive financial commitments. A notable advancement took place at COP27, where the parties consented to create a specific Loss and Damage Fund.⁶³ This event represented a significant milestone in acknowledging the validity of the requests made by vulnerable nations. For the first time, there was an official recognition that financial assistance is essential to tackle the unavoidable consequences of climate change that exceed adaptation efforts. Despite its symbolic and political importance, several critical obstacles persist concerning the fund's efficacy and implementation:

- **Adequacy of Funding:** There remains uncertainty regarding the extent of financial contributions. Considering the scale of climate-related losses—estimated to be in the hundreds of billions annually—the existing commitments are largely perceived as inadequate.
- **Sources of Finance:** There are ongoing questions about who should contribute and on what grounds. While developed nations are anticipated to take the lead, discussions continue regarding the inclusion of emerging economies.
- **Access and Distribution:** Ensuring that funds are delivered to the most vulnerable countries and communities promptly and fairly is a significant concern. Bureaucratic obstacles and conditions could hinder effectiveness.
- **Scope of Coverage:** Loss and damage encompass not only economic losses (such as infrastructure damage) but also non-economic losses like cultural heritage, biodiversity, and human displacement. Assessing and compensating for these intangible damages poses considerable legal and practical challenges.

From the perspective of climate justice, the creation of the Loss and Damage Fund signifies an essential advancement in recognizing historical accountability and tackling global disparities.⁶⁴ Nevertheless, its effectiveness will ultimately hinge on its transformation into a strong, sufficiently financed, and accessible framework capable of providing substantial assistance to those who are most impacted. In this context, loss and damage transcends being a mere technical concern within climate policy—it embodies a moral and legal obligation. It represents the wider fight for justice within the global climate framework, underscoring the necessity for a system that not only averts future harm but also addresses the wrongs of the past and present.

7. Rethinking Equity: Towards Transformative Climate Governance

The ongoing disparity between the normative commitment to equity in international climate law and its actual implementation necessitates a comprehensive re-evaluation of the structure and execution of climate governance.⁶⁵ Although frameworks such as the United Nations Framework Convention on Climate Change and the Paris Agreement formally acknowledge equity and Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC), their predominantly flexible and non-binding characteristics have constrained their potential for transformation.⁶⁶ Consequently, equity frequently remains a matter of rhetoric rather than a practical reality. To realize genuine climate justice, international climate law must evolve from mere symbolic acknowledgment to substantial and enforceable obligations that tackle structural inequalities and historical disparities.⁶⁷ This demands a transition towards transformative climate governance—a paradigm that not only

reduces emissions but also reallocates resources, empowers marginalized communities, and integrates justice into all levels of decision-making.

7.1. Binding Climate Finance Obligations

One of the most urgent reforms is the necessity to transform voluntary climate finance commitments into legally binding responsibilities. Although developed nations have pledged to mobilize financial resources for developing

⁶⁰ Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report* (IPCC 2023).

⁶¹ Roda Verheyen, *Climate Change Damage and International Law: Prevention, Duties and State Responsibility* (Martinus Nijhoff 2005).

⁶² United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

⁶³ UNFCCC, *Report of the Conference of the Parties on its Twenty-Seventh Session (COP27)* (2022) UN Doc FCCC/CP/2022/10.

⁶⁴ Meinhard Doelle and Sara L Seck, 'Loss & Damage and Climate Justice' (2021) 11 *Climate Law* 1.

⁶⁵ Lavanya Rajamani, *Innovation and Experimentation in the International Climate Change Regime* (Brill 2020).

⁶⁶ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107; Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1.

⁶⁷ Philippe Cullet, *Differential Treatment in International Environmental Law* (Ashgate 2003).

countries, these commitments—like the USD 100 billion annual goal—have frequently been insufficiently met.⁶⁸ A transformative strategy would necessitate:

- Clear, enforceable targets for climate finance contributions;
- A transition from loan-based financing to grants, alleviating the debt burden on developing nations;
- Transparent accounting and monitoring systems to guarantee accountability.

Such reforms would implement corrective justice by ensuring that those historically accountable for emissions offer substantial support to those most impacted.

7.2. Enhanced Technology Transfer Mechanisms

Access to technologies that are friendly to the climate is crucial for fostering sustainable development pathways in the Global South. Nevertheless, the current mechanisms established under the United Nations Framework Convention on Climate Change have been hindered by barriers related to intellectual property, elevated costs, and a lack of adequate institutional support.⁶⁹

Reforms in this domain should concentrate on:

- Easing intellectual property limitations for essential climate technologies;
- Encouraging collaborative research and development partnerships;
- Enhancing institutional frameworks for capacity-building and knowledge-sharing.

By promoting fair access to technology, the international community can assist developing nations in transitioning to low-carbon economies while still prioritizing their development goals.

7.3. Legal Recognition of Climate-Induced Displacement

Climate change is increasingly causing large-scale displacement, especially in vulnerable regions like coastal and low-lying areas. However, current international legal frameworks—such as refugee law—fail to adequately acknowledge climate-induced displacement as a valid reason for protection.⁷⁰

A justice-oriented framework should:

- Create legal categories that recognize "climate refugees" or environmentally displaced individuals;
 - Set international obligations for protection, resettlement, and compensation;
 - Incorporate displacement considerations into national adaptation and disaster risk reduction strategies.
- This reform is essential for addressing the human impacts of climate change and ensuring that affected populations are not left in a state of legal and institutional uncertainty.

7.4. Integration of Human Rights into Climate Frameworks

A transformative approach to climate governance must explicitly incorporate human rights principles into climate law and policy.

Climate change has a direct impact on the enjoyment of fundamental rights, such as the rights to life, health, food, water, and housing.⁷¹

Integrating human rights within climate frameworks would entail:

- Recognizing state responsibilities to avert climate-related harm to individuals and communities;
- Enhancing accountability mechanisms through judicial and quasi-judicial entities;
- Ensuring participation, transparency, and access to justice in climate decision-making processes.

This integration would strengthen the normative basis of climate justice and align environmental governance with broader principles of international law.

7.5. Focusing on the Global South

At the core of transformative climate governance is the imperative to prioritize the voices, experiences, and needs of the Global South. Historically, international climate discussions have been largely influenced by powerful nations, frequently sidelining the issues faced by vulnerable countries.⁷² A justice-centered approach necessitates:

- Enhanced representation of developing nations in global decision-making platforms;
- Acknowledgment of local knowledge systems and community-driven adaptation methods;
- Inclusive processes that empower indigenous populations, women, and marginalized communities.

Nations like India and Bangladesh, along with small island developing states, offer vital insights shaped by their direct experiences with climate vulnerability. Integrating these insights is crucial for formulating policies that are both effective and fair.

Reevaluating equity in international climate law is not just an academic endeavour; it is a practical requirement for tackling the worsening climate crisis. Transformative climate governance calls for a rethinking of legal standards, institutional frameworks, and political priorities to ensure that justice is a fundamental guiding

principle rather than an afterthought. Only by transcending mere aspirational commitments and adopting enforceable, inclusive, and rights-based strategies can the global community aspire to realize a genuinely equitable and sustainable climate future.

8. Conclusion

Climate justice has transitioned from a normative ideal to a crucial legal framework necessary for addressing the

⁶⁸ Organisation for Economic Co-operation and Development, *Climate Finance Provided and Mobilised by Developed Countries* (OECD 2021).

⁶⁹ United Nations Framework Convention on Climate Change, *Technology Mechanism: 2022 Progress Report* (UNFCCC 2022).

⁷⁰ Jane McAdam, *Climate Change, Forced Migration, and International Law* (OUP 2012).

⁷¹ United Nations Human Rights Council, *Human Rights and Climate Change* (Res 7/23, 28 March 2008) UN Doc A/HRC/RES/7/23.

⁷² Amartya Sen, *Development as Freedom* (OUP 1999).

escalating global climate crisis.⁷³ It is no longer adequate to regard climate change solely as a scientific or environmental concern; it must instead be treated as a legal issue involving rights and justice. The increasing occurrence of extreme weather events, ecological degradation, and climate-induced displacement highlights that the repercussions of inaction are disproportionately felt, with the most vulnerable communities experiencing the most severe impacts.⁷⁴ In this regard, climate justice transcends a mere moral goal; it is a legal imperative that requires enforceable duties and accountable governance.

International climate law, particularly through instruments such as the United Nations Framework Convention on Climate Change and the Paris Agreement, has made significant progress in formally acknowledging principles of equity, fairness, and Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC).⁷⁵ These frameworks recognize the unequal nature of climate change and strive to reconcile global cooperation with differentiated responsibilities. Nevertheless, despite these advancements, the gap in implementation remains considerable. Commitments are frequently non-binding, financial assistance is erratic, and enforcement mechanisms are inadequate, leading to results that do not meet the pressing needs of climate justice.⁷⁶

The experiences of the Global South continue to reveal these deficiencies. Nations such as India and Bangladesh, along with small island developing states, encounter disproportionate climate effects despite their minimal contribution to global emissions. This disparity underscores a persistent structural inequity within the international framework—one that mirrors historical trends of industrialization, economic inequality, and unequal access to resources.⁷⁷ The ongoing vulnerability of these regions illustrates that current legal frameworks have not adequately transformed principles of equity into concrete results.

The use of the term "न्याय-oriented" (justice-oriented) emphasizes the necessity to incorporate substantive justice—not just procedural fairness—into climate governance. This requires transcending symbolic commitments to guarantee genuine redistribution of resources, meaningful involvement of affected communities, and effective accountability for both state and non-state entities. A justice-oriented framework must tackle both distributive justice (equitable distribution of burdens and benefits) and corrective justice (responsibility for historical emissions and damage), while also integrating intergenerational equity, ensuring that future generations are not deprived of a sustainable environment.⁷⁸

A reimagined strategy for climate governance must be based on three interconnected pillars:

- Fairness: Just distribution of responsibilities, with increased obligations assigned to those with higher historical emissions and greater capacities;
- Accountability: Enhancing legal frameworks to guarantee adherence to climate commitments, which includes judicial oversight and international monitoring;
- Solidarity: Promoting authentic international collaboration through dependable climate financing, accessible technology transfer, and capacity-building assistance for developing nations.

This approach also necessitates a fundamental transformation in global governance structures to ensure that the voices of the Global South are not sidelined but actively influence decision-making processes. Integrating diverse viewpoints—especially from vulnerable communities—can result in more contextually relevant and effective climate solutions.

In the end, achieving climate justice demands a transformation of international climate law from a system of negotiated compromises into one of enforceable rights and obligations. Only by aligning legal standards with the lived experiences of those most impacted can the international community aspire to tackle the climate crisis in a way that is both effective and fair. A future that is environmentally sustainable must also be socially equitable; the two are inextricably linked.

⁷³ Simon Caney, 'Climate Change and the Duties of the Advantaged' (2010) 13 *Critical Review of International Social and Political Philosophy* 203.

⁷⁴ Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report* (IPCC 2023).

⁷⁵ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107; Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1.

⁷⁶ Daniel Bodansky, 'The Paris Climate Change Agreement: A New Hope?' (2016) 110 *AJIL* 288.

⁷⁷ United Nations Development Programme, *Human Development Report 2020: The Next Frontier* (UNDP 2020).

⁷⁸ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Transnational Publishers 1989).