

Rights to freedom of peaceful assembly and of association

As global warming is increasing, intense cyclones near India, in the Bay of Bengal and the Arabian Sea are hitting Indian states with greater frequency. Human influence on climate has been the dominant cause of observed warming since the mid 20th century, while global average surface temperature warmed by 0.85-degree celsius between 1880 and 2012.ⁱ Many regions of the world already have greater regional scale warming, with 20-40% of the global population having experienced over 1.5-degree celsius of warming in at least one season. The most affected people live in low and middle-income countries, some of which have experienced a decline in food security, which in turn is partly linked to rising migration and poverty.ⁱⁱ Worldwide numerous ecosystems are at risk of severe impacts, particularly warm water tropical reefs and Arctic ecosystems.ⁱⁱⁱ The Intergovernmental Panel on Climate Change (IPCC) predicts that glacial melts in the Himalayan region alone will increase flooding, trigger avalanches and landslides, and cause the extinction of species and ecosystems. As such, Himalayan glaciers, including Gangotri, which is the source of the perennial and holy river Ganga, have receded by 30 meters endangering water supply in the dry season. Other changes in hydrological cycles are also expected to cause extreme drought or flood conditions; shorten crop duration periods to detriment agricultural yields, threaten biological diversity, increase the risk of outbreaks by disease-carrying vectors; and increase cyclones in the

coastal region. The Fifth Annual report suggested that equity, sustainable development, and poverty eradication are best understood as mutually supportive and co achievable within the context of climate action and are underpinned by various other international hard and soft law instruments, sustainable development and poverty eradication. Equity is a long-standing principle within international law and climate change law in particular. ^{iv} The aforesaid report describes equity as having three dimensions: intergenerational(fairness between generations), international(fairness between states) and national(fairness between individuals).^v The principle is generally agreed to involve both procedural justice and distributive justice.

In India, the constitution grants people the Rights to freedom of peaceful assembly that has been well utilized with the government allowing protests. Unfortunately, there have been incidents in various states of India that are examples of government high handedness against people protesting peacefully on climate change issues. India is a constitutional democracy whose GDP and emissions make it an important player in global mitigation instruments and strategies. However, the protection of the constitutional rights of Indians, threatened by the absence of a political will, stringent and arbitrary use laws restricting movements and protests and an effective international climate treaty. This article discusses that climate change presents a serious challenge to the constitutional rights(Right to freedom of

movement in particular) of Indians; a right that can only be taken away by the State and through proper legal procedure. The article demonstrates a less examined issue in international climate regime discussions at stake is the fundamentally legal, social and political fabric of modern and developing societies. After several debates, IPCC has concluded that there is a very likelihood that failure to achieve the 2-degree Celsius limit will result in a climate “tipping point”, unleashing irreversible non-linear, exponential, long term impacts and feedback effects. Giving effect to the imperative scientific recommendation through law and policy is equally contentious. A global regime to address climate change was established in 1992 at the Rio conference, where several UN Members signed the United Nations Framework Convention on Climate Change (UNFCCC). The agreement set out the basic structure for establishing legal obligation among countries to reduce greenhouse gases; detailed obligations were set out in the Kyoto protocol, which was opened for signature in 1997. In 2002, India acceded to the Kyoto Protocol, although neither the protocol nor UNFCCC obligates the Government of India to reduce its GreenHouse Gases emissions.

One of the most salient features of the Constitution of India, Fundamental Rights, was incorporated in Part III of the Constitution. The rights were not only conferred because of the worldwide civil liberties movement and rights movement of that period, but also in

response to deeply disturbing inequalities and social distortions within Indian society. While the constitution guarantees Indians fundamental rights, they are not necessarily unlimited. The translation of the fundamental right into practice remains an ongoing process even though the Indian legislation has enacted several statutes on numerous issues that are directly linked to fundamental rights. Climate change is an issue where mitigation legislation passed by the government addresses certain rights of the Indian community but doesn't protect all fundamental rights. Catastrophic events or even preventive measures by the community implicate the rights of the citizens. The right will be affected are either fundamental rights under the Constitution, notably the Article 21, right to life, or rights that the Supreme Court has held to be an integral part of Article 21, including rights to livelihood^{vi}, health, freedom of movement of basic necessities^{vii}. Violation of fundamental rights is unconstitutional without following a procedure established by law.

India's effort to mitigate Climate Change cannot ensure that the fundamental rights of millions of Indians will be protected if there is a 2 or more degree Celsius increase in global temperature. This emerging constitutional challenge in the case of climate change illustrates that the focus on limiting international obligations to reduce emissions could potentially undermine a foundational document of not only nations'

legal system, but its entire form of governance; the fine balance between the rights of people and the constraints over government powers.

It is very important to understand that the Right to freedom of movement sits right at the epicentre of climate justice movements in order to take preventive steps to resist the exploitation of non-renewable resources by the State of Trans-National Corporations. These exploitations have grave and adverse effects on the local ecology and the communities of the affected geographical areas. By way of protests and peaceful resistance, the communities exercise their liberty to register their discontent, secure their fundamental rights and also safeguard the environment. However, the state, irrespective of any political regime, approaches with tyrannical instruments and cracks down the Climate Change activists and warriors with repressive use of laws such as Indian Penal Code, Forest Rights Act and Unlawful Activities (Prevention) Act. Provisions such as unlawful assembly, seditions, preventive detention, damaging public property, disrupting law and order, disrupting public tranquillity etc. are often attracted on the peaceful protestors supplemented by police brutality to check and disperse their movement and assembly respectively.

Approaches towards Climate Justice Activism in India:

In India climate justice activism has approached hybrid medium with the help of Civil Society Organisations. Indigenous and impacted communities have been involved in on ground non violent peaceful

protests supplemented by online campaigns through various social media platforms. This strategy has resulted in grabbing the attention of millions of youth population which has made the campaigns and issue more popular and has also delivered good results. Further, with such activism several socio legal organisations have come forward and facilitated legal interventions by way of filing writ petitions in public and ecological interests in different forums such as National Green Tribunal, High Courts and Supreme Court in India.

Challenges and threats to exercising assembly and association rights to advance climate justice:

In India a myriad of challenges and threats are posed to climate change activists and organisations. Activists and organisations have been cracked down by the state elements and have been detained under draconian laws. The rationale by the State to detain activists and disperse such protests has been “interrupting public tranquility” and “developmental activities”. Whenever such protests are organised the local administration imposes Section 144 of the Code of Criminal Procedure, 1973 which restricts mass gathering. During Covid 19 pandemic Disaster Management Act, 2005 and Epidemic Diseases Act, 1897 has been used to check protests and dissent. With amendments in The Foreign Contribution Regulation Act, 2010, and the malicious use of the National Investigation Agency and Enforcement Directorate by

the central government has been cracking down and imposing sanctions on civil society organisations.

Examples illustrating violation of the rights to freedom of peaceful assembly and association against climate defenders:

On February 14, 2021, the Delhi Police arrested 22-year-old Disha Ravi for her alleged involvement in preparing a Google document that Greta Thunberg tweeted in support of farmer protests in India. The police claim it was a toolkit Ravi drafted in collaboration with separatist groups abroad with the aim of waging a social, cultural and economic war against India.^{viii}

In the Kaimur district of Bihar police opened fire on tribal people (Adivasis) who were demanding forest rights. This was because the Bihar government had identified Kaimur forests for establishing a second tiger reserve in the state that would unfortunately uproot thousands of Adivasi families from their natural habitat. Bihar forest department officials created several hurdles in order to include planting trees on agricultural lands and destroying houses in order to displace the tribals. To protest these kinds of harassment the Adivasis organized a two-day sit-in protest in September 2020 but the police instead of allowing this peaceful protest fired on the protestors and brutally beat up men, women and children.^{ix}

In Jharkhand in Godda district soon after state police personnel drove up in a convoy of vehicles on August 31, 2018 a company arrived with earthmoving equipment. There were 8-10 police for each protester according to a villager Sita Murmu who also described the attempt by the company to take over the villagers' farmlands. The earthmovers began uprooting valuable palm trees and paddy cultivation. The villagers' pleas to the District Government officers and to the company's representatives not to demolish their habitat fell on deaf ears. ^x

In the southern state of Tamil Nadu, massive protests erupted in Tamil Nadu's Tuticorin in May 2018 against Vedanta's Sterlite Copper plant over environmental concerns. The protests escalated on May 22 leading to violence that resulted in 13 deaths due to police firing.

In the Chhattisgarh state of India, 4000 people had been sitting on a protest in December 2020 against proposed iron ore mining and against the arrest of six people who police believe to be Naxals but the villagers say they are innocent. ^{xi}

In December 2019 in Odisha state heavy police were present on a site in Talabira to completely cordon off the region where 40,000 trees were removed to pave way for a mine. Rayagada district of Odisha in 2016 had witnessed the arrest of Debaranjan Sarangi who was an active member of GASS. His lawyer said that the arrest had been made on some cases dating back to the year 2005 relating to a movement against

setting up of aluminium plant and bauxite mining in the area. The movement has suffered in the past with the police actions against them in the past decade. ^{xii}

In May 2018 in Gujrat's Bhavnagar district, the police forces lobbed 62 teargas shells to disperse a huge mob of farmers from 12 villages, who were opposing the construction of a lignite based power plant of Gujarat Power Corporation Limited. The said company had acquired around 1,415 hectares of private and government land and three mining blocks namely Ghoga Surka, Khadsaliya I and Khadsaliya II. ^{xiii} In another incident in Gujrat's Chhota Udaipur district the local police cracked down on the protestors on the last day of the three day-long rallies to protest against the government for not carrying out proper rehabilitation and resettlement work for the project affected people of Sardar Sarovar Dam. ^{xiv}

The above examples show us how there have been cases of government action on peaceful protests related to climate change. This trend does not depend on any particular government but as we can see the actions have been taken by different political parties who are in power in the state.

Measures and Actions:

In order to ensure that Climate Change Activists and Civil Society Organisations are not restrained in delivering mitigating Climate Change impact it is important to take multifold approaches. To start with it is

pertinent that the state shall withdraw false cases filed against activists and community members and release all the activists, lawyers and community members imprisoned for fighting against the activists and community members. Furthermore it is imperative that sedition laws as well as other draconian laws such as the UAPA should be repealed. Along with the repeal, there is also a need to ensure that tribals laws are strictly implemented in the concerned areas of Odisha, Jharkhand, Andhra Pradesh, Chhattisgarh and other tribal regions. The EIA notification has diluted the power of the gram sabhas in deciding the matters pertaining to environmental clearance which need to be reinstated and the government should abstain from taking such steps which take away the volition of the panchayat. Thus, a strict implementation of Panchayati Raj Act which involves the gram sabha in the decisions involving the land, air, water and forest, is very essential. The government should focus on policies that protect the environmental activists, lawyers and communities who play an important role in ensuring the protection of the environment and related activities.

The supranational institutions like the United Nations should provide a platform for climate change movements involving activists, lawyers and communities working for the cause. The institutions can ensure that local issues are given due attention and provide a platform for international bodies to coordinate and work together. The international body should take an active role in putting sanctions against nations that

violate international laws related to environment and climate change. The body should also work on providing incentives to the countries to ensure their adherence to their respective environmental obligations. Thus, it is a duty of the organisation to support the movements against state's repression in relation to environmental movements.

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IPCC Fifth Assessment Report

ii IPCC, 2012a

iii IPCC 2014a

iv Shelton, 2008; Bodansky et al, 2017

v Fleurbaey et al. 2014

vi Bandhua Mukti Morcha vs Union of India, A.I.R 1978, SC 1548

vii Olga Tellis vs Bombay Municipal Corporation, A.I.R 1985. S.C 180

viii Olga Tellis vs Bombay Municipal Corporation, A.I.R 1985. S.C 180

ix <https://www.thecitizen.in/index.php/en/NewsDetail/index/9/19537/Bihar-Cops-Open-Fire-on-Kaimur-Adivasis-Demanding-Forest-Rights>

x https://www.business-standard.com/article/economy-policy/how-jharkhand-govt-broke-law-by-taking-fertile-land-from-farmers-for-adani-118120300103_1.html

xi <https://www.thehindu.com/news/national/other-states/villagers-protest-over-mining-arrest-of-six-locals-in-chhattisgarh/article33256867.ece>

xii <https://www.newsclick.in/talabira-odisha-over-40000-trees-removed-pave-way-adani-mine>

xiii <https://timesofindia.indiatimes.com/city/rajkot/62-teargas-shells-lobbed-as-farmers-clash-with-police/articleshow/64151783.cms>

xiv <https://www.downtoearth.org.in/news/water/gujarat-police-crackdown-on-nba-rally-58054>