

## The Role of Justice in Shaping Climate Change Negotiations

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### Abstract

The manner in which the states define their responsibilities to act on climate change and interpret the other state's accountability has been the fundamental conflict within climate change negotiations. The concept of justice is the moral basis of all political action and the principles of equity are the cornerstone, in the quest for justice, which has guided the international and national climate change mitigation and adaptation policies. It derives from a concept of social justice which can be applied to individuals, communities, nations, and even across generations. The pertinent question this paper examines are- Who should be held responsible for climate change? And who should pay the cost for it? The Climate Justice approach strengthens the institutional demand for equity and democratic decision making, which has eroded over the decades and at the same time it offers a sharp polemical response to the dominant discourses of development.

**Keywords:** climate change, climate justice, negotiations, equity, North-South divide

### Introduction

The manner in which the states define their responsibilities to act on climate change and interpret the other state's accountability has been the fundamental conflict within climate change negotiations. The problem with the issue of climate change is the inequity set in its origins- those who are responsible for the problem are also the most well equipped to handle its consequences, while the least responsible states are the most vulnerable to its negative externalities. The concept of justice is the moral basis of all political action. Equity is the central ethical norm, in the quest for justice, which has guided the international and national climate change mitigation and adaptation policies. It derives from a concept of social justice which can be applied to individuals, communities, nations, and even across generations. Who should be held responsible for climate change? And who should pay the cost for it? The lack of agreement on a fair solution to these questions still sustains, but there remain certain, "assumptions and distinctions regarding justice that we do hold in common even when our conceptions of justice differ" (Sterba 1980: 37). Equity covers a range of principles, from the common responsibility of all states towards the burden sharing of the climate change problem, the differentiation among states as outlined in the Kyoto Protocol (1997), the north-south divide in the negotiations, equity among as well as within states, historical responsibility, the fair distribution of abatement costs, equal entitlements, and the responsibility of developed states towards the poorer and more vulnerable countries.

This paper critically examines the principles of equity within the climate change negotiations, their origins, and multiple interpretations. This paper outlines the key stumbling blocks in the path of mitigation of this existential disaster and focuses on the conceptions of climate justice as the key to resolving the most important issue that faces the planet. The paper attempts to understand the

underlying rubric of equity and justice, which has shaped and continues to shape the global climate politics.

### **Stumbling blocks of climate change negotiations**

The Problem of climate change poses a fourfold problem. Firstly, the threat of climate change has planetary level consequences. It challenges the principles of state sovereignty and presents itself as a transnational phenomenon. Chakrabarty (2009:9) argues that, "Unlike in the crises of capitalism, there are no lifeboats here for the rich and the privileged." Beck (2014:7) describes the condition as, "the language of threat is infectious and transforms social inequality: the social need is hierarchical, the new threat, by contrast, is democratic."

Chaturvedi and Doyle (2015:207) in their insightful study of the critical geopolitics of climate change counter this construction of 'universal we' as detrimental to the welfare of the poor and marginalized. "In this new green map," they believe "the lines between haves and have-nots do not disappear at all. Rather it strips power from the powerless, and strangles the voices of the poor."

Secondly, the divergent views on intergenerational justice and the constant buck-passing of responsibility has become a mainstay of our response to the problem. The problem with collective action on climate change is the inequity set in its origins- those who are responsible for the problem are also the most equipped to handle its consequences, while the least responsible states are the most vulnerable and ill-capacitated. The third aspect is the irreversibility of the human-induced climate change. There is now a global consensus amongst the scientific community that the anthropogenic causes of climate change, are shaping the planet for centuries to come, what has been referred to as 'the great acceleration' and beginning of the 'sixth extinction' (Kolhbert 2014). In 2009, a new framework of 'planetary boundaries' that attempts to analyze all aspect of human impact on the environment comprehensively was proposed a 'safe operating space for humanity' (Rockstrom et al. 2009:17). Beyond these boundaries, it argued, the risk of 'abrupt environmental change' will be irreversible. And fourthly, it is argued that the impact of climate change will be uncertain to predict, which according to Robert Manne (2016) "creates opportunities for political mischief, policy inertia, and public confusion." Beck (2009:15) encapsulates this risk when he writes, "the anticipation of a catastrophe shaping the world," and an entirely self-interested national strategy for coping with increasing risk of environmental threats would divide, exclude and stigmatize the person or group, which is usually the poor and marginalized.

### **The problem of definitions**

The boundaries of what constitutes an 'environmental' issue have always been a blurred. The twentieth century was the first time when the concept of Climate took shape as a distinct category from the everyday weather. This was a significant break from the past, wherein, as Behringer (2010: 89) points out, "short-term changes (in climate) had greater importance than medium to long-term ones".

In fact, there has been very little agreement on the definition of the terms like 'nature' or 'environment.' At different points in history, it has carried a different significance (Bodansky 2010:10). In the current scenario, the states are dealing with problems ranging from global warming and loss of biological diversity to mass migration and resource conflict, which are further affected by a range of factors like population growth, energy consumption, food security, and international trade. This lack of consensus is at the heart of the debate on equity and climate justice.

### **The absence of legality**

The nineteenth-century English legal philosopher, John Austin, described the international law as a 'positive morality', referring to its lack of sanctions. This particular problem has been most prominent in the international climate change negotiations, wherein the legal sanctions have been heavily debated and rarely implemented. The Kyoto Protocol lacked any enforcement teeth, which meant that it fell short of being described a law. Similarly, The Paris agreement stumbles at the similar pitfalls, wherein it prioritizes global consensus over legally binding goals. The 1987 Montreal Protocol on the depletion of the Ozone Layer is the only example of legal implementation of equity principles on an international level but they were exclusively focused on a single issue, which cannot be the case with climate change, which is practically an umbrella term for a range of concerns. Therefore, the incentive to act is often in conflict with the free-riding principle, which implies that the self-interests of the states will remain paramount. (Cazerola & Toman 2001: 4-5).

### **The difficulty with ethics**

Gardiner (2006) writes of climate change as, 'A Perfect Moral Storm,' a problem which is more complex than Hardin's tragedy of the commons. Unlike Hardin's theory, which prescribes coercion of state as a possible solution, the problem with transnational climate change is the absence of any similar international authority (Betsill et al. 2006). This absence of authority makes it susceptible to the free-riding problem, wherein some states, due to lack of any legal sanction, will ride on the efforts of the rest, thereby hindering collective action. The problem of moral inaptitude rises from the two critical asymmetries in the world- Asymmetry of power and asymmetry of wealth (Gardiner 2006; Shue 1992).

### **The injustice of unequal burdens**

The asymmetry of power and wealth have been at the heart of this tragedy of climate change. The north-south divide is visible and widening. To prevent climate change, we will need a complete overhauling of the current capitalistic pattern of exploitation and address the fundamental questions of inequality and climate justice (Tokar 2010). The north-south dichotomy and its resulting impasse have had a significant impact on any chances of charting out any legally binding instrument between states. Myers and Kent (2003) argue that the statist view of climate justice does not lead to any solution and the real divide today is not so much between developed and developing states as it is between rich and poor populations. This gap gets reflected in the domestic inequality within the nations and the increasing fragmentations within both global north and the global south.

### **The conceptions of justice: Approaches and contestations**

The idea of equity is set within the broader frame of climate justice, or more precisely justice. The concepts of equity, distributive justice, procedural justice and environmental justice have been utilized inconsistently within the existing literature (Ikeme 2003:195). The central concern within the ambit of climate justice can be outlined as: those nations that hold a causal responsibility for the problem, both knowingly and unknowingly, are better placed to deal with its consequences, while the most vulnerable nations have the fewest resources to adapt or mitigate its disastrous consequences. Okereke (2008) argues that the definition of justice remains malleable and open to interpretations and it is important to understand how justice and sustainability come together. It is not enough to focus on distributive forms of justice but also important to interpret questions of participatory justice, recognition, and identity (Walker & Bulkeley, 2006; Ikeme, 2003).

### **Deontological vs. consequentialist approaches to justice**

The debate on justice can be categorised into two broader categories- deontological (rights-based) and consequentialist (goal-based) paradigms. Deontological approach maintains the priority of the right over

the good (Kant, 1948). Consequentialist approach, on the other hand, gives priority to good over right (Ikeme 2003; Rawls, 1972; Dworkin, 1978).

All deontological ethics are non-consequentialists in nature, which means that they emphasize the action itself, the motivations, principles which underlie such actions, rather than the outcomes of such actions. The deontological theories are essentially rooted in an assumption about universal rights or wrongs. Deontology denotes the morality of state by their conformity with a norm, usually to rights or duties. They are applicable universally and equally to everyone. The universal declaration of Human rights is a prime example of this approach. Kant's moral philosophy is a critical foundation of this approach. Kant (1948) articulates the idea of moral imperative, wherein he describes his task of, "the search for and establishment of the supreme principle of morality," which he describes as the categorical imperative. This universal application of the law is at the core of this approach. This cosmopolitan view of climate change is relevant as it lays underneath any global efforts on the part of states and people to fight against climate change. It upholds collective action as the moral imperative, something that is acknowledged in the fourth assessment report of the IPCC, which claims that our odds improve when intergovernmental efforts to fight climate change increases. Nozick (1974: 151) supports this argument when he says, "whatever arises from a just situation by just steps is itself just."

It is also noteworthy that the deontological ideas have primarily shaped the debates surrounding the climate-related policy-making and the ethical concerns. For example, the Copenhagen COP 15 in 2009, China, India and the G77 and China group came together to voice their support for the deontological claims such as the historical responsibility, while the US-led delegation categorically opposed such claims. The following Durban COP 17 witnessed an emergence of a more articulated demand for fairness by the developing countries. Although the claims regarding historical responsibility took a back seat, the larger agenda set by the developing nations centered on the deontological claims. Historically, the international negotiations have favored the deontological approach, when it dealt with the issue of mitigation.

These deontological claims have been regularly juxtaposed with the ideas that fall within the ambit of consequentialism, "a moral approach that holds that acts and/or intentions are morally relevant, i.e., right, wrong or indifferent, only in virtue of their consequences, that is, of the state of affairs that they bring about" (Ikeme 2003). The consequentialist ideas are outcome oriented as clearly explained in Dworkin's assertion that, "justice is a matter of outcomes: a political decision causes injustice, however fair the procedures that produced it, when it denies people some resource, liberty or opportunity that the best theories of justice entitle them" (Dworkin, 1993: 140).

The philosophy of Utilitarianism is the most common example of the consequentialist approach. This conception of justice is based on, "the considerations of social utility in such a way that following these requirements will result in the maximization of total happiness or satisfaction in the society" (Sterba 1980: 8). The utilitarian ideas were a radical critique of the elitist structure of the society, wherein inequality was justified based on some biased conception of tradition, or nature or even religion (Kymlicka 2002:47). Therefore, it focuses entirely on consequences, and not history or procedure that was employed to reach these ends. Consequentialism is well in sync with the broader deontic principles such as maximizing and satisfying principles (Jamieson 2012). According to the more Classical form of utilitarianism, the maximization of the sum of individual utilities or welfare is of the paramount importance (Sigwick, 1907). While the Pluralist conception of consequentialism, "do not simply focus on maximizing welfare, but it also emphasizes on equal distribution of welfare (Barry, 1965: Rawls 1972)."

The non-utilitarian basis for consequentialism, most recently articulated through the capabilities approach, is focused on the measurement of wellbeing and development based on the key indicators

such as health, the longevity of life and education (Sen 1999). Unlike utilitarianism, which attributes pleasure principle the highest priority, these new approaches are more concerned with wellness and capabilities rather than income or pleasure (Sen, 1999). A recent approach in the field of political philosophy, neuroscience, and economics (Grasso, 2013; Singer, 2002) tends to argue that by embracing a welfare-maximizing, consequentialist approach, which forms the basis for the international systems of tradable emission rights, we can better handle the mitigation challenges of the climate change. Rights-based approaches have predominantly featured in climate justice literature like Sen (2000) who writes that, “justice is not merely about trying to achieve, or dreaming about achieving, some perfectly just society or social arrangements, but about preventing manifestly severe injustices.”

The emerging discourses on climate justice have drawn from multiple fields, and they have critically enhanced the debate in the last decades. Apart from this scholarly approach to justice, we have witnessed the emergence of justice as a critical aspect of negotiations. Each state positions its argument based upon its own understanding of justice.

### **The principles of equity**

Based on the above distinctions, the principles of equity can be classified into two broad categories. Equity can be argued for, based on certain notions of fairness, including concepts of rights, without emphasizing their intended consequences. Regarding the consequences, equity can understand regarding emissions allocations and the social as well as economic consequences of such policies for both individual as well as the states

Therefore, the study of climate change through the lens of equity is relevant as it explores the causes of political contestations and the policy paralysis. It poses the critical question of how will the threats of climate change be tackled without marginalizing the large sections of the world population, which are least equipped and most vulnerable to present dangers of climate change.

### **The ability to pay approach**

Caney (2010: 213) defines this principle as, the duty to address some problem (in this case, bearing the burdens of climate change) should be borne by the wealthy, and, moreover, that the duty should increase in line with an agent’s wealth. This is a forward looking principle of equity, wherein the past emissions of a nation may not necessarily have resulted in present-day benefits, and at the same time, it places the mitigation costs on those least harmed by making it their responsibility to bear the cost. This principle does not emphasize causality or any form of historic responsibility. However, it does take into the consideration the moral aspect of inequality. An important aspect of the ability to pay is captured in, the notion of graduation, namely that there will be no burden of payment for countries below a threshold level of income (Mattoo et al. 2011; Bhagwati, 2009).

### **The polluter pays principle**

It is a corrective justice approach which focuses on the idea of fairness. The central idea is that the states or individuals ought to bear the costs of their activities. This is the most debated principle of equity that has been drawn from a range of historical debates. This is a future looking principle of equity. Unlike the ability to pay principle, it does not give relevance to the fact that the agents may have differential abilities. It only adheres to the principle that the contributor to the pollution has to pay the abatement cost. In fact, it argues that most of these states cannot be held accountable for the historic emissions, because, firstly they were mostly ignorant of the negative externalities in the past, and secondly most the people who contributed to the problem are already dead and, therefore it is impossible to apply the arguments of liability. Another line of argument in favour of this principle is that past emissions actually resulted from the invention and mass production of public goods, which were

equally beneficial to the development of poor states, in raising their standard of living. Shue (1993) counters such line of argument by emphasizing on the large debt that was incurred on these nations in exchange for such transfer of public goods.

### **The beneficiary pay principle**

Page (2015:68) defines this principle as, the burdens involved (in addressing climate change) should be distributed amongst states according to the amount of benefit that each state has derived from past and present activities that contribute to climate change.

Scholars like Singer (2004), Nuemayer (2000), have articulated the position, wherein the argument is that the northern developed nations have enormously benefited from the large-scale, unchecked use of fossil fuels. Therefore, this principle favours an approach where states or individuals who have been the beneficiaries of the process, should bear the burden the most for the abatement. Another important dimension of this principle is the belief in horizontal equity, which requires all those with similar resources or wealth, to be treated equally. If a state has benefited by the use of resources within as well as outside its borders, and in the process brought disadvantage to the other party; in such instances, the former must remediate the latter's disadvantage.

### **The equal per capita emissions approach**

The concept of per capita emissions dates before the negotiations itself. The basic idea of Per capita has been utilized in two ways— it can be an indicator and an entitlement (Aslam et al. 2002:182). The more common understanding or usage of this concept, with regards to the climate negotiations, has been the concept of carbon emissions. As an indicator, it signifies the total emissions of nations, whereas as an entitlement it can help in determining how much the nation should be allowed to emit. This approach has been a critical aspect of the negotiations as it allows for the formulation of public policy which guides the timing of commitments by the states (Agarwal and Narain 1991; Aslam et al. 2002:185).

The important aspect of the per capita approach is its use as an entitlement. It establishes the limit that is suitable for the total carbon emissions of the states. This budgeting of the carbon space has been the mainstay of the negotiations for two decades. This carbon space is a critical idea as it indicates the highest levels at which CO<sub>2</sub> emissions will have to be stabilized over the next decades. This upper limit was a contentious topic at the COP meetings since 2009 and constitutes a major objective of the UNFCCC.

This is an important indicator for the developing countries like India and China, which have a sizeable population and economic growth, making them significant polluters regarding total output, a statistic that has been rising in the last few decades. But as the per capita approach is utilized, it exposes the underlying disparity of such statistics, as the average Indian or Chinese individual lags way behind someone in the developing world who are still the top emitters by an unfair margin. The first state to officially adopt the approach was India, which outlined this position at the first COP meeting in 1995. This was later accepted by other developing countries, like the Africa Group as a part of their negotiating position.

As a critique of this concept, Posner and Weisbach (2010) have argued that this approach only promises a superficial understanding of justice. It fails to deliver on the question of equity because, population and incomes are not (negatively) correlated: that is, giving greater emissions allocations to countries with large populations would not necessarily be the same as giving greater emissions to poor countries (Mattoo et al. 2012: 1086). The approach has been described as 'overly egalitarian,' because it does not focus on the unequal nature of equity within the nations, and particularly concerning geographical distribution and individual needs (Starkey, 2008: 47).

### **The principle of historical responsibility**

The concept of historical responsibility focuses on the commitments and responsibility of countries based on their emissions in the past. The 'Brazilian proposal', as it was called at the time of its proposal in 1997, has since been reinterpreted and renegotiated within the COP mechanism, and the concept itself has remained the most contentious aspect of the entire negotiations. It is central to the north-south rivalry that exists within the talks, often peaking at the summits, such COP meetings of Nairobi, Bali, and Copenhagen. The concept has shifted from the debate regarding the North-South responsibilities and capacities, their distribution in an equitable manner, and today it is often brought to the table in conjunction with physical nature in climate models, thereby weakening the equity argument which the southern states believe is essential to the success of climate change negotiations (Friman et al. 2008: 345).

Posner and Weisbach (2010) have critiqued the concept because in their view, retributive justice perspective on historic responsibility normally requires establishing an perpetrator who behaved in a morally culpable way and establishing the identity of the injured or the victim. In the climate change context, this argument leads to the question whether the perpetrator has to be an individual or a country.

The historical responsibilities clause has been a critical demand of the developing nations, who constantly find themselves at a disadvantage in mitigation and adaptation fronts, many of them lacking the basic technology or the financial capacity to tackle the challenge.

### **Conclusion**

The critical question that emerges from the debates around climate justice and the principle of equity is - Who should pay the costs of anthropogenic climate change and why should they do so? There are myriad explanations for these problems and each state has its own position on equity, which can be a function of its capacity, normative values, ethical standpoint, domestic politics, and ultimately self-interest. Each state in an international system acts in self-interest. The climate researchers point to this nature of state as being antithetical to collective action that is essential for curbing the climate change. In the absence of such consensus, clearly reflected in the failure of the UNFCCC negotiations to reach a common, agreeable agenda, what plays out are the interests, and preferences of each of the states. Henry Shue (1993), a political philosopher, believes that Equity is not so much so a western or eastern concept; it is universal its basic appeal. Therefore, it reflects upon the existing reality of the world. The North-South dichotomy may have diluted over the years, particularly with the rise of India and China, but as the statistics point out the average standard of living on a per capita basis still holds. The developing world is not a monolith, but what brings it under a single umbrella is their common concern regarding what climate justice must entail- The rich nations have to bear the burden of mitigation costs and sharing of responsibilities will have to remain a function of individual capacity and responsibilities. The latter is a contentious term, as reflected in the chapter, although it is mostly agreed upon that the different strands of ethical theory do hold on to that distinction. The principles of equity are, therefore, fundamental to the negotiation process.

Within the climate change negotiations, one can observe the dominance of the deontological form of justice. One strand being the retributive justice, which holds practical implications, for example in the Polluter Pays principle and carbon trading systems, as articulated in the Kyoto protocol in 1997. It is reflected in the demands for ecological debt and compensation, especially by the poor and island countries, who demand retribution for the damages incurred due to climate change. This came into

practice in Warsaw International Mechanism for Loss and Damage at the COP 19 in Warsaw. The other important strand is the distributive justice which is reflected in the Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC).

The most important aspect to the issue of climate change is its framing itself. The first frame poses climate change as a problem that requires a collective action. It is most visible in the scientific and technocratic discourses of carbon emissions, peak emissions, bioengineering, planetary boundaries, ecological modernization, and green governmentalism. The second frame posits climate change as a problem of scales, one that requires cooperation at multiple levels- international, national and local. It views climate change as a more nuanced problem which requires solutions on multiple fronts- sustainability, renewable energy, technology transfer, and conservation and pollution control. It has been described as the bottom up approach to the climate change mitigation, and highlighted in the Paris agreement of 2015. D'Andrea (2013: 108) refutes the universalization of climate related threat when he argues climate change is a 'globalized' phenomena and not 'global' phenomena wherein, 'only the latter establish an objective foundation for the community of mankind.' The discourse around climate change has centered on the viewpoints of states, through multilateral international negotiations. The balance of power has dictated such discourses to favor a more North centric debate, ignoring the more indigenous appeals from the poorest parts of the world.

Jones et al (2009) explain that, Equity comes from the idea of moral equality, that people should be treated as equals. Thinking about equity can help us decide how to distribute goods and services across society, holding the state responsible for its influence over how goods and services are distributed in a society, and using this influence to ensure fair treatment for all citizens. The contestations over equity and the principle questions of justice, and fairness in international environmental regimes are a critical part of the global environmental governance project, which has pushed for a shared ethical responsibility and political accountability. Yet it remains the fundamental point of impasse within the negotiations, as reflected in the evolution of principles such as CBDR, polluter pays principle, the precautionary principle, equal per capita emissions, in the early stages, towards the critical questions of historical responsibility, north-south differentiation, technology transfer, remunerations for the vulnerable, the common heritage of mankind (CHM), loss and damage mechanism, and an impetus on financial mechanisms to safeguard the weakest, in the face of an impending tragedy. Although the concept of fairness is relative and subjective, it still remains rooted in some basic shared assumptions, which are unavoidable.

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