

## THE DISPROPORTIONATE IMPACTS OF CLIMATE CHANGE ON INDIGENOUS PEOPLE: A JUDICIAL APPROACH

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### Abstract:

The right to a dignified life is closely linked with the right to a healthy environment. A dignified life requires access to basic human rights such as life, health, food, water and sanitation, all of which are depend on a safe clean and healthy environment. Indigenous people worldwide are disproportionately affected by climate change due to their close relationship with the environment and reliance on traditional practices. Due to climate change these people face increased risks from rising temperature, extreme weather events and loss of bio diversity which threatened their livelihoods and cultural practices. The right to a healthy environment is implicitly enshrined under Article 21 of the Constitution of India and therefore it is the duty of the State to provide protection to the Indigenous community who often face grave and life threatening risk of their traditional lands, resources and territories for survival, livelihoods, religious and customary practices due to environmental degradation. In India the right to environment for indigenous people is supported by Constitutional provisions, statutory laws and policy reforms in addition to Article 21. The judiciary has played a significant role in safeguarding the rights of indigenous people and enforcing these rights through landmark judgments. This paper will focus on the impact of climatic change on the lives of indigenous people and their struggle in the field of environmental protection through an analysis of constitutional and statutory laws and the role of judiciary to safeguard their rights.

**Keywords:** Climate Change, Indigenous People, Judicial Approach

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### Introduction

The relationship between humans and nature is profoundly interconnected and indigenous people exemplify this connection through their respect for and sustainable management of environment. Indigenous people are culturally distinct ethnic groups who are the original inhabitants of a region, predating colonization or settlement by others. Globally, there are approximately 476 million indigenous people across 90 countries, representing over 5000 groups. These tribes have a close relation with their natural surroundings. Their traditional knowledge systems, which include thorough awareness of local ecosystems, have guided their sustainable agriculture, resource management and conservation practices. Because of this intimate connection, indigenous people have been able to grow in harmony with their environment, creating a balance within ecosystems, assuring their sustenance and cultural continuity. Over the years climate change has emerged as a severe threat to the well-being of indigenous people. Climate refers to the long term global average of temperature, humidity and rainfall patterns over seasons, years or decade and climate change refers to the significant variation of average weather conditions for example warmer, wetter or drier. Climate change significantly impacts on indigenous people. Some of the

key challenges indigenous people face due to climate change are as follows:

- a) Damage of traditional lands and resources: Rising sea levels, melting glaciers, and deviations in weather pattern threaten indigenous peoples' traditional lands, territories and resources.
- b) Disturbance of traditional livelihood: Climate change affects indigenous peoples' hunting, gathering and fishing practices. Making it tougher for them to maintain their traditional livelihood.
- c) Cultural heritage at danger: Climate change impends indigenous peoples' cultural heritage including their languages, customs and traditional knowledge.
- d) Impact on physical wellbeing: Climate change increases the spread of diseases, heat stress and other health issues among indigenous peoples.

Indigenous people play a critical role in climate change mitigation through their sustainable practices, traditional knowledge and effective land stewardship. Hence, through safeguards not only honors indigenous rights but also strengthens global efforts to combat climate change and biodiversity loss. Their rights are recognized and protected through various international framework, notably United Nations Declaration on Rights of Indigenous People, 2007. This Declaration sets minimum standards for indigenous people rights,

including self-determination, land ownership and free prior informed consent.

India is home to one of the largest indigenous populations in the world and approximately 700 tribal groups are recognized as the original inhabitants of the land. The protection of rights of indigenous people is primarily established through the Constitution, specific legislations and through the active judiciary in India. Articles 21, 51A (g), 48A, fifth and sixth schedules are some of provisions regarding rights of indigenous people under Indian Constitution. The Biological Diversity Act, 2002, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Panchayat (Extension to Scheduled Areas) Act, 1996 are some of the statutes in India regarding rights of indigenous people. Along with these, the judiciary has played a vital role in protecting the rights of indigenous people. Key judgments like *M.K. Ranjitsinh and Ors. v. Union of India* and *Vimal Bhai v. State of Uttarakhand* cases have upheld indigenous people rights over land and natural resources.

#### Objective of the study

- a) The objectives of the study are as follows:
- b) To study the effects of climate change on the lives of Indigenous people in India.
- c) To examine the various mechanisms adopted internationally for protecting the rights and sustainable development of indigenous communities.
- d) To analyse the Constitutional safeguards and national laws in upholding the rights of Indigenous peoples in India.
- e) To put an insight upon the judicial activism in protecting the rights of indigenous people against climate change.

#### Methodology of the study

This paper is based on secondary sources of data such as books, articles, statutes, international conventions and case study. The qualitative method focuses on analytical study of climate change and its impact on indigenous people. The study also focuses on the role of judiciary in upholding the rights of indigenous people.

#### International Perspective of Climate Change and Indigenous Peoples' Right

Indigenous peoples' rights are vital in addressing climate change due to their deep connection to the environment and their role as stewards of biodiversity. Indigenous people possess traditional ecological knowledge passed down through generations. Their practices, such as sustainable agriculture and fire management, offer effective climate adaptation and mitigation strategies. Indigenous lands cover about 25% of the earth surface, holding a significant portion of global biodiversity and carbon sinks. Protecting these lands is crucial for reducing emissions and safeguarding ecosystems. Indigenous people are among the first to face the adverse effects of climate change, such as extreme weather, resource depletion and cultural erosion. This makes securing their rights essential for

resilience and survival. Hence, in international level various conventions, declaration and agreements have taken as initiatives to strengthen Indigenous Peoples' Rights not only protects their right to environment but also enhances global efforts to combat climate change. Some of the key international conventions and declarations regarding rights of indigenous people are as follows:

1. **UN Declaration on Rights of Indigenous People (2007):** the Declaration emphasizes indigenous peoples' right to conserve and protect their environment, including the requirement for free, prior and informed consent before any project affecting their lands or resources (United Nations Human Rights Office of The High Commissionner).

2. **ILO Convention No. 169 (1989):** the Convention recognizes indigenous peoples' Rights to their lands and resources, linking them to self-determination and development (United Nations Human Rights Office of The High Commissionner).

3. **Convention on Biological Diversity (1992):** Article 8 (j) of the Convention acknowledges the rights of indigenous people over their traditional knowledge and practices relevant to biodiversity conservation (Shastri).

4. **The Rio Declaration on Environment and Development (1992):** this Declaration emphasizes the vital role of indigenous people in environmental conservation through Principle 22. This Principle recognizes the importance of Indigenous knowledge and traditional practices in sustainable development and encourages states to support their identity, culture and interests. It also advocates for their effective participation in achieving sustainable development (Shastri).

5. **UN Framework Convention on Climate Change (UNFCCC) (1992):** this Convention acknowledges the critical role of indigenous people in environmental conservation and climate action. They are recognized as a major constituency within the UNFCCC, with their rights referenced in Paris Agreement. The Local Communities and Indigenous People platform established under the UNFCCC, aims to enhance their participation in climate negotiations (CIEL).

6. **Paris Agreement (2015):** the Paris Agreement recognizes the importance of Indigenous Peoples' rights and their role in climate action. The agreement highlights the need of Indigenous knowledge for climate adaptation and mitigation, such as sustainable land management and biodiversity conservation (Swiderska). These are some of the International Conventions and Declarations address climate change and indigenous peoples' rights. In addition to this, Judiciaries worldwide in different cases have increasingly recognized the importance of indigenous peoples' rights in addressing climate change, given their unique relationship with the environment and their vulnerability to its impacts. Some significant international cases regarding climate change and indigenous peoples' rights are as follows:

1. **The Inuit petition (2005):** the Inuit Circumpolar Conference filed a petition with the Inter-American Commission on Human Rights, alleging that the United

States failure to address climate change violated the human rights of Inuit people (Osofsky).

2. **The Kichwa People of Sarayaku v. Ecuador (2012):** the Inter-American Commission on Human rights ruled that Ecuador had violated the rights of Kichwa people by allowing oil exploration on their ancestral lands without their consent (Kichwa Indigenous People of Sarayaku v Ecuador).

3. **Urgenda Foundation v. State of Netherlands (2015):** the Hague District Court ruled that the Netherlands government had a duty to reduce greenhouse gas emissions to protect the rights of its citizens, including Indigenous People (Urgenda Foundation v. State of the Netherlands).

4. **Teitiota v. New Zealand (2015):** the New Zealand High Court rejected a claim by a Kirabati man, Loane Teitiota, who sought asylum in New Zealand due to the impacts of climate change on his home island (Hatano).

5. **Juliana v. United States (2016):** A group of young people, including some indigenous plaintiffs, sued the United States government for failing to address climate change. The case emphasizes on indigenous peoples' rights on the constitutional right to a stable climate and government's responsibility to protect natural resources essential for life (Brister).

6. **Lhaka Honhat Association v. Argentina (2020):** the Inter-American Court of Human Rights held Argentina accountable for violating the right to healthy environment of indigenous people. The Court set standards for rights to water, food and a healthy environment, emphasizing the protection of nature itself (International Justice Resource Centre).

### 7. **Climate Change and Indigenous Peoples' Right in India: Role of Judiciary**

Judiciary has been interpreted broadly the Constitution of India, statutes provisions through different cases regarding the indigenous people rights in India. The Constitution provides several key protections for indigenous people through various provisions to safeguard their rights, autonomy and cultural heritage. The United Nations Declaration on the Rights of Indigenous People (UNDRIP) emphasis the importance of free, prior and informed consent for indigenous people in decisions affecting their lands, territories and resources. It also advocating for indigenous people right to safe and healthy environment. This goal has been reflected through Article 21 of the Constitution of India. The Article recognizes right to a dignified life, which includes the right to healthy environment. The **M.C. Mehta v. Kamal Nath and Others** (1997) 1 SCC 388, case is considered to be a landmark case in Indian Environmental Law due to the fact that Public Trust Doctrine and The Polluter Pays Principle were applied. The court rightly observed that any interference with the environmental component viz. air, water and soil will be amounting to violation of dignified life guaranteed by Article 21 of the Constitution of India. In the subsequent decision, **M. C. Mehta v Union of India** AIR 1987 SC 1086, (also known as **Oleum Gas Leak** case) the Court found the right to live in a healthy environment to be a

fundamental right under Article 21 of the Indian Constitution. Besides this, the Constitution recognizes the rights of indigenous people to their lands and resources through Article 371 and the fifth and sixth schedules. It protects cultural rights of Indigenous peoples through Article 29. The Panchayat (Extension to Scheduled Areas) Act, 1996, provide special safeguards for Indigenous peoples consent. The National Green Tribunal Act, 2010, provides a mechanism for environmental justice and accountability.

The Supreme Court in **TN Godavarman Thirumulkad v. Union of India** 1997(2) SCC 267, provided a safeguard to protect greenery by liberally interpreting the Forest Conservation Act 1980. The Court held that:

- Forest Conservation Act was enacted to check deforestation and applies to all forests irrespective of nature of their ownership or classification and includes the forests designated as reserved, private, or otherwise;
- Prior approval of the central Government is required for any non-forest activity within the area of any forest. The principle of Absolute Liability was established in **MC Mehta v. Union of India** AIR 1987 SC 1086 (The **Oleum Gas Leak** case). Oleum gas leaked from Sri Ram food and fertilizers factory in December 1985 and a case was filed for determining:
- The liability of the enterprises engaged in sale and manufacture of hazardous products; and
- The conditions in which they should be permitted to operate.

The Supreme Court while deciding this case referred to the leading case of **Ryland v. Fletcher** 1861-1873 All ELR (Reprint) 1, but did not accept the principle laid down therein. The Court held that if any damage is caused due to hazardous or dangerous activity then the sufferer is liable to be compensated irrespective of the fact that reasonable care was taken in carrying out the activity. The liability is absolute; there are no exceptions as held in the Ryland case. The aforesaid principle has been given statutory recognition by enacting the Public Liability Insurance Act, 1991 and the National Green Tribunal Act 2010. Thus, the Supreme Court has established the following principles in the aforesaid case:

- i. There should be Sustainable Development.
- ii. Precautionary Principles should be adopted.
- iii. Polluter Pays.
- iv. Public Trust Doctrine.
- v. Save Forests, trees, biodiversity.
- vi. The Rule of Absolute Liability.

In **Vimal Bhai v. State of Uttarakhand** (2020) the court held that the state government must take action to protect the environment and mitigate the impacts of climate change. The Karnataka high court held in the case of **M. K. Vishwanath v. Union of India** (2020), that the Central government must provide compensation to farmers affected by climate change. Again the Delhi High Court ruled that the central government must take action to reduce greenhouse gas emissions and mitigate the impacts of climate change. The fascinating thing about the case of, **M.K. Ranjitsinh and Ors. v. Union of India** (2024), is that it wasn't even a case about climate

change. It started out as a case about protecting an endangered bird called the Great Indian Bustard, which was dying because of solar power plant wires. This case highlights the complexity of environmental issues and how even green solutions aimed at reducing coalmining can inadvertently harm biodiversity. Public interest litigation has become a common avenue for environmental legal action in India because it can be brought by anyone acting on behalf of the public interest, and not just by those directly affected by an issue. In this case, M K Ranjitsinh filed the case to protect the Great Indian Bustard. The High Court considered whether the wires harming the bird could be placed on the ground. But when the case went to the Supreme Court, it took an unexpected turn. The Supreme Court linked climate change and human rights in four ways. First, it interpreted the constitutional right to life to include the right to a healthy environment. This recognized a new legal right to a healthy environment, imposing a legal obligation on the state to ensure citizens are free from the adverse effects of climate change. The ruling also highlighted the right to equality as a crucial element in human rights discourse on climate change. The Court recognized that climate change doesn't affect everyone in the same way, as it deepens existing vulnerabilities. Indigenous communities, women, lower caste people and other excluded communities are the most vulnerable to its impacts. In addition, the ruling linked the right to life to the right to access essential resources such as water, clean air and land. Finally, it touched on the tension between protecting biodiversity while promoting renewable energy and the need to take into account human rights impacts. The ruling makes far-reaching demands, one of which is the need for an overarching climate law. India needs adequate enforcement of existing environmental laws. There are numerous regulations that over the last decade haven't been implemented. The focus has shifted from a precautionary to a compensatory approach. This means that instead of assessing the environmental impact of a project in advance, the government prefers to compensate for the damage after a project has been implemented. Climate and environmental protection are an afterthought. We need to return to a precautionary approach. Finally, socio-economic rights must be an integral part of the effort to address the climate crisis. Without economic justice, we won't tackle the climate crisis, which has its most adverse impacts on Indigenous peoples, women, children and Dalits – people of the lowest caste formerly known as 'untouchables'.

### Closing Observation

The disproportionate impacts of climate change on indigenous people are a persistent human right concern. Judiciaries has significantly contributed in addressing the of climate change on indigenous people through different landmark judgments by applying existing laws to protect indigenous people. The Courts develops new environmental jurisprudence that recognizes the impacts of climate change on the rights of these people. In some cases the courts have ruled in favour of indigenous

people seeking to protect their land from exploitation or holding governments accountable for failing to act on climate change.

Legal frameworks including international instruments like the United Nations Declaration on the rights of Indigenous Peoples (UNDIRP), United Nation Framework Convention on Climate Change (UNFCCC), Paris Agreement offers some protection, but enforcement remains a challenge. Despite of such efforts indigenous peoples often lack representation making it harder for them to advocate for climate justice. These communities are frequently excluded from decision making processes about environmental policies and climate adaptation strategies, further exacerbating their vulnerability. They should be given proper attention so that they may participate in decision making process.

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