



Looking beyond anthropocentrism to mitigate climate change: Striving for earth jurisprudence

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Abstract

In spite of several attempts being made to reconcile human ends with environmental well being, human needs have always jeopardized the health of the natural environment. Carbon emission in the atmosphere affecting the oceans and biodiversity, deforestation, soil erosion, vanishing wetlands and host of other environmental concerns are now at the tip of the neck from where we can hardly find ways to revert back. Therefore time has come to embrace upon new environmental jurisprudence in order to reduce our ecological fallacy. Climate change has emerged as the world's most pressing issue. The overall initiatives being taken for climate change adaptation has not made much effective progress on the formulation of adaptation strategies to effectively address the need. The paper critically accesses the fallout of the present environmental jurisprudence in its endeavor to mitigate climate change crisis and thereafter revamp upon newer radical concept of wild law vis-à-vis Earth Jurisprudence to effectively redress the climatic fiasco.

Keywords: earth jurisprudence, wild law, eco-centrism, indigenous cosmology

Introduction

The issue of climate change and its devastating effects on almost everything has been the most serious concern for the world today. It is now proved beyond doubt that human activities have huge detrimental impact on the environment. Every public opinion poll accepts the reality of anthropogenic climate change and also does not deny that mitigating efforts are not been comprehensive and effective. The problem lies to the fact that environment is deeply inter-linked with the dormant values of economic growth and materialistic urge of human beings ^[1]. The present day rule of law on environmental law making do bear with it the problems grounded on the dichotomy of nature's interest and human interest. Environmental law, so far developed, intended to protect human interests primarily. The concern for the nature is only due to the fact that science and technology has not yet been so advanced whereby human beings can choose for alternative habitat other than this planet and since we humans have to survive here, the planet needs to be protected as well. This approach however cannot fetch the ultimate goal of sustenance since nature is self-regulating and complex and its complexities may lead to such uncertainties which human beings may fail to resettle. Humans objectify nature by framing its own set of rules, yet cannot regulate nature. It is therefore correct to say that humans can only regulate environment quality indirectly by regulating human activities that may influence that quality ^[2]. Thus, often we find that complexities in the nature's own law and of the relations and mutual influences and dependencies between the innumerable elements in the eco-system make the task of environmental regulation a difficult one.

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What is earth jurisprudence

The concept of Earth Jurisprudence undermines the environmental law which prioritizes upon objectifying the environment to reach out human well being. Earth Jurisprudence sets out a theory wherein it claims that separatist attitude of human beings towards nature in their policy making and governance is the root cause for the wide spectrum of environmental hazards and climate change conditions which is eventually going beyond human control to mitigate. Earth Jurisprudence therefore denounces the existing environmental legal system and sets out new fundamentals concepts which strive to delimit human dominance over nature and directly shift laws and governance in support of the Earth community. Earth jurisprudence strives to formulate a concrete goal of eco-centrism wherein it seeks to break through the monopolistic ideology of pro-industrial or pro-developmental concern of human race which is carried out at the cost of exploiting and causing permanent damages to the environment. It therefore tries to bring a new ray of hope which if practically given a comprehensive shape may save the existence in this planet.

It was Thomas Berry, an eminent deep ecologist and Earth Scholar, who laid to the foundation of "Earth Jurisprudence" in a conference held in Arlie, Virginia in 2001, which was attended by deep ecologists, lawyers and Earth advocates ^[3]. In his paper presented titled "The Origin Differentiation and Role of Rights" Berry recapitulated the ideas of Land Ethics

developed by Aldo Leopold ^[4], the philosophy of deep ecology by Arne Naess and George Sessions ^[5] and the pioneering job done by Christopher Stone in “Should Trees Have Standing” ^[6]. In his original work Berry set out few fundamental ideas by stating that “[E]very component of the Earth Community has three rights: (1) the right to be; (2) the right to habitat; and (3) the right to fulfil its role in the ever-renewing processes of the Earth Community ^[7].” To him these rights exist as inherent right for the Earth Community as these rights originate from where the very existence originates and therefore existence determines the rights of the Earth Community.

His vision was therefore to develop a jurisprudence whereby laws emanate from the Universe itself in juxtaposition to what we perceived as laws merely a set of human regulations setting rules for protection and welfare of human beings. According to his theory human beings should be untagged to be designated as the highest authority of the planet having rights over all other forms of species in the eco-system. Thus, “Earth Jurisprudence” or “Great Law” sets out a fundamental principle that human societies are mere parts of the bigger whole, i.e. the Earth Community. The Universe is actually being governed by its own rules and order. Human beings are therefore webbed inextricably into this order. This order is a dynamic living process which maintains the equilibrium of the planet ^[8]. Evolutionary history has proved that species which have tried to go against nature’s greater laws have lost their space in this ecosystem. Thus, time has come for human beings to re-learn the laws of nature and redevelop those senses, which are lost due to our love for materialistic world.

Thus, it can be said that the notions of Earth Jurisprudence has been focusing upon the idea of “Earth Democracy” instead of “human democracy”. Earth democracy is defined as infusing eco-centric philosophies within the premises of human centric democracy and public participation ^[9]. Thus it strives to protest all forms of human centric biasness and brings forth the idea of self-determination not only for humans but also for species having existence in Earth community. Therefore, Earth Democracy is a concept which seeks to eradicate the human dominion and their claim of being superior and recognize that human rights are inter-dependant and co-relative subsets of earth rights. Humans are mere companions of Earth Community in the evolutionary process and therefore have no right to deplete and over-extract the constituents of the planet ^[10].

Thus, incorporation of indigenous cosmology which cultivates complex understanding of human responsibilities over the natural world has been prioritized by wild law proponents. Legal philosophy transcending through ages have talked about human rights over natural world, be it land, animals or rivers. Hardly any discussion has acquired pre-dominance which spoke of human responsibilities towards land. Therefore, with indigenous cultures, Earth Jurisprudence thrives a new vigour by redefining set of reciprocal rights and responsibilities between humans and other species as well as between humans and other non-living elements of the Earth as is embedded in the thinking of the indigenous culture ^[11].

In response to Thomas’s work, another environmentalist Cormac Cullinan formulated the idea of ‘wild law’ which called for a direct shift of laws and governance in support of

the Earth community. The fundamental idea of wild law is to make a movement towards recognition of the legal rights of every being existing in this planet ^[12]. Legal recognition of rights is essential so as to recognize rights of any being in a bilateral legal relation. Recognition of the legal right of the nature can actually serve their best interest. Wild laws are thus expressed principles which derive its origin from world environment itself. These principles drive to build up constructive and practical tools which the lawyers and advocates can adhere to while practically approaching for the concern of the environment. They seek to build a “legal thread” what weaves all together in the aspect of governance including economics and human structure of governance ^[13]. According to Cormac Cullinan, “Law, after all, is intended to bind, constrain, regularise and civilise... [it is] designed to clip, prune and train the wilderness of human behaviour into the manicured lawns and shrubbery of the civilized garden ^[14].”

Present rule of law to mitigate climate change

The concept of rule of law on climate change is a highly contested one and there are differential understandings as to what rule of law and related principle of legality should be applied to address the pressing need. The proponents of Rule of Law believe that the fundamental of Rule of Law lies on the predetermined legal rules that restrain arbitrary exercise of power by someone who is subjected to the law including the State. The present rule of law on climate change emerged to address the climatic situation in the early 1990s. The field of climate change law exploded within just two decades, roughly with the adaptation of the United Nations Framework Convention on Climate Change (UNFCCC) who had to play the initiator role for the purpose of developing an international convention relating to climate change. UNFCCC was a significant outcome of the United Nations Conference on Environment and Development, Rio de Janeiro in June 1992 and the UNFCCC came into force on 21 March 1994 ^[15] which tried to achieve the objective of stabilizing the emission of greenhouse gases “at a level that would prevent dangerous anthropogenic interference with the climate system” ^[16]. Emphasis was laid upon the sustenance of the ecosystem and enabling economic development in sustainable manner.

Kyoto Protocol, an international agreement linked to UNFCCC, which was entered into force on 16th February, 2005 looked for stipulating binding emission targets against the 1990 level for the Annex I countries and frame targets to be met. Kyoto Protocol was based on the Berlin Mandate, by which it was decided at the first Conference of Parties (COP) that ‘appropriate action’ for would be initiated for the period after 2000 by the acceptance of a protocol or another legal instrument at its third session ^[17].

The detailed commitments of Annex I parties were set out in Annex B to the Protocol, according to which during the five years of the commitment period from 2008 to 2012, those parties will have reduced their emissions by an average of 5.2% from 1990 levels ^[18], whereas the non-Annex I countries had no obligation.

Thus these initiatives built up a climate change law making process which focused upon fragmentation and multilevel governance. The differential approach to entrust responsibilities upon the Annex I countries had actually been

arbitrary with not much rational basis. As a result of which this mechanism failed to extract reduction commitments from India and China, who were understood to be few of the biggest emitters of green house gases. This became the basis of United Nations to sideline their obligations under the Kyoto Protocol and UNFCCC [19]. In 2002, the eighth Conference of Parties (COP) ended with a declaration that clearly sidelined the obligations of the developing countries to declare their emission targets. Thus disputes over common but differential responsibilities (CBR) almost made it a redundant mechanism while the global warming continued to spread its demonic wings. The first commitment period under the Protocol which ended in 2012 did not bring about much change to the climate conditions. The second commitment period, shall be ending by 2020, has also fallen short of what is needed to mitigate and adapt to dangerous climate change. Moreover only 74 countries had accepted binding targets under the second commitment period of the Kyoto Protocol by the end of 2016, and current projections for average global temperature rise by the end of the century place warming well above the 1.5 degrees to 2 degrees limit necessary to avoid dangerous climate change [20].

In the meanwhile, Copenhagen Climate Change Conference was held on the 15th session of the COP of UNFCCC, after the failure of action plan agreed in Bali in the 13th COP. The Conference tried to advance negotiations on the infrastructure needed for effective global climate change co-operations and significantly progress in narrowing down options and clarifying choices to be made on key issues later on in the negotiations. Copenhagen Accord did not contain commitments to emission reduction to achieve the goal. The Accord was not adopted by the Conference of Parties due to its alleged unorthodox drafting procedure and least reference to the roadmap to be followed since the Bali Action Plan. There had actually not been much political will among the world leaders to come to any form of negotiations before the Conference. It all ended up in political blame game as it was being alleged that the Accord was the manifestation of the comforting ideas put forward by United States and BASIC group of countries which included Brazil, South Africa, India and China.

After years of deadlock to progress on climate change adaptation and mitigation, in 2015, 197 countries of UNFCCC concluded a new agreement on climate change in its 21st Conference of Parties at Paris by advancing Paris Agreement of Climate Change for Sustainable Development. Through this Agreement the parties sought to adopt strategies so as to keep the global temperature well below 2 degree Celsius, pursuing efforts towards a 1.5 degree Celsius limit above pre-industrial levels [21]. Pursuance was also made towards increasing adaptation to climate impacts and fostering resilience and also to harness finance flows for low greenhouse gas (GHG) emissions and climate-resilient development [22]. The Convention relooked upon the financial strategies to bind all nations and make them contribute towards adapting and mitigating climate change conditions. It adopted a bottom top approach by thrusting obligations upon 188 countries to submit climate action plan to the UNFCCC up to December 2016, as Nationally Determined Contributions (NDCs) to the global response to climate change [23]. NDCs aiming to

achieve long term goals to mitigate climate change, embody efforts by each country to reduce national emissions and adapt to the impacts of climate change. national emissions and adapt to the impacts of climate change [24]. Article 4 of the Paris Agreement obliges each Party to prepare, communicate and maintain successive nationally determined contributions (NDCs) that it intends to achieve. Parties are also required to pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions [25].

However, in spite of having almost the world consensus on mitigating and adapting climate change situations in Paris Convention, there are several pitfalls in the agreement. It has been more of a gentleman's handshake among the States to develop a common consensus with no practical approach to fulfill the commitments. The Convention did not lay down any framework as to how the countries should work upon to fetch their goals. Furthermore, the lenient attitude reflected in the Paris Agreement creates a vacuum where countries hardly can have any answerability for non-compliance with the terms.

Embracing earth jurisprudence

It is now been well understood that ecological losses are so rampant that in case we do not opt for a radical approach that work to keep society in compliance with Nature's own laws to effectively mitigate ecological challenges, the planet shall perish, perish forever. We have been to such a threshold that even new environmental law cannot assure to effectively confront the monumental challenges ahead. Climate change is an imminent peril and one of the serious concerns whereby only mitigating strategies shall not work unless we go for adaptive mechanisms. Climate change from continued greenhouse gas pollution threatens to melt ice sheets over Greenland and at both poles, wipe out coral reefs, turn the Amazon forests into a vast desert and obliterate huge number of species from the planet in near future. Rising sea levels that inundate coastal areas worldwide trigger desperate migration of bio-diversity many a times leading to their extinction and if not so then a complete metamorphosis which threatens the existence of other species in the oceans [26].

Climate crisis therefore poses an unfathomable urgency because what scientists and experts call is that it is just a tip of the ice-berg. These thresholds, caused by human carbon emission, trigger dangerous feedback culpable for unraveling the climate system of the planet. It continues as a vicious cycle despite of diligent subsequent efforts being made to reduce carbon emissions. Therefore to put it bluntly, we are in a time zone where only a narrow window remains open to act before tipping points foreclose all the feasible options. All trials made in developing an environmental law which can address the issues concerned have proved to be erroneous. Given the inadequacy of the present framework, environmental scholars find it timely to look for a fresh thinking which shall be having a radical approach to environmental governance and policy making. It is being argued that economical profit driven environmental policies cannot thrive for environmental protection and its well being. Many critics do believe that UNFCCC framework has not focused on the root causes of environmental crisis but on the market driven corporate led economic model [27].

Cormac Cullinan, who propounded the theory of Wild Law,

laments that States hardly acknowledge the fact that symptoms of environmental crisis cannot be cured without addressing the root causes for the same. What we perceive as ecological crisis are actually the mere symptoms of adopting erroneous philosophical approach to address environmental concern [28].

Climate governance through earth jurisprudence: The principles to be laid down

The climate law under the present governance mechanism is only restricted to human centric ideas, whereas the Earth Jurisprudence suggests to embrace a paradigm shift towards eco-centric to law and, ultimately, the Great Jurisprudence. Therefore, the first change towards the reform shall be one from planet manager to being a planet facilitator. A global consensus is therefore required for building up of the rights of nature and exploring more avenues of Great Jurisprudence to further develop the same and incorporate them in our legal education. This is the only way to develop earth centred governance.

There has been a ground breaking work of the international network of lawyers and Earth advocates who created the Global Alliance for the Rights of Nature (Global Alliance) [29]. The Global Alliance was created at the World People's Congress for Climate Change and the Rights of Mother Earth in Cochabamba, Bolivia in 2010 [30]. It is a network formed out of diverse indigenous and non-indigenous groups from all across the world who all have the motto to establish earth centred governance mechanism who know preserving the indigenous knowledge [31].

This Network has taken two major initiatives with an ambition to establish Earth Jurisprudence by overriding anthropocentrism. It came up with the declaration named Universal Declaration for the Rights of Mother Earth (UNDRME) that recognises the rights of the non human entities to exist, thrive as well as to evolve [32]. This Declaration however did not receive formal recognition in the international law domain but it represents the agreed values of many people belonging to civil society. It is being reported by the Global Alliance for the Rights of Nature that over 35,000 people from more than 100 countries participated in drafting the Declaration [33]. The Declaration was also presented to the United Nations and was also featured prominently at the Rio+20 UN Conference on Sustainable Development held in June 2012. The Final Declaration of the Rio+ 20 People's Summit called on "governments and people of the world to adopt and implement the UNDRME." Even though the final Declaration did not incorporate the provisions of UNDRME, yet it categorically specified how many of the member States have recognised the rights of nature within their environmental legal framework [34].

The second initiative of the Alliance has been the creation of the International Rights of Natural Tribunal [35]. Since many of the members participating in the Global Alliance raised concerned about the growing atrocities of the domestic laws which blatantly denied the rights of the natural world and also facilitated in inflicting damage to them, they decided to propose for a Global Tribunal which shall hear out matters concerning the rights of Nature and appropriately recommend the remedies and take care of the restoration process. The

tribunal also aim to create awareness and educate people about the potential outcomes of Earth Jurisprudence [36]. Till date, the Tribunal has been effectively striving for condemning egregious violations of rights of the nature. The Tribunal, in its verdict in 12 cases, has found corporations, United Nations and some Governments guilty of violating nature's rights [37]. In the Rights of Nature Tribunal Press Conference held during the UNFCCC COP 20 in Lima, the Tribunal reported the same holding a view that climate change represents a systematic violation of rights of nature. Key responsible parties are governments, transnational corporations, the UN system, and the capitalist system [38]. The address also mentioned that one needs to get deep into the understanding of its grievousness. UNFCCC has been blamed to have been concentrating upon the structural causes of climate change. The issue needs far more attention than mere emission cuts and national contributions for the same. We need to look into the quantum of consumptions, patterns of productions and determine our limitations to economic development so as to sustain the limited ecological resources. Very recently on November, 2017 the Tribunal heard 7 cases [39] from a new socio-economic perspective based on the interdependence between humans and nature. One of the cases being based on the violations of the rights of nature caused by fracking, nuclear energy and the consolidation of fossil fuels in North America [40]. The Tribunal on collectively deciding upon the matter demonstrated that global and national climate change commitments cannot be met without fundamental changes to the legal systems which legalise the activities that cause climate change and the destruction of the ecological systems on which life depends [41].

Thus, it is pertinent to note here that these initiatives even through are in its formative stage, the pace it has acquired in the recent times, is sure to bring about a paradigm shift. Since 2009, the General Assembly has adopted nine consecutive resolutions on Harmony with Nature including one designating 22 April as International Mother Earth Day [42]. On 21st April, 2017, General Assembly had conducted an interactive dialogue on harmony with nature in commemoration of International Mother Earth Day. General Assembly has also adopted Resolution vide Resolution no. 70/1 on 24th September, 2015 in its seventieth Session entitled "Transforming Our World: the 2030 Agenda for Sustainable Development" to ensure sustainable consumption and production patterns for every State to build harmony with nature. Resolution no. 70/208, adopted by General Assembly in December, 2015 has specifically acknowledged the importance of Earth Jurisprudence to advance harmony with nature [43]. The experts' reports advanced during the dialogue mechanisms of the Resolutions so passed stressed on the fundamental importance to determine the co-relationship between humans and nature. It is the urgent need of the hour to develop consciousness among the citizens and the members of the societies all across the globe as to how one should interact with the non-human world and progress towards implementation of Sustainable Development Goal for Agenda 2030 [44].

Another approach in the line of Earth Jurisprudence is to move away from internationally negotiated agreements to local level stewardship. Localisation of Earth governance shall

lead to incorporation of indigenous cosmology which shall cultivate complex understanding of human responsibilities over the natural world. In *Wild Law*, Cullinan devotes considerable space to considering why a shift to communities is desirable ^[45]. He argues that the diversity and creativity of local communities are under threat from the homogenization of cultures and governance structures ^[46]. Autonomous, democratic and participatory bodies governing small areas based on distinct biological, geographic and cultural characteristics can actually effectively redress the climatic problems. This decentralized bottom top approach therefore needs actual transfer of rights to the indigenous communities. Once the powers are legally been transferred communities would be able to take action on behalf of the environment against various potential greenhouse gas emitting activities. Initiatives are being taken by “wild lawyers” to depower the corporations and delegate powers in the hands of the local bodies to effectively protect environment focusing on environmental good rather than human good.

However, it can be contested that climate change is an international concern and local actions without any formative mechanism established in the global level cannot effectively address the problem, yet it is highly proposed that local actions to eradicate illegal coal mining or mining of other natural resources, deforestations, landfilling activities or other activities which affect the climatic conditions, is needed to be adopted. At least measures should be taken to establish rights of the local bodies to decide the best interest of the ecosystem free passing the corporate giants who only seek to look for monetary value at the cost of the environment.

Thus time has come to embrace Earth Jurisprudence by abandoning the market solution to the climatic problem. The jurisprudence developed so far has been a non-concrete, impractical, market orientated where the big political players take false oath with no intention to fulfill their commitments.

While laying down principles of *Wild Law*, Cullinan has pointed out that conceptualizing land as a commodity in the hand of private players actually legitimizes the exploitation of natural Earth by human beings ^[47]. Therefore, commodification of natural resources which includes carbon is actually facilitating the human beings to exploit nature. Thus embracing Earth Jurisprudence will certainly curtail the rights of the human beings and make them more responsible towards other communities of the planet ^[48].

Conclusion

There is no denial of the fact that it is difficult to adopt a new jurisprudence in a radical way. Yet, pragmatism in the form of Earth Jurisprudence is seriously advocated. As the advocates of *Wild law* propose, “we may have to “do everything that is possible, and the impossible too” ^[49]. There is no denial of also the fact that earth jurisprudence is eventually gaining acceptance. As has been discussed, initiatives have been taken to incorporate these ideas in the present international environmental law. We need to be optimistic, progressive and radical in our future course of actions and have to understand that earth jurisprudence and its further connotations if any is the only mechanism in our hand at present by which we can guarantee sustenance. If the planet perishes, human beings are also destined to perish. Thus, the core idea is to eliminate

financialisation of natural resources and ecosystem by large that enable Nature to be privatised, commodified and traded in financial market systems.

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