

# Climate Justice, Constitution, and the Court: A Quick Reflection on the Right-Based Approach

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## Abstract

*Climate change impacts on the livelihood of people. Climate change can be studied in constitutional and legal context. This paper focuses on the rights provisioned in the constitution and law for ensuring the climate justice. The challenges of Climate change in Nepal is highlighted with special focus on the constitutional provisions of fundamental rights, directive principles and state policies. This paper addresses the questions about the role of law for climate justice, constitutional provisions about the green transition and the role of Supreme Court in this process. The conclusion of this paper rests on law-science inter face that plays role in securing justice to people. This paper helps understand the sustainable development as provided in The Constitution of Nepal. It even highlights the need of the international environmental courts to address the accountability gaps witnessed in international climate negotiations especially in areas of climate finance, loss and damage and tardiness in transitioning to carbon neutral economy. The gaps also create obstacles in securing climate justice at the domestic level. So the policy makers at the domestic level need to address for safeguarding the environmental safety for all the generations.*

## Introduction

Climate change is essentially a science led discourse (The Paris Agreement, 2015)<sup>2</sup>. However, it is also studied in the context of the existing and evolving constitutional and legal system. This is

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because of the deep impact posed by climate change on the life and livelihood of the people. The paper reflects on the rights embodied in the constitution and law see how the legal regime can contribute to green transition by ensuring climate justice. For this purpose, the paper first highlights the challenges brought about by climate change in Nepal. Following this, it presents constitutional highlights with special focus on fundamental rights and Directive Principles and State Policies (DPSPs). It then addresses pointed questions such as: a) the role of law in securing climate justice; b) whether or not the substantive conception of environmental rights makes a difference; c) whether or not the constitution has anything to say about green transition; and d) whether or not the Supreme Court assist this process by providing safeguards of fairness and legitimacy. These questions are relevant not only for lawyers but also for policy makers and others interested in law and justice. The paper concludes by highlighting how the law-science interface could be employed for securing justice to the people. It is hoped that the paper will contribute to better understanding of the concept of “ecologically sustainable development” promised by the Constitution to the people of Nepal.

### **Climate Change and Nepal**

A country of moderate physical size in the Himalaya system, Nepal is bordered by two giant neighbors –China and India, who are gigantic not only in terms of their physical size or population but also in terms of Green House Gas (GHG) emission. They along with the USA contribute 42.6% emissions while the bottom 100 countries account for only 2.9% (Friedrich, 2023).<sup>3</sup> Nepal falling in the bottom 100, emits only 0.027%. However, today she bears brunt of climate induced devastation such as flood, cloud storm, dusty winds, melting of the mountain, permafrost and glaciers melting, massive floods even in traditionally rain-shadow areas, upward shifting of tree-line and vegetation commensurate with shifting climate boundaries (Taylor, 2025). Due to temperature rise, one witnesses the spread of malaria and dengue in high mountain areas (Poudel, 2023), aggravated fires creating havoc to life and livelihood of the people. Reduced productivity and crop failure and resultant ecological imbalance have changed the face of Nepali mountains. If climate change, biodiversity loss and pollution are prominent existential crises facing humanity, their impacts are intensely visible in Nepal. A study by the government of Nepal reveals that climate-induced disasters account for around sixty-five percent of annual disaster-related deaths (Ministry of Forest and Environment, 2021; Bhattarai et al., 2024). The average annual economic loss from these disasters is approximately 0.08

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<sup>2</sup> The warning bell on devastating impact of climate change was first raised by scientists. Since then heavy reliance is put on “best available science” while exploring the possible way forward. The importance of science is illustrated in Paris Agreement Science.

<sup>3</sup> Currently, China is the first and India the third emitter of GHG gases

percent of the GDP (Ministry of Forest and Environment, 2021). The injustice caused by climate change is deeply felt by the Secretary General of the UN who after visiting mountain region of Nepal in October 2023, said the following in the Nepali Parliament:

*What is happening in this country as a result of climate change is an appalling injustice and a searing indictment of the fossil fuel age. I am deeply concerned by those communities in Nepal facing the brutal impacts of the climate crisis. . .* (Bhattarai et al., 2024).<sup>4</sup>

The above being some of the challenges brought about by climate change, Nepal is also undertaking a bit of good work contributing to the mitigation of its effect. First among them is the progress in the generation of renewable energy. It is currently producing over 3000MW of renewable energy (Energy Development Roadmap, 2081) in the form of either solar or hydro-electricity. She has even begun to export surplus electricity India and Bangladesh. Second, is the EV boom in Nepal. Nepal had first introduced electric vehicles in 1975, and battery-run-auto rickshaw 1993. Today EVs dominate the auto market in Nepal (Prasain, 2025)<sup>5</sup> comprising around 70% of the net import of vehicles. The generation of surplus electricity has changed Nepali homes resulting in the introduction of induction stove and other utilities. Third, Nepal has made considerable progress in expanding her forest cover which now reaches to around 45 percent of the land mass. Against enormous challenges facing Nepal, these figures create some amount of optimism.

### **The Constitutional Landscape**

Nepal promulgated a new constitution in 2015 introducing inclusive democracy in the country. Now, inclusion is a very important component of the Nepali constitution (The Constitution of Nepal, 2015, Art. 4, Art. 6, Art. 18, Art. 24, Art. 42; Bhattarai, 2022). The constitution also contains a bold framework of enforceable rights including civil and political, economic, social, cultural and environmental rights. The Constitution requires the state to enact necessary laws within three years for the enforcement these rights (The Constitution of Nepal, 2015, Art. 47). The framework of rights very clearly keeps the people and the state in right-duty relation, where the state is required not only to protect and respect the rights but also act as positive mover and capacity builder. When the rights are guaranteed but no law is enacted within the stipulated time, people can file a petition to the Supreme Court, which again is a fundamental right (The

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<sup>4</sup> Antonio Guterres, October 31, 2023 cited

<sup>5</sup> The imports of EV skyrocketed by almost 200% in the last two fiscal years. In FY 2023/24, the total imports were 11,701 EVs, with 8,938 (76.4%) from China, while there were 2763 EV imports from other countries.

Constitution of Nepal, 2015, Art. 46)). At another level, the Constitution provides for a more or less independent judiciary both structurally and functionally. The Supreme Court is recognized as the guardian of the constitution, vested with the power of judicial review of the law (The Constitution of Nepal, 2015, Art. 133, 137). It is empowered to give final interpretation to the Constitution (The Constitution of Nepal, 2015, Art. 128(2)). Given that independent and competent system of justice is a promise of the constitution (The Constitution of Nepal, 2015, Preamble), the judiciary is expected to realize this promise by securing justice in its broadest amplification so as to give direction to the constitution.

This being the general framework of rights, on specific aspect of environment, Article 30 of the Constitution guarantees every citizen the right to a clean and healthy environment. Here, the word “healthy” needs to be taken note of. Put simply, a healthy environment is a prerequisite to the enjoyment of human rights. As an unhealthy environment causes environmental harms it contributes to the violation of rights which the constitution takes note of. This being so, the constitution does not stop here. It also creates entitlement for compensation to the victims of “environmental pollution and degradation” (The Constitution of Nepal, 2015, Art. 30(2)). As it is a common knowledge that climate change contributes to “environmental degradation”, there is a possibility of the people praying to the court for compensation for climate change induced environmental degradation impacting on the rights relating to food, health, and loss of property due to fire, flood etc. Even though due to varieties of factors influencing the enjoyment of rights, measurement of per-capita climate induced loss may be difficult, in appropriate cases where justice demands compensation, the court may take a commonsense approach and award compensation to the victims of environmental degradation. Given the desperate impact on the poor and the marginalized resulting in their added vulnerability, the Constitution opens up social-justice-net and requires the state to take special legal measures for the “protection, empowerment and development” of such group of people. Justice to such people is based on equity which is a cardinal principle of the constitution. The protective measures thus envisaged may cover the whole life span from conception to the death of the climate victims (The Constitution of Nepal, 2015, Art. 18(3) and Art. 38(5), 40, 42, 43).

This being the situation for enforceable rights, the issue of protection of environment and mitigation of the effect of climate change also needs to be seen in the light of Directive Principles and State Policies (DPSPs) enshrined in Part IV of the Constitution. Though the provisions in this Chapter do not use the term “climate Change”, when one looks at various policy stipulations one can very much say that the constitution is informed of the impact of climate change. And therefore, it requires the state to pursue the path of ecologically sustainable development taking note of environmental degradation on land, water and forest resources. As for instance, the constitution calls for protection of land, farmers and increase of agricultural

productivity through appropriate land use policy; modernization and diversification of agriculture. It also calls for development of balanced and environment friendly sustainable physical infrastructure. The conservation, protection and environmentally sustainable use of natural resources, and equitable sharing of benefits according priority to local people, is another directive of the constitution. It also calls for production and development of renewable energy, its reliable supply for meeting basic needs of the citizens; control of water-borne diseases, management of rivers and development of reliable and sustainable irrigation. Similarly, it requires the state to work for conservation, promotion, and sustainable use of, forests, wildlife, birds, vegetation and bio-diversity; mitigation of risk to environment from industrial development, maintenance of appropriate forest cover for ecological balance; adoption of appropriate measures to abolish or mitigate existing or possible adverse environmental impacts on the nature, environment or biological diversity. Pursuance of the principles of environmentally sustainable development taking note of the principles of polluter pays, of precaution in environmental protection and prior informed consent is a clarion call of the constitution. It also requires the state to make advance warning, preparedness, rescue, relief and rehabilitation in order to mitigate risks from natural disasters (The Constitution of Nepal, 2015, Art. 51 (e) (g)). As mentioned above, these stipulations reveal that the constitution is informed of the challenges and impact of climate change and so require the state to pursue the path of “ecologically sustainable development”. This is the promise of the state to its people and obligation consciously taken for the enforcement of rights guaranteed in the constitution.

Even though directive principles are not enforceable by the Courts, one finds the judiciaries in South Asia including Nepal taking common position that the DPSPs are not vacuous jargons; the government is required to give effect to them as they add force and vitality to fundamental rights (Yogi Naraharinath et al. v PM Girija Prasad Koirala and Others, 2053 B.S.)<sup>6</sup>. This highlights the importance of DPSPs in giving amplified and contextual meaning to fundamental rights. The approach is in line with the approach taken by South Asian Courts. For instance, in the famous *Minerva Mills* Case the Indian Supreme Court said: “harmony and balance between fundamental rights and DPSPs is an essential feature of the basic structure of the Constitution” (*Minerva Mills Ltd v Union of India*, 1980). Other courts in South Asia have also made similar observations regarding the constitutional importance of DPSPs (*Seneviratne v University Grants Commission*, 1979; *A. Wahab v Secretary, Ministry of Land and Others*, 1996; *Masdar Hossain(Md.) and Others v Bangladesh*, 1999; *Bhattarai*, 2012). In a nutshell, while constitutionalism is the bedrock of present constitution, it promotes equality, equity and

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<sup>6</sup> (Re-protection of environmental heritage)

fairness, access to justice and enjoyment of rights. The alignment of environmental rights with inclusivity, sustainability, and other fundamental rights facilitates the evolution of **environmental constitutionalism** now forming the foundation of the Nepali constitutional order (Bhattarai et al., 2024).

## **Law, Justice and Climate Change**

### **What role does law play in securing climate justice?**

Here, like the pantheons in legal field I also take view that if law has a purpose it is justice, and only justice. And in the context of environmental challenges, it can be said that if the law has a purpose. it is to impart justice to humans and the nature. As mentioned earlier, even though environment and climate change are science led discourses, law has a significant role to play in securing climate justice, because rights, equity, and fairness in the benefits and burden are in sharp focus here. And, when we talk about justice, it is not divine justice but legal justice. This is more or less explained in *Asghar Leghari* where climate justice in the context of climate change is epitomized as:

*[A] clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society who are unable to approach this Court (Asghar Leghari v Federation of Pakistan, 2018, Para 11). ”*

*“Climate Justice links human rights and development to achieve a human-centered approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly. Climate justice is informed by science, responds to science and acknowledges the need for equitable stewardship of the world’s resources (Asghar Leghari v Federation of Pakistan, 2018, Para 21)”*

I am of the view that if climate justice has a human face- it speaks through the mouth of judges and revolves around considerations such as rights and obligations, fair treatment, participation, health and well-being of human and nature, promotion of equity and mitigation and alleviation of vulnerability and good governance. When I say this, I do understand that many things, of course, depend on how the legal system is premised and framed, and what powers given to the judiciary. But as a student of law, I consider rights as a-priori; something supra-constitutional. Therefore, when I look at the constitution and laws of Nepal, beaconing the pathway towards ecologically sustainable development through right-based framework recognizing the need for a healthy environment, my first instinct tells me to make those values realizable. As seen above, the Lahore High Court in *Asghar Leghari* accorded primacy to humans and took a right based approach.

Secondly, when one talks about the role of law, it needs to be seen in the light of the rule of law and the embodied normative order. The rule of law recognizes the supremacy of the constitution. It emphasizes that every action of the state and non-state actors should have a legal basis and be guided by values of democratic accountability. To illustrate this further, one can take Art. 75 of the Constitution of Nepal, which states, “The executive power of Nepal shall, *pursuant to this Constitution and law*, be vested in the Council of Ministers”. The provision essentially means that the executive draws its power from the constitution and laws. So it should respect the constitution and laws including the rights guaranteed. The executive cannot bypass them while exercising power. It is here we see the convergence between the rule of law and the role it plays concerning the challenges posed, among others, by climate change. Now, with horizontal implementation of rights getting popularity in democratic countries, law can be an effective tool also to bind non-state actors as well. Non-state actors (natural and legal persons) are also required to respect rights of the people (Keshar Jung KC and Others v Ministry of Health and Population and others, 2077 B.S.) . In view of this, it is very much possible to define and determine the space and limits of their activities vis-à-vis the right of the people through the regulatory framework created for this purpose.

Thirdly, law plays the role of positive catalyst and becomes useful in creating awareness, building capacity, setting standard, prioritizing activities and facilitating the introduction of science, technology and knowhow, creating forward looking and robust institutions and promoting good governance.

Fourthly, the role of law becomes even more crucial in addressing non-compliance and omission on the part of the government which is so palpable in South Asia.

Finally, as understood in the context of South Asia, the rule of law is a rule of just, fair and reasonable law. And in the context of climate change it is the rule of science informed law. Where it is not so and where there is vacuum, the courts can issue mandamus to enact laws for the protection of climate concerning mountain range or the river system and the river based civilization. The courts have recognized the rights of nature, her right to exist, thrive and reproduce. This has been recognized in Nepal and in other jurisdictions in South Asia (Prakashmani Sharma and Ors v PM and Council of Ministers and Others, 2079 B.S; Lalit Miglani v State of Uttarakhand, 2015; Turang River Case, 2017). On this basis, it can be very confidently said that law has a role to play in securing climate justice.

### **Can Substantive Conception of Environmental rights make a difference?**

This requires us to dig into history of environmental justice. Let me recapitulate the scenario of the 1980s and 1990s when the Indian Supreme Court began extrapolating rights to cover basic

necessities of life. In Francis *Coralie Mullin* (Francis Coralie Mullin v the Administrator, 1981) while giving expansive meaning to the right to life the Court said:

*“The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human being. The magnitude and components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter include the bare necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self.”*

Right to life was further extrapolated in *Subash Kumar* in 1991 to include the right to live in a pollution free environment (Subash Kumar v State of Bihar AIR, 1991; MC Mehta v Kamalnath, 2000).<sup>7</sup> In Nepal the SC in the landmark *Godavari Marble Case*, said right to environment is intrinsic to the right to life (Surya Prasad Sharma Dhungel v. Godavari Marble Industry, 2049 B.S). Other courts in South Asia have also followed this line of interpretation<sup>8</sup>. As the time passed by, a host of ESC rights such as the right to food, clothing, shelter, education etc., have been taken as part of the right to life. While giving expansive interpretation of right, the courts also eased *locus standi* rule and opened up access to justice providing chances of filing PIL to the voiceless minions in low visibility areas of society, who were not able to use the court services due to economic, social disabilities or other constraints. These developments by the Courts and other courts have “dismantled the insurmountable wall of procedure and opened the door for issues that had never reached them before (Muralidhar, 2008).”

While saying this one need to be also aware that the right to environment did not get immediate welcome especially in the western world where, to my mind, Hohfeld’s matrix of right duty correlation dominated legal thinking (Gupta, 2022). This is despite the Stockholm Declaration (Stockholm Declaration, 1972) using the right vocabulary, and the Rio Declaration (Rio Declaration, 1992) putting sustainable development at the center. The debate is beautifully

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<sup>7</sup> Though the right against poisoning of rivers was discussed by *Rachel Carson* in her book *Silent Spring* in 1962 it took around 30 years to get entry into domestic practice. Where the SC observed: “Right to live is a fundamental right under Art 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art, 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.” In the second case, SCI further said:” Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for “life” would be hazardous to “life” within the meaning of Article 21 of the Constitution”.

<sup>8</sup> For instance *Sheela Zia* (Pakistan), and *Moiddin Faraqui* (Bangladesh), *Desanayake v Gamini Jayavikrama Perrera - Eppewals Phosphate mining Case* (Sri-Lanka)



captured by Alan Boyle, Michael Anderson and others in the book titled *Human Rights Approaches to Environment* (Boyle and Anderson, 1994) in the early 1990s. The general tone and tenor of the book, as I recollect now, was linking human rights and environment was difficult and might not even be desirable. The dichotomy has not totally died down as the North-South divide still persists, seen in various submissions/arguments made to the ICJ currently deliberating on state obligation in respect of climate change (IISD Earth Negotiation Bulletin, 2023). But as a law person working in domestic legal environment, I see that the right approach is overwhelmingly present in state practice. Now over 180 countries have recognized environmental rights either in their constitutions or laws or court decisions or through treaties of which they are parties (Boyd, 2013). Besides, a growing acceptance of the right approach at the international level revealed in the UN in 2022 the Right to a Clean, Healthy and Sustainable Environment, and decisions of regional human rights bodies and tribunals (IISD Earth Negotiation Bulletin, 2023)<sup>9</sup> will further reinforce the state practice, leading to the implementation of this right in very many ways in different countries. Therefore, when I am asked whether or not the substantive concept of environment rights makes a difference, my answer is an emphatic yes. Even though the polemics is not free from swings of the courts in different directions in approaching eco-centrism and anthropocentrism, it is submitted that the court must avoid the esoteric discussion on “ism”. Instead, it must concentrate on the vulnerability of the people and focus on equity, equality, fairness and justice and help the country to realize its constitutional promise by imparting justice to the people. I have some practical reasons for believing that recognition of the environmental rights makes a difference. My reasons are as follows:

First, substantive right to environment is linked to other substantive rights such as the right to life and dignity, right to food, property, housing, health, education and culture. The recognition of the right to environment helps to enhance protection, respect and fulfillment of those rights through organic interpretation.

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<sup>9</sup> Most recently, an advisory opinion of the International Tribunal for the Law of the Sea (ITLOS) confirmed that States have to prevent, reduce, and control marine pollution from GHG emissions and protect and preserve the marine environment from climate change impacts and Ocean acidification. Another advisory opinion is pending at the Inter-American Court of Human Rights on the individual and collective obligations of States to respond to the climate emergency within the framework of international human rights law, specifically under the American Convention on Human Rights and other inter-American treaties.

Second, at the procedural level, recognition of this right reinforces the right to inclusion, and participation in decision making, and help in avoiding externally imposed injustices.

Third, this right should also be seen in the light of government accountability which is more known for omission than protective action, especially in situations where impact is on marginalized sections.

Finally, the right derecognizes the pessimistic attitude of trade-off between economic development and environmental protection. It requires us to stand on the side of reducing destructive carbon footprints on mother earth.

### **Does the constitution have anything to say about green transition?**

To my mind the overall orientation of the Paris Agreement is green transition while keeping note that the transition remains just, fair and equitable. Various expressions used in the Paris Agreement such as principles of equity and CBDRRC, integrity of the ecosystem, special circumstances of countries, vulnerabilities, climate justice indicate towards green transition. Further, the Agreement clearly mentions that States may be affected not only by climate change but also by the impacts of measures taken in response to climate change (The Paris Agreement, 2015, Preamble). If the Agreement is read along with prep-com documents, I do believe that equity, justice, fairness, mitigation of disparate impact to marginalized section, and obligation to protect human rights and the right to participate in decision making while transitioning to carbonless economy would be the core component of green transition.

If one juxtaposes climate justice with the constitutions of South Asia, one will find all the constitutions being recognized as social charters. A combined reading of rights and DPSPs enshrined in these charters enables one to cull out their transformative dimensions. The comparative study also shows that younger the constitutions are, the more is the environmental content in them. This is seen in the constitutions of Afghanistan, Bhutan, Maldives and Nepal. For instance, the Constitution of Afghanistan 2004 obligates the state “to adopt necessary measures to protect and improve forests as well as the living environment” (The Constitution of Afghanistan, 2004). Similarly, the Constitution of Bhutan 2008 requires the states to “preserve, protect and promote cultural heritage of the country” (The Constitution of Kingdom of Bhutan, 2008). Furthermore, it makes a very bold promise and states: “Every Bhutanese is a trustee of the Kingdom’s natural resources and environment for the benefit of the present and future generations. The constitution also mentions it to be a fundamental duty of every citizen to contribute to the protection of the natural environment, conservation of the rich biodiversity of Bhutan and prevention of all forms of ecological degradation ...”( The Constitution of Kingdom of Bhutan, 2008) Protection, preservation and respect of environment, and assistance to others in times of national calamity are constitutional duties of all the Bhutanese citizens(The

Constitution of Kingdom of Bhutan, 2008). Similarly, the Constitution of the Maldives 2008 calls upon the State to “to protect and preserve the natural environment, biodiversity, resources and beauty of the country for the benefit of present and future generations. It also provides that “the State shall undertake and promote desirable economic and social goals through ecologically balanced sustainable development and shall take measures necessary to foster conservation, prevent pollution, the extinction of any species and ecological degradation from any such goals” (Constitution of the Republic of Maldives, 2008). Further, “A healthy and ecologically balanced environment” is guaranteed as fundamental rights of the citizen in the Maldives (Constitution of the Republic of Maldives, 2008). The provisions and approach of the Nepali Constitution are already outlined above. Put briefly, Nepal’s environmental and climate change concerns are more or less explicitly spelt out in the constitution. Therefore, in view of the fact that constitutions have inter-generational dimension, and that they are expected to navigate with present challenges and remain relevant with expanding future, I am inclined to believe that after carefully culling out the provisions of the DPSPs and fundamental rights (along with the treaty obligation of Nepal) one can trace the resonance of the constitution to green transition (The Constitution of Nepal, 2015, Art. 47).

**Can the Supreme Court assist this process by providing safeguards of fairness and legitimacy?**

The most prominent motivating factor for any judge to act is the situation of injustice. This is more so in situations created by climate change. As climate injustice poses existential threats, the denial of justice amounts to denial of survival rights. This said, much depends on what jurisdiction is given to the judiciary by the constitution or laws. It also depends on the public trust created by the justice system. Trust is one of the prime variables for providing legitimacy to the work of the judiciary. Trust is also a cultural issue, which is based on the education and training of judges and lawyers and the value they portray in judicial behavior. Even though South Asia does possess a very strong court system every judiciary has its own approach to justice. So no two judiciaries are similar. While all the judiciaries are engaged in norm interpretation, a few of them are sometimes engaged in norm creation in the form of directives/orders they sometimes issue to expedite justice or secure effective justice (Supreme Court of India, 1988). This occurs where there is a legal void and urgency of the matter requires such norm creation. For instance, the Supreme Court in Nepal and India have sometimes engaged in issuing directive orders and guideline in order to protect the right of petitioner/victim till the time executive or the legislature creates relevant legal instruments (Vishaka v State of Rajasthan

AIR, 1997; Bajuddin Minya v OPMCM and others, 2066).<sup>10</sup> One may find such instances in Bangladesh and Pakistan as well. But it is not so in Afghanistan Bhutan or Maldives. In recent times, the courts have begun to address climate justice issues facilitating green transition in different ways such as *Asghar Leghari* asking the government to implement climate change policy and *M K Ranjitsinh* (Great Indian Bustard Case) (MK Ranjitsingh & Ors. v. Union of India & Others, 2024) recognizing that right to life includes the right to a clean environment and the adverse effect of climate change, or *Padam Bahadur Shrestha* (Padam Bahadur Shrestha v. OPMCM., 2076 B.S.)<sup>11</sup>, *Chakra Bahadur Bohra* (Chakra Bahadur Bohara et al. v. OPMCM., 2023),<sup>12</sup> and *Sailendra Ambedkar* (Sailendra Prasad Ambedkar and others v PM and Council of Ministers, 2080),<sup>13</sup> and other cases from Nepal taking note of principles such as payment for ecosystem service or *in-dubio-pro-natura*, or condemning acts of devastation terming it to be an ecocide, reveal the possibility of courts facilitating green transition. While most of the time pre-existing norm determines judicial behavior the judiciary, based on emerging dynamics of environmental and climate justice in South Asia, I am inclined to believe that the judiciary, can significantly assist in green transition by reviewing the just and fairness of policies and the processes brought by the State and playing more active role and directing the State where there is a void.

### **Concluding observations**

Climate Justice is global justice advocating fairness to the mother earth and all living beings inhabiting it at present and in the future. It requires one to see justice in its widest amplitude covering all aspects of corrective as well as distributive justice. As mentioned earlier climate change directly affects numerous rights relating to food, health, and loss of property due to fire, flood etc. The protection of these and other rights against adverse effect of climate change is an important component of the right to a safe, secure and healthy environment. Given that the Constitution of Nepal opens up possibilities for compensation resulting from “environmental degradation” the evolution of climate justice will be informed by the right jurisprudence. It is beyond dispute that human survival is so intimately connected with the healthy climate regime denial of climate justice can be essentially construed as a denial of survival rights. From this perspective, climate justice is an aspiration that humanity always strives to achieve for its

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<sup>10</sup> Issuing Vishaka Guidelines on sexual harassment at work place; directives for processing the claims of farmers claiming loss of crops by wildlife

<sup>11</sup> asking government to bring out law on climate change

<sup>12</sup> asking government to pay local community in the watershed of the river for the ecosystem service they rendered

<sup>13</sup> Protection of *Churia* hill range- where the court said its destruction amounts to ecocide

wellbeing. It is ingrained in the inter-generational in approach as espoused by our constitution (The Constitution of Nepal, 2015, Art 51 (g) (1)).

As indicated earlier climate change is a science led discourse. Scientific findings have informed the policy making at the international and national level. Of late, scientific findings are taken seriously by courts and tribunals in comparative jurisdictions. There is an opportunity for our court to use scientific tools in collecting evidences, and assessing harms, and determining the amount of compensation and reparation in appropriate cases, and thus further enrich climate justice jurisprudence and evolve 'science informed environmental rule of law'.

The jurisdictional and temporal dimensions in respect of climate justice create challenges for bringing the emitters within the jurisdictional ambit of justice at the domestic level. The accountability gaps witnessed in international climate negotiations especially in areas of climate finance, loss and damage and tardiness in transitioning to carbon neutral economy also create obstacles in securing climate justice at the domestic level. This to an extent vindicates the need for the establishment of international environmental courts. But then, so long as the country remains a party to any international treaty, an honest implementation of the treaty obligations in the domestic environ is a legitimate expectation. (The Constitution of Nepal, 2015, Art 51 (m) (2)).

The Constitution of Nepal is quite informed of the challenges brought about by climate change and therefore focuses on right and relevant policy guidelines for reduction of carbon footprints. The Constitution propagates the idea of a holistic and inter-generational justice while prioritizing fairness, equity and inclusion in decision making and benefit sharing. Now, as ecologically sustainable development has been recognized as the most fundamental principles among the DPSPs bringing within its sweep principles of precaution, prior-informed consent and payment to the polluters, inclusion and participation, the Constitution beacons policy makers towards safeguarding the interest of present generation and the posterity by securing environmental safety for them. This is how the transformative potential of the constitution could be realized.

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