

CLIMATE CHANGE AND THE CONCEPT OF INTERGENERATIONAL EQUITY IN INTERNATIONAL LAW AND EUROPEAN LAW: A DEFINITIVE SYNTHESIS

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ABSTRACT

Climate Change is the pressing issue of the today's world. Its effects are visible in the forms of the changing of the weather patterns and the rising of the global temperatures at unprecedented levels. Sea rising and the flooding in the urban centers is becoming more rampant in every corner of the world. In all states of world several legal instruments in the form of the environmental laws, constitutional provisions and environmental policies are enacted so as to stall and minimize the effects of this factor. The premise behind these legal endeavors is the protection of the environment for the persons living now and for the future generations as well. When the concern for the protection of environment for the future generation is taken into account this becomes the principle of intergenerational equity. All domestic and international agreements and binding legal documents endorse this concept. This research piece aims at digging into the evolution and conceptualization of this principle of environmental law in the domains of the international law and the European law. Thus, this research juxtaposes the two big systems of law so as to make this concept more elaborate to be understood and be established in the face of validity of the concern.

Key Words: Climate Change, Intergenerational Equity, Sustainable Development, International Law, European Union, International Court of Justice, Human Rights, Trans Boundary Environmental Harm, Equity and Environmental Justice.

What is Intergenerational Equity?

This concept is vivid from the lexicon that the same set of circumstances is the basic right of the people of future generations which are being enjoyed by the people who are living and thriving on the face of earth. The following are some manners in which the concept is tried to be explained and dissected for the sake of the academic clarity.

Intergenerational equity is the concept which calls for the protection of environment for the future generations to the degree which is livable and hopefully better than the current state, in which the living people are experiencing. This is not a modern concept nor it has emerged overnight.

According to Bertram, Intergenerational equity is the child of the Second World War in whose aftermath the talk of the protection of the future generations did set in (Bertram D, 2023)

Weiss is of the view that the development in the scientific knowledge has sensitized the people and nations that the protection of the physical environment is not only the need of the current generations but this has become their liability to keep it protected for the future generations (Weiss, E. 2021).

In the landmark case *Oposa v. Factoran*, Philippines Supreme Court gave a landmark decision in which it establishes that the protection of the environment is not only indispensable for

the current citizens but it is a requisite for the humans in future. (Quising, 2024). Through the above verdict and other comprehensions, it has become evident that when a system is concerned about the wellbeing and the existence of the future generations on the same lines of the present this becomes the intergenerational equity and it is a valid and much attention seeking academic debate in the field of social sciences and the law.

Is Intergenerational Equity a valid concern?

The concept of the intergenerational equity is not only a wholeheartedly accepted dogma there are further issues and objections attached to it by various thinkers regarding its validity and the level of attention which has been and being accorded to it.

When the concept of intergenerational equity is taken into the consideration by legal and social researchers it turns out that there has been a division prevalent among the thinkers over the validation of the concept. Barry is of the view that the standards of the justice which are prevalent with the contemporaries must be evaluated on the ethical grounds and if there is any discrepancy among them such shall not be applied for the future generations (Barry, 1982).

Beckerman says that the debate of having rights is with the people who are existing and for the people who do not exist such debate has no relevance (Beckerman & Pasek, 2001). Solum defines the intergenerational equity as it is the obligation of the current generation towards the future generation regarding the livability and sustainability of the environment to such degree of which the former are having it or in a better shape so a child born in future would be able to enjoy the same or improved set of living environmental conditions (Solum, 2001).

In the today's philosophical debates, the intergenerational justice is a key debate and it has come out of the question of veracity because the much concern and emphasis on the subject have made it a real and concerning debate in the justice system nevertheless, they are designed to dole out the equity to the generations which are visible and active in the communities and nations (Campos, 2018).

In the light of the practices of the current generations with respect to the resources, Motupalli fears that there is a likelihood that there would be an uneven balance of resources between the living-now and living-than people (Motupalli, 2018). In the debate of persons and resources in the future Morgolis is of the view that the identity of the person in the future is the concern of today whether such person does exist or not (Margolis, 1986).

The current pace at which the climate change is happening is not disbalancing the equity among the present generation and future generation but there will be war of equity among the future generations as they would belong to areas and regions of asymmetrical weather patterns, social classes, economic profiles and perseverance to the effects of Climate Change (Weiss, 2008).

In the face of various opinions by the several social scientists and the interpretation offered by many courts of justice and visible environmental degradations and the scientific evidences validate the concern for the protection of the rights of the future generations is a valid one and relevant.

Intergenerational Equity's role in the furtherance of the Sustainable Development

The theory of sustainable development has a vital role in the social and economic development of the world and it has a big say in the embodiment of the concept of the integrational Justice too (Shi, 2019). As the sustainable development is the goal of all sustainability endeavors and moves. The premise behind the sustainable development is that it centers on the adoption of such measures which are not only environmentally friendly but the people in the future need not to redesign such actions in altogether different fashion.

Padilla contends that in the adoption of cost and benefits of the future generation the model of sustainability is the key as the privileges of today are the requirement of the tomorrow (Padilla, 2002). It goes without saying that in the essence of the definition of the sustainable development the conception of the regard of the rights of people in future lies. The sensitization towards the right of the people of future is also linked with the choices made today which are in the case of prudence are

bound to extend benefits across time and generations (Summers, 2014).

Intergenerational Equity in the International law

The international law is concerned about the wellbeing of the humanity and it is centric to the production of such instructions which do have international outlook and can be applicable to all states of the world. As this law relies on the treaties and conventions Riley sheds a light on the limitations of these instruments by declaring that there are some constraints in them (Riley, 2016). When it comes to the protection of the environment and its protected availability for the persons of future the scope of the international law even though is not to a level of satisfaction but it has clear insinuations regarding this debate. Article 3(1) defines the term and says that the parties to this convention shall extend a resolve to protect the environment for the benefit of the current and future generations.

UNFCCC (United Nations Framework Convention on Climate Change) 1992 defines the sustainable development' (4.3.2) along with the concept of the Intergenerational equity. Several other international covenants and conventions define the concept of the Intergenerational equity in various ways. For example, the Preamble to the International Convention for the Regulation of Whaling calls for the protection of the whaling stocks for the generations of future. Likewise, Preamble to the Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 shows a concern for the protection of flora and fauna for the generations to come. Principle 2 of the Stockholm Declaration 1972, extended a resolve of the protection of the natural resources for the upcoming generations.

Rio Declaration on Environment and Development in Principle 3, stipulates that 'the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations. *Nicaragua v. Costa Rica* is a landmark judgement handed down in 2018 by the International Court of Justice (ICJ) in which the trans-boundary environmental harm is not only determined but a compensation is awarded to Costa Rica as the

damage caused to the environment is required to be repaired for the people of present and the future. This is a landmark judgement in the embodiment of the regime of the compensation for extraterritorial environmental harm (Tanaka, 2021). The concept of the sustainable development in the conventions rolled out by the United Nations is clearly elaborate for the intergenerational equity (Spijkers, 2018).

Intergenerational equity in European law

The Article 3(3) of the Treaty of European Union (TEU) is elaborate about the concept of the Intergenerational equity with the wording of 'The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment'. Point 10 of preamble of the European Forest Regulation is concerned with the protection of the environment for the future generations in the face of current environmental hazards.

In point 26 of the preamble of the European Climate Law 2021 there is a commitment for the neutral climate for the people in the future. This is the endorsement of the right of the intergenerational equity in the European law. Article 191(2) of the Treaty of the Functioning of the European Union (TFEU) calls for the protection of environment along with the salient principles of *precautionary* and *polluter pays* of the environmental law. Several litigation cases have resulted in the endorsement of this principle by the courts of justice.

In the famous case law *Urgenda vs The Netherlands*, The Hague District Court implied this principle while ordering the Netherlands government to lower the emissions of the greenhouse gases by 20% by 2020 from the level of 1990 (Peel, 2022). In *Neubauer vs Germany* the German Constitutional Courts accentuated on the more and robust efforts on the part of the German government to ensure the protection of the environment by invoking the principle of intergenerational equity (Ekardt, 2022).

Core divergences and convergences

The both laws often do provide such literature which is convergent on the many points and resultantly it has some conflicts when the both are juxtaposed with each other. The following are some convergences which are being reproduced in concise way.

Sustainable Development: - The principle of the sustainable development is the main building block of the environmental law and both the international law and European law do revolve around it by considering it the manifestation of the obligation which the current generations do have with respect to the future generations.

Reliance on the Judicial Interpretation: - The judicial interpretation is common to both in the embodiment of this principle in the both laws as the ICJ and other international and local courts have established this right with respect to and with the help of other established rights as there have been cases of protection of rights before them in question.

Conflict between intergenerational and intragenerational equity: - A tension is prevalent in the both laws regarding the establishment of the equity between the people living now and the people of future. As the sustainable development model is often silent on the opinion of future generations when any module is being development for the progress of today.

Divergences are the key in defining the saliency and the definite form of any theory or literature. In the context of the intergenerational equity and the domains of the international and European law the following are the key divergences.

Explicitness: - The international law has more textual and has source clarity with respect to the principle of the intergenerational equity as United Nations treaties and declarations do underscore this principle in a very vivid and elaborate manner. Other way round the European law derives this from the debate of the sustainable development and the environmental objectives extended by several agreements.

Enforcement and Legal Obligation: - in the case of the international law the right towards the future generation is approached as the customary law and there is no definite enforcement mechanism in place. However, the European law has a robust and swift mechanism in place in the form of the ombudsman so as to enforce the right of the future generation.

Doctrinal Framing: - in the context of international law this doctrine is built around the planetary trust and other global commons but when the European law is concerned it goes without saying that this revolves around the multi-level constitutional order and the states outside this ambit are not recognized as the stakeholders. The doctrinal framing scope of the latter is wider than the former.

Conclusion

In the face of the rapid Climate Change and other allied environmental concerns the debate for the protection of the environment and its sustainability for the future generations has become a concern for the legal and international political domains. This debate has given the form to the principle of intergenerational equity and this is widely elaborated in the preambles and the texts of the international conventions and treaties which are enacted both for the entire international communities and the European nations. Several legal instruments and the case laws do underscore this principle when they talk about the role and the relevancy of the law for the protection of the environment and the promotion of the sustainable development. Intergenerational equity is not only a principle but it is the resolve and concern of the living people towards the future generations.

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