

Intergenerational equity and its importance in climate change mitigation and adaptation policies



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A problem that we cannot ignore any longer is that climate change and its repercussions are wreaking havoc everywhere with extreme weather conditions, including increasing heat waves, catastrophic monsoons, roaring wildfires, severe droughts, and bone-chilling cold spells.

Climate change is inherently an intergenerational problem affecting the present generations. It will cast an ominous shadow on the future (unborn) generation, mainly depending on the actions we choose to take today. Hence, present action to combat climate change may not result in immediate results but is an investment sought to be undertaken for the benefit of future generations.

The concept of 'intergenerational equity', initially conceptualised for sustainable development, has become even more relevant in light of climate change. As two sides of the same coin, intergenerational equity and sustainable development are rooted in the need to balance the short-term needs of today's generation (intragenerational equity) with the longer-term needs of future generations (intergenerational equity), all the while promoting prosperity and quality of life.

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Intergenerational equity has been the bedrock of sustainable development and international policies surrounding climate change since time immemorial. While many international legal instruments— most notably the [Stockholm Declaration](#), [Rio Declaration](#), [United Nations Framework Convention on Climate Change \(UNFCCC\)](#) and the [Paris Agreement](#) recognise and seek to preserve the rights and interests of future generations, intergenerational equity is usually undefined and often regarded as 'soft law' with the scope of interpretation to suit different circumstances.

Aspects of intergenerational equity

International legal instruments, specifically in environmental law, often refer to intergenerational equity as the foundation for advocating for environmental protection and climate change mitigation and adoption policies.

These instruments are being used to propel litigations worldwide at both domestic and international levels, often instituted by the younger generations and claim the rights of the future (unborn) generations.

The 'soft law' status has been successfully moulded by the International Court of Justice (ICJ) time and time again, relying on the principle of intergenerational fairness and equity to decide a variety of cases.

The decisions include ICJ's 'advisory opinions' by recognising the environment as representative of the quality of life and health of human beings, including

generations unborn, and also recognising the rights of future generations beyond the embryonic stage (for example, the Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, 1996).

The ICJ also relied on this principle to decide a dispute between States regarding the construction and operation of dams in *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, 1997. The ICJ sought to balance economic development with the protection of the environment, especially recognising the rights of generations unborn. It sought to do so through a continuous environmental impact assessment of this project and to take measures for protecting and preserving the environment as an "essential interest" of the State.

While these and more cases (for example, *Denmark versus Norway*, 1993; *Argentina versus Uruguay*, 2010) have been interpreted in light of sustainable development, some recent cases from regional and domestic courts have recognised this principle specifically in light of climate change.

Multiple proceedings are also underway in various regional courts such as the *Inter-American Court of Human Rights* and the *European Court of Human Rights* deciding on the rights of future generations and the obligations (if any) of States to take steps to mitigate climate change.

The *Concerned Citizens of Manila Bay* (2011), *Urgenda Foundation Case* (2015), *Colombia Future Generations Case* (2018) and many others across the globe have recognised the rights of future generations in light of climate change.

Whether it is to clean and preserve Manila Bay in the Philippines, adhere to obligations ratified under the Paris Agreement, or recognise the role of the Amazon deforestation in accelerating climate change events— all have been interpreted unequivocally considering the rights and interests of future generations.

India-specific approach

India has been at the forefront of recognising a clean and healthy environment as an integral part of the right to life under Article 21. It has advanced this fundamental right by enforcing the right to a healthy environment through specific legislation, a dedicated tribunal and judicial precedents.

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India has contributed to developing the principle of 'intergenerational equity' by placing the obligation on the governments to take adequate and necessary steps to provide 'clean air' to protect the health of future generations (for example, in *M.C. Mehta versus Union of India*, 1987).

It has gone one step ahead and placed an affirmative duty on the governments of the present generations to adequately take measures, even if it means amending current legislation to make accommodations for the generations to come (in *A.P. Pollution Control Board versus Prof. M.V. Nayudu*, 2000).

The Supreme Court has also interpreted the principle for protecting carbon sinks and prohibiting large-scale deforestation (in *K.M. Chinnappa versus Union of India*, 2002 and *Maharashtra Land Development Corporation versus State of Maharashtra*, 2010).

Recently, it also regulated mining using this principle (in *Goa Foundation versus Union of India*, 2014) and in furtherance of wildlife conservation (in *T.N. Godavarman Thirumulpad versus Union of India*, 2010).

These cases have led to the development of environmental jurisprudence in India and present an opportunity to develop the principle of intergenerational equity specific to climate change. It would also require the governments— both at the Union and the state level— to work in tandem to enforce the decisions of the Supreme Court.

Considering India's unique socio-economic vulnerabilities, intergenerational equity could also lead to enriching jurisprudence across the globe and the development of international climate change law.

The criticism of the principle of intergenerational equity lies in its anthropocentricity and the self-perpetuating cycle of climate vulnerability. Those facing socio-economic hardship and marginalisation are most severely **impacted** by climate change, adversely affecting their adaptive capacity.

This presents a unique opportunity for India to be at the forefront of addressing these concerns in light of recent climate change events and provide a blueprint to similarly placed nations at comparable economic capacities and development indices.

Another drawback of the modern judicial system is that if future generations (through representations) directly bring claims, they might be deemed non-existent.

So, how can they claim rights in the present when they do not exist? However, this issue has been dealt with by the Supreme Court of India effectively, as it has vastly expanded the scope of *locus standi*, mainly when it deals with violating fundamental rights such as life, health, livelihood and clean environment.

All such rights stand endangered for the present and future generations if the current trajectory of climate change continues and mitigation policies are not adopted.

Future approach

The Supreme Court of India has been the torchbearer in the recognition of a healthy, clean environment as part of the enforceable fundamental right to life, especially with the need for balancing it with other competing fundamental rights, and can continue to pave the way for the protection of the climate system as well.

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development and, importantly, 'intergenerational equity'.

In the context of Indian jurisprudence, it is up to the governments in tacit compliance with the judiciary to take charge in the fight against climate change, considering its unique circumstances.

It is essential to recognise India's socioeconomic vulnerabilities while formulating climate change adaptation and mitigation policies and ensuring fairness between the generations.

This process can start by targeting [short-lived climate pollutants](#) such as methane, black carbon, tropospheric ozone and hydrofluorocarbons by monitoring and focusing on their reduction through policy measures at the state and district levels.

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It can use the already existing mechanisms of pollution control boards to monitor the effective implementation of such policies.

Climate change mitigation policies are the need of the hour and they require the positive and active involvement of States to protect the rights of future generations effectively.