GENDER, CLIMATE JUSTICE, AND THE LAW: TOWARDS A LEGAL AND POLICY REFORM

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Abstract - Climate change impacts everyone but not equally. The interaction of socio-economic attributes such as gender, ethnicity, age, with bio-physical factors determines vulnerability to the impacts of climate change. Women as a socio-economically marginalized section of the population, especially in developing countries like Nepal, are disproportionately impacted by climate change. Such disproportionate impacts of climate change create a vicious circle of inequality where the pre-existing vulnerabilities are exacerbated by climate change stresses. In that milieu, legal, policy and institutional arrangement play an instrumental role in empowering the marginalized communities and population. If legal, policy and institutional instruments are not well designed, it has the potential to impede climate justice. The paper, therefore, examines legal, policy and institutional instruments from a gender perspective with an objective to find out whether such arrangements impede or foster gender equality and women empowerment.

Keywords - Human Rights, Gender, Climate Change, Himalayas

I. INTRODUCTION: CLIMATE CHANGE, HIMALAYAS, AND MOUNTAIN WOMEN

Historically, women and mountains share an intricate relationship, therefore, pressure on the mountain resources can threaten their development and livelihood. In case of Nepal's Himalayas, women are usually the ultimate users of the natural resources with their major role in agriculture, livestock, household and domestic work.

Today, the effects of climate change are felt globally, however, not equally. There are various factors that come into play. According to the UNDP resource guide on Gender and Climate change, "depending on social categories such as gender, age, economic level and ethnic groups, climate change has and will have different effects."It becomes of importance to acknowledge that even though at times climate change is viewed under the light of scientific and technical phenomenon exclusively, its impact is arrayed through various social, political and economic vulnerabilities of people and society, setting back development and destroying livelihoods. Marginalized people across the globe, affected by climate change are struggling to gain basic needs which are primarily based on natural resources. People living in this area have been encounteringdisasters over the whole year. It is obvious that the first victims of the disasters, due to climate change, in the mountainous parts are the people and the communities living in that part. Therefore, the first hazardous impact of it is upon the indigenous people there. Increase in intensity of weather change hampers one's life, housing and health. Digging deeper, women are the primary victim regarding aspects like health and education as these aspects are difficult for women in particular to adopt because of the gender roles in the society. Certain experiences have shown that gender inequalities obstruct the achievement of sustainable development of the mountain region. Here, we summarize the epidemiological evidence of how climate variations and trends affect the human rights through gender perspective.

Even more specifically, this paper assesses some points regarding how differences and changes in climate bring variances in the basic needs of humans such as food, health and education which are the fundamental rights of human beings. Not only national and regional actions, but even international actions and plans by organizations and treaties like UDHR (Universal Declaration of Human Rights), OHCHR (Office of United Nations High Commissioner for Human Rights), CEDAW (Convention on Elimination of All Forms of Discrimination Against Women), and many more have been taking actions against the devastating effects climate change has brought.

II. MOUNTAIN WOMEN AND THEIR DEVELOPMENT

The effects of climate change, particularly among women of Nepal have been studied, however, these studies have been limited to the hilly region and not in the proximity of the women living in the mountains who are the most vulnerable.

We see that many women in sub-Saharan Africa must spend more and more hours walking in search of water, while in Switzerland, lack of snow in the recent winters has affected mountain shelters, affecting family homes. Similarly, while individuals and families are constantly exposed to various risks that threaten the quality of life, and even though the economic costs of climate events affect everyone,

climate change risks are not equally distributed. However, there are a number of threats and risks that climate change brings, that increase an individual's vulnerability regardless of where they live.

Nepal's mountain women are highly regarded for their hospitality in domestic and economic activities due to their active participant. Economic and social role of women as caretakers of households and communities in a whole has paved its way for tourism in the destination communities. The capacity of the industry to employ the most unskilled, disadvantaged women makes tourism business a very attractive industry for marginalized people. In many parts of mountain areas, women are engaged in cooking, managing hotels, tea shops and lodges, making of indigenous handicrafts, fruit and vegetable productions, and so on.

Women in mountain face various health hazards like Uterus prolapse. The UN Human Rights Council has recognized that the environmental changes brought about by climate change can interfere with the realization of fundamental, internationally recognized human rights – including those protected by the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights.

According to the UN Charter, the Universal Declaration of Human Rights, and other international human rights instruments, states are obliged to cooperate to prevent violation of human rights, including the duty to act effectively against climate change, and also respect and protect human rights during the process.

It is tough for mountain people to endure the highest levels of food and nutrition insecurity in the region extremely because farmers highly depend on a few selective crops which again results in depletion of natural resources caused mostly by environmental degradation. Climate change makes floods and drought more frequent. This is likely to destroy poor people’s food crops, livelihoods and deepen poverty. These connect with socioeconomic pressures that make mountain people specifically unprotected to poverty and food security.

III. INTERNATIONAL LEGAL FRAMEWORK AND CLIMATE JUSTICE

The International Covenant on Economic, Social and Cultural Rights (ICESCR) calls for equal rights of men and women in enjoying all economic, social and cultural rights set forth in the present Covenant. The International Covenant on Civil and Political Rights (ICCPR) guarantees women equal rights as laid out in the Covenant. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Beijing Declaration and Platform for Action, and other instruments further affirm that Parties and other relevant actors must prioritize gender equality in all their actions. Gender equality and non-discrimination are fundamental human rights principles that require State action to ensure their fulfilment including in the context of climate change. This is highlighted in relevant decisions of the COP to the UNFCCC. For example, in decision 36/CP.7, the UNFCCC noted the importance of improving the participation of women in decision making processes related to climate change and called for the nomination of women to bodies established under the Convention or the Kyoto Protocol. The UNFCCC expanded on this with decision 23/CP.18, calling for greater gender balance in bodies established by and related to the Convention and in Party delegations. Decision 18/CP.20 followed, establishing the Lima work programme on gender and emphasizing “the need for gender mainstreaming through all relevant targets and goals in activities under the Convention as an important contribution to increase their effectiveness”. It urges Parties to “advance gender balance, promote gender sensitivity in developing and implementing climate policy, and achieve gender-responsive climate policy in all relevant activities under the Convention.”

The Paris Agreement to the UNFCCC continues to build towards greater gender inclusiveness and equality in climate actions and policies. The preamble states that climate actions should promote and consider human rights obligations, including gender equality and the empowerment of women. Furthermore, Article 7 emphasizes on gender responsive, participatory and fully transparency approach, considering vulnerable groups and ecosystems. Gender equality has also been increasingly incorporated as a priority in other climate related policies. The Programme of Action from the 1994 International Conference on Population and Development (ICPD) links sustainable development and the rights of all people and communities having implications for climate change-related risks and paves the way for women’s full participation in all aspects of action to tackle them. The new Sustainable Development Goals (SDGs), in accordance with existing international human rights law and other measures, aim by 2030 to achieve gender equality through goals that encourage women’s equality, empowerment, active participation in climate actions and education, peace and security, and ending poverty. Human Rights Council resolution 32/33 on human rights and climate change “calls upon States to integrate a gender perspective in pursuing mitigation and adaptation responses to the adverse impact of climate change on the full and effective enjoyment of the rights of every boy and girl.” Even the CEDAW Committee recognizes the obligations of parties to address gendered aspects of

climate change and disaster response. In its 44th session, the Committee emphasized that all Parties and other relevant actors should work to ensure that climate change and disaster risk reduction efforts are gender responsive and protect human rights. Similarly, the Sendai Framework for Disaster Risk Reduction states that "a gender, age, disability and cultural perspective should be integrated in all policies and practices, and women and youth leadership should be promoted." At the 52nd session of the Commission on the Status of Women, a gender perspective was stressed as critical in all aspects of climate change, owing to the often-disproportionate impacts of climate change on women combined with often unequal access to resources and relevant decision-making processes. The Rio Declaration addresses the needs of developing countries, especially those which are environmentally vulnerable. It recognizes women as key players and advocates about the important role of the indigenous people and their communities and other local communities in environmental management and in attainment of sustainable development. The Earth Summit and Agenda 21 recognizes sustainable mountain development pointing out the do's and don'ts of governments. This pushes government to promote means to control erosion after identifying hazardous areas vulnerable to disasters like snow avalanches, landslides, and so on, conserve resources, use environment-friendly technologies, identify mountain areas polluted by industries or urban areas, and create centers of information on mountain environment. Furthermore, it also encourages women in sustainable development by urging the governments to give equal access to education, reducing their workloads, providing necessary health care facilities and bringing females into full participation nationally, regionally and globally and ensuring their roles. It works to eliminate violence against women and negative images, stereotypes and attitudes, and prejudices against women. As a whole, it motivates women to be involved in ecosystem management and in controlling environmental degradation. UNEP's Gender Action Plan, during the Third World Conference on Women (in Nairobi), played important role in linking women and environment. Along with the main motive to ensure women's active participation, promote equality between men and women in national, regional and global levels, and equity and women's rights and to work for the betterment of the environment and sustainable development, the Governing Council highlighted the role of women in environment and development.

IV. NEPAL'S INITIATIVE

The government of Nepal, after recognizing the need of international financial and technical assistance to gain climate compatible growth, it has shown interest in the UNFCCC so as to raise awareness effectively and internationally. Recently, in the Free and Compulsory Education Plan of Action (2001-2015), GoN has addressed "Basis of New Nepal, Education as Universal Fundamental Right", where the primary focus has been shown towards female regardless of any socio-economic factor.

According to UNDP Nepal, 2009, the majority of the poor and the most vulnerable is constituted by women. Yet, they perform activities to secure their livelihoods through their responsibilities for family farming and tasks like collecting water and biomass for energy by depending highly on natural resources.

Different impacts of climate change on individuals and communities has been addressed and is in the process of resolvement by Nepal's Climate Change Policy of 2011. The acknowledged impact of climate change is greater in poor, developing, landlocked countries and on village women. The Policy also states that the government has not integrated a gender perspective as it does not address the vulnerabilities of marginalized people. The Policy recognizes support to address the impacts of climate change as an opportunity for the socio-economic and sustainable development of Nepal. In its objectives for capacity building, people's participation and empowerment, the Policy provides for women's participation in the implementation of climate adaptation programme.

V. FINDING AND ANALYSIS

It is well established that climate change will cause more harm to developing countries and its people, because people in developing nations rely more heavily on natural resources for survival. In the present case, through the lens of intersectionality (indicator: gender and topography), the mountain women face adversary given the gender disposition in Nepalese society.

Men and women are affected differently by climate change, largely because of their differing roles within communities. This is pronounced in Nepal, where while both genders are vulnerable to climate change, their experience of the phenomenon is different along with their ability to cope and adapt because of the difference in their lifestyles. Adaptation requires the sustainable use of land, water, energy and other resources, which means that it needs to be promoted in multi-pronged ways, from local practices to the policy level to global engagement. Vulnerability to socioeconomic and environmental change is highly contingent upon the social context, including social and power relations, class, gender, and ethnicity, so adaptation strategies must also reflect a nuanced understanding of these dynamics.

Some efforts (example – Solidarity in Greenhouse) were made in this direction, e.g. by holding side events, raising awareness of gender issues among COP participants and negotiators, and by networking and discussing positions and statements during the COPs, but they quickly fell by the wayside during negotiations and between the annual meetings. Until today, no gender analyses have been conducted in relation to the instruments and articles of the UNFCCC and the Kyoto Protocol. We can assume that this gap is linked to the lack of participation by gender experts in the negotiations: women are not one of the 'constituencies' included as observers in the UNFCCC process (like the major group 'women' in the Commission on Sustainable Development process). This might be one reason why experts on equal opportunities and women's rights kept away from the negotiations for a long time. We know very well from other UN processes that if women's organizations and gender experts are not involved, gender issuesare not addressed.

However, not everything is as grim as it might seem, over the years, small progress can be recognized. In regards to education of girl child, more and more are being enrolled in school. (Of course, the question regarding their meaning attendance is still questionable.) Another facet of change throughout the years in the increase in participation of mountain women in political appointment. Although very few mountain women hold political appointments in national assemblies, increasingly women are voting and taking up positions in local bodies. In Nepal, this is encouraged through the provision of seats reservedfor women. The greatest impact, however, may be in women's newly found levels of self-confidence and commitment to change things for the better in collaboration with other women in the community.

VI. CONCLUSION AND RECOMMENDATION

Firstly, women's right and gender equality at the UNFCCC and in all climate, action should be mainstreamed by integrating gender perspectives with particular recognition of the existing knowledge, skills, and experience of women and girls. It is necessary to reflect the different experiences as observed by the different individual in their own surrounding, particularly, in the present case, to identify women's key points of contribution in areas and sectors impacted by climate change, and develop tools and frameworks for constructively and pro-actively engaging women and promoting their active participation in related climate actions, so as to address and remedy climate impacts on women exposed to multiple and intersecting forms of discrimination. Secondly, build capacity at the grassroots level for women to meaningfully contribute and share their knowledge in climaterelated conferences by including a grassroots facilitation model in new initiatives on climate change and providing resources to support women's participation at the UNFCCC by providing support and resources for skills training and capacity building.

Thirdly, (perhaps most importantly), increase awareness of the gendered impacts of climate change and climate action through the collection and publication of disaggregated and gender sensitive data should be done as it is key to taking informed action to address climate change and its impacts on the enjoyment of women's rights.

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