India's New Constitutional Climate Right

Examining the Significance of *M.K. Ranjitsinh and Others* v. *Union of India and Others* for Climate Litigation in India

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The Supreme Court of India delivered a historic judgement on climate change and human rights in *M.K. Ranjitsinh and Others* v. *Union of India and Others* (hereinafter "*M.K. Ranjitsinh*") on March 21, 2024 (made publicly available on the court website in early April). A three-judge bench of the Supreme Court, led by Chief Justice, D.Y. Chandrachud, formulated a new constitutional right to be free from the adverse effects of climate change by drawing upon Article 21 (the fundamental right to life and personal liberty) and Article 14 (the fundamental right to equality) of the Indian Constitution.

Despite several shortcomings and problematic assumptions in the court's treatment of the immediate issue at hand (the threats posed by overhead power transmission lines to two critically endangered species of birds), the final judgement is a remarkable development for the evolution of constitutional climate litigation in India and across the world. The court here decisively seized the opportunity to construct firm constitutional foundations in India for human rights related to climate change in a scenario where no clear constitutional guidance formerly prevailed. In one fell swoop, the court has declared a new fundamental human right to be free from the adverse effects of climate change, connected this new right to the right to a clean and healthy environment that was read into the Constitution by earlier judicial decisions, and has clarified that the origins of this new right trace back to the right to life and the right to equality that are enshrined in the Constitution. The judgement also embraces a recognition-based approach to climate justice by noting how certain groups of people, such as, indigenous, tribal, and forest-dwelling communities, women, low income households, and the inhabitants of specific geographical areas (the Lakshadweep islands and forest areas, for example) are particularly (and non-equally) vulnerable to climate change impacts.

As we will highlight in greater detail below, *M.K. Ranjitsinh* also represents the tussle between the demands of a developing economy aspiring towards net neutrality on the one hand and the possible ecological costs arising from this transition on the other hand. This case will certainly not be the last to have to engage with these conflicting priorities, and therefore, by laying down a right against the adverse effects of climate change, it sets an important precedent for future litigants navigating the same conflict in varying circumstances.

Context, Facts and Judgement: The Bird that Brought the Case to Court

The judgement arose from a writ petition under Article 32 of the Constitution of India before the Supreme Court of India, where the petitioner, M.K. Ranjitsinh sought directions for the preservation of an endangered bird species, the Great Indian Bustard (GIB). The GIB is on the verge of extinction due to a variety of factors, including climate change and overhead transmission lines. In one of the interim directions that followed through a judgement on April 19, 2021, the Supreme Court restricted the installation of overhead transmission lines in an area spanning about 99,000 square kilometres and directed the conversion of overhead power lines into underground power lines in the areas relevant for the GIB.

It was in the context of a plea for modification of this judgement by certain Respondent Ministries that the Supreme Court bench led by Chief Justice Chandrachud set about examining India's obligations under

the Paris Agreement and its commitment against the effects of climate change. The bench highlighted that India's ambitious targets for renewable energy form one of the key strategies in India's efforts to combat the effects of climate change (Paragraph 16), with the country's commitment to transitioning to non-fossil-fuels "not just a strategic energy goal but a fundamental necessity for environmental preservation" (Paragraph 17). Referring to the right to a clean environment established by the Supreme Court in other judgements and national policies for climate change mitigation, the Court found that the right against the adverse effects of climate change and the right to a clean environment are "two sides of the same coin" (Paragraph 24).

In Indian constitutional law jurisprudence, the right to a clean environment has typically been recognised under Article 21 of the Constitution (the fundamental right to life). In M.K. Ranjitsinh the Supreme Court went further by anchoring the right against the adverse effects of climate change under Article 14 (the fundamental right to equality) as well, citing the hardships of communities more vulnerable to climate change within India based on their geographical and economic circumstances, which could impinge on their Article 14 freedom.

Ultimately, the Court stressed the need to "recognize the intricate interface between the conservation of an endangered species, such as the Great Indian Bustard, and the imperative of protecting against climate change" (Paragraph 53), concluding that a blanket prohibition on overhead transmission lines was therefore inappropriate (Paragraph 61).

In the operative part of the judgement, the Supreme Court constituted an Expert Committee to undertake a variety of activities, including the assessment of the feasibility of constructing overhead and underground electric lines and the identification of measures for the protection and long-term survival of the GIB (Paragraph 66).

A Big Victory for Rights-Based Climate Litigation in India

This judgement is of tremendous importance not just for providing expression to a right against the adverse effects of climate change to the world's most populous country, and one that faces very direct and sizeable impacts of climate change, but also for firmly anchoring this new right directly within the country's constitutional framework.

India's rich environmental jurisprudence provides a robust bedrock for bringing climate change concerns to courts, and it is no surprise that India's constitutionally guaranteed fundamental rights form the route for climate litigation in India, similar to other Global South jurisdictions. However, so far, these efforts to address climate change have often focussed on avoiding a direct climate change framing, a "stealthy" strategy common to Global South jurisdictions, motivated in part by a preference to rely on established legal arguments to enhance chances of success. One commentator, writing in 2020 and analysing climate litigation judgements from India, had opined that "*climate change is likely to remain a peripheral, albeit an important, issue in most cases that raise and address more "mainstream" environmental concerns*".

When Ridhima Pandey, a nine-year old petitioner, approached the National Green Tribunal (NGT) in India in 2017 to seek the inclusion of climate change-related concerns within the Environmental Impact Assessment (EIA) framework, her well-researched and thoughtful petition was disposed of by the NGT in 2019 with an extremely disappointing brief two-page order that contained nothing more than perfunctory remarks on the thrust of the petition and the relevance of climate change. The NGT arrived at the deeply flawed conclusion that "*[t]here is no reason to presume that Paris Agreement and other international protocols are not reflected in the policies of the Government of India or are not taken into consideration in granting environment clearances.*"

In contrast, the Supreme Court in *M.K. Ranjitsinh* went out of its way to engage deeply with climate change in the Indian context: the unequal vulnerabili-

ties and adaptive capacities related to climate change within the country, India's obligations at the international level for protecting against adverse effects of climate change, and the existing landscape of climate change litigation in other jurisdictions from across the globe. This is an unprecedented and welcome development that likely signals the advent of a new phase of climate-informed rights litigation in India. The judgement surveys climate litigation developments in other jurisdictions and remarks (somewhat cryptically), *"[t]hese cases, all instituted and decided in the past decade, indicate the type of concerns which will travel to the courts in the next few years* (Paragraph 50)." With the right civil society mobilisation, follow-up strategic litigation, and other enabling conditions, this and other ensuing rights-promoting judgements related to climate change can be more than just a hollow hope, and could contribute to a (climate) rights revolution in India.

Problems with the Supreme Court's Approach in M.K. Ranjitsinh

The judgement no doubt represents a positive development in Indian jurisprudence, but is also problematic for a number of reasons. The judgement ultimately is deeply anthropocentric and insensitive to the court's own existing jurisprudence on ecocentric law and the legal recognition of the more-than-human in India: the endangered birds that form the focus of the original petition are disallowed existing protection that was in place from the earlier blanket prohibition against new overhead power lines in the region. In its enthusiastic championing of solar energy, the court also appears to be entirely oblivious to the very harmful ecological and human rights impacts of large-scale renewable (solar) energy projects. The judgement is also silent on how non-renewable power sources will likely also benefit from its removal of restrictions on overhead power transmission lines in the region. Finally, the decision also reflects an excessive deference to cost-efficiency calculations and governmental assertions of technical possibility that many who recognise the urgency of the climate and biodiversity loss breakdown will find deeply misguided.

On the newly-declared climate right to be free from the adverse effects of climate change, the court's analysis of mitigation and adaptation in the Indian and global context appears muddled and less rigorous than desirable. The judgement also disappoints by offering nothing on how the new right that has been declared will be protected in practice.

Using this Moment in Climate Litigation in India to Reflect on Climate Legislation in India

In contrast to framework litigation cases in the Global North (most notably in the EU), which rely on existing climate legislation and seek judicial intervention for more enhanced climate ambition through (in particular) reduced emissions, climate litigation in India cannot at present anchor itself to an overarching climate legislation, since such legislation does not exist.

This legislative vacuum finds acknowledgement in the judgement, with the bench observing:

> *"Despite governmental policy and rules and regulations recognising the adverse effects of climate change and seeking to combat it, there is no single or umbrella legislation in India which relates to climate change and the attendant concerns. However, this does not mean that the people of India do not have a right against the adverse effects of climate change" (Paragraph 19).*

Over half a decade ago, we wrote about the fragmented and disjointed nature of India's climate policy landscape, arguing for a comprehensive policy document or integrated national legislation to replace some of the outdated policy plans on climate change, in order to reflect a new vision for urgently meeting the goal of effectively combating climate change. A judgement like *M.K. Ranjitsinh* will undoubtedly strengthen claims before the judiciary, which seek to directly bring the violation of the right against the adverse effects of climate change into issue. However, at the same time, it remains imperative that India enacts climate legislation to safeguard climate justice considerations and to provide greater transparency and institutional certainty on the trajectory to meet its avowed goal of

net-zero emissions by 2070. It remains critically important to engage with the need for an integrated, holistic, imaginative, and effective climate protection law and policy framework in the days ahead.

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