

ENVIRONMENTAL JURISPRUDENCE AT CROSS-ROADS IN INDIA: THE BALANCE OF HUMAN RIGHTS AGAINST CLIMATE CHANGE AND RIGHT OF HARMONIOUS CO-EXISTENCE

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Abstract

India passed its first historic judgment on climate change which was made available on 08th April 2024 by recognising its adverse impacts to be a violation of human rights and that of the fundamental right to life as enshrined in the Indian Constitution and interpreted in multifarious dimensions by the courts of law in India. While it is indeed true that it is historic in nature, the paper attempts to raise certain concerns. First, wasn't this aspect already recognised as a right in plethora of decisions already dating back from the times of M.C. Mehta vs. Union of India or M.C. Mehta vs. Kamal Nath or Enviro Legal Action and all such landmark decisions that paved the way for the environmental jurisprudence in India? Second, what is and how is this case different than those earlier decisions and finally, how many really bothered to even glance through the facts of the case and issues involved to note why and how did the apex court pronounce such a remarkable order? In this regard, thus, the paper attempts to meander through the environmental jurisprudence in crossroads in India where the rights of the living beings are contrary to each other and instead of the harmonious existence of the living world, the courts are sticking to the age-old anthropocentric approach to environmental protection. Ultimately, then, the paper raises the larger question of how is this case remarkable when it fails, if so, to keep a balance of human rights and rights of Nature.

Keywords

Rights of Nature, climate change, fundamental right, human rights, harmonious existence.

Resumo

A Índia proferiu a sua primeira decisão histórica sobre as alterações climáticas, divulgada a 8 de abril de 2024, ao reconhecer que os seus impactos adversos constituem uma violação dos direitos humanos e do direito fundamental à vida, consagrado na Constituição indiana e interpretado sob múltiplas perspetivas pelos tribunais da Índia. Embora seja verdade que se trata de uma decisão de carácter histórico, o presente artigo procura levantar algumas questões. Primeiro, este aspeto não já tinha sido reconhecido como um direito numa infinidade de decisões que remontam aos tempos de M.C. Mehta vs. União da Índia ou M.C. Mehta vs. Kamal Nath ou Enviro Legal Action e todas essas decisões marcantes que abriram caminho



para a jurisprudência ambiental na Índia? Em segundo lugar, em que consiste e em que medida este caso difere dessas decisões anteriores e, por fim, quantos se deram ao trabalho de sequer dar uma vista de olhos aos factos do caso e às questões envolvidas para perceber por que razão e de que forma o tribunal superior proferiu uma decisão tão notável? Neste sentido, o artigo procura, assim, percorrer a jurisprudência ambiental na encruzilhada na Índia, onde os direitos dos seres vivos se opõem uns aos outros e, em vez da existência harmoniosa do mundo vivo, os tribunais mantêm-se fiéis à abordagem antropocêntrica secular da proteção ambiental. Em última análise, o artigo levanta a questão mais ampla de como é que este caso é notável quando falha, se é que o faz, em manter um equilíbrio entre os direitos humanos e os direitos da Natureza.

Palavras-chave

Direitos da Natureza, alterações climáticas, direito fundamental, direitos humanos, existência harmoniosa.

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Introduction

Through the recent judgment in *M.K. Ranjitsinh and Ors. v. Union of India* (M K Ranjitsinh & Ors vs Union of India, 2023), the Supreme Court has paved the way for climate change litigation in India. It has recognized the 'Right Against Adverse Effects of Climate Change' as a distinct right flowing from Art. 14 and Art. 21 of the Indian Constitution (M K Ranjitsinh & Ors vs Union of India, 2023). The *MK Ranjitsinh* judgment can potentially drive more climate litigation, hence a landmark judgment. Additionally, it is one of the first judgments to address the tripartite dilemma of climate change, Human rights, and sustainable development. However, is this judgment truly remarkable? The author in this article attempts to answer the following pertinent questions that have brought India at the crossroads in its journey with environmental law.

1. Wasn't this fundamental rights already recognised as a right in plethora of Supreme Court decisions dating back to the times of 1970s when environmental law was making inroads to India that contributed to the environmental jurisprudence in India?
2. What is and how is this case different from those earlier decisions?
3. Was the order of the Apex Court legitimate considering the issues on which the court was adjudicating?

Before delving into these questions, a short glimpse into the necessity for this decision on Fundamental Rights against Climate Change and, accordingly, its significance will be portrayed transitioning into the next section on international jurisprudence on the subject-matter. The last sections shall be on the landmark and historic case in India and its criticisms.



Consequences of Climate Change and Pollution

The adverse effects of climate change such as asthma, increase in worsening of cardiac health, pest-related diseases like Lyme Disease and West Nile Virus water- and food-related illnesses, and injuries and deaths (EPA, 2022) are well known today and backed with enough scientific research. However, the first instance of underscoring the consequences on health due to climate change through scientific study was in the IPCC's First Assessment Report (FAR) in 1990 (IPCC), which already included mentions of the potential health impacts of climate change, the main diseases of concern are asthma, rhinosinusitis, chronic obstructive pulmonary disease (COPD) and respiratory tract infections. This was followed by the EPA's "Climate Change and the Health of Vulnerable Populations" report in 1997. The Third Assessment Report (TAR) of the IPCC was released in 2001 and focused attention on the impacts of climate change and the need for adaptation. In 2009, EPA's released "Climate Change and Public Health" outlining the various health impacts of climate change, including respiratory diseases exacerbated by air pollution and allergens. Further, in 2016, a study by US Global research program (Beard, 2016) revealed that climate change has also led to increase in Lyme disease by expanding the range of ticks (Beard, 2016). The same study also stated that climate change also contributed to increase in West Nile Virus by accelerating mosquito development, biting rates, and the incubation of the disease within a mosquito (Beard, 2016).

With regard to environmental pollution, the first instance of an environmental disaster resulting in health consequences is the "Great London Smog in 1952". This severe air-pollution event, caused by a combination of industrial pollution and weather conditions, led to thousands of respiratory illnesses and deaths, highlighting the connection between pollution and respiratory conditions like asthma. Additionally, the discovery of the ozone hole in 1985 was a significant environmental milestone (Discover). British scientists, led by Dr. Joe Farman, Jonathan Shanklin, and Brian Gardiner, published findings revealing a dramatic thinning of the ozone layer over Antarctica. The relationship between the ozone hole and skin cancer is critical. Dr. F. Sherwood Rowland and Dr. Mario Molina, who won the Nobel Prize in Chemistry in 1995 for their work on the ozone layer, also emphasized the health impacts, including the increased risk of skin cancer due to higher levels of ultraviolet (UV) radiation reaching the Earth's surface. Their groundbreaking research in the 1970s demonstrated how chlorofluorocarbons (CFCs) break down ozone molecules in the stratosphere. (Ukri, 2021)

In June, a woman in her 70s from western Canada was admitted to a hospital in Nelson, British Columbia, suffering from dehydration, asthma, and diabetes. The record-breaking heat wave in the region, which saw temperatures exceed 100 degrees Fahrenheit and was exacerbated by heavy wildfire smoke, led Dr. Kyle Merritt to diagnose her condition as being caused by climate change (Express, 2021). This diagnosis reflects the growing impact of extreme weather conditions on health, with nearly 600 deaths in British Columbia attributed to the heat. The heat wave was followed by severe flooding in November, which resulted in additional fatalities (institute).

Dr. Merritt, who leads the emergency room at Kootenay Lake Hospital, noted that many patients' existing health issues were aggravated by the extreme temperatures. Although



it is challenging to directly link severe illnesses to climate factors, Merritt chose to highlight climate change as the root cause, arguing that treating symptoms alone is insufficient without addressing underlying environmental factors. This case may represent one of the first instances where a doctor has explicitly linked a patient's condition to climate change.

Developments in the international courts

Recently, the European Court of Human Rights in *Verin vs Switzerland* (Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, 2020) also took a human rights perspective on climate change. The ECHR in its judgment links obligations under international agreements concerning climate change with human rights. By holding the Swiss government culpable for neglecting its citizens' rights in relation to climate change, the ECHR sets a precedent that states must take proactive measures to protect their citizens from the adverse effects of climate change. Further, the ECHR places the rights and well-being of citizens at the center of its decisions on climate change. Therefore, making the state authorities obligated to protect its citizens from adverse effects of climate change (Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, 2020). This approach ensures that governments prioritize human rights when designing and implementing climate policies.

In the landmark judgment of *Tieota vs New Zealand* (Tieota vs New Zealand, 2020), the UN Human Rights Committee acknowledged the human rights violations caused by climate change. It further stated that the consequences of "climate change, environmental degradation and unsustainable development" will have adverse effects on an individual (and future generations) right to life (Tieota vs New Zealand, 2020). It further affirmed in its report that, both UNHCR and regional human rights tribunals have established that environmental degradation can compromise effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life. (Tieota vs New Zealand, 2020) By taking cognizance of the inherent connection of the adverse effects of climate change on right to life, the UNHCR has set a precedent as consequences of climate change are viewed from the lens of human rights. This opens up avenues for climate change litigation as well. Additionally, the committee also concluded that if national and international efforts are not robust, the effect of climate change may lead to violation of rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending States (Tieota vs New Zealand, 2020).

Indian SC Case on Fundamental Rights Against Climate Change

The facts that the case was about the existential crisis of the Great Indian Bustard (GIB). The GIB is a critically endangered species whose numbers are dwindling in India, owing to multiple threats, one of which is its collision with high-tension power lines in their habitats in Rajasthan and Gujarat. To protect the GIB, the SC ordered in 2021 that all high-tension cables in these areas be laid underground. (M K Ranjitsinh & Ors vs Union of India, 2023) However, laying high-tension cables underground could make solar power projects unviable for companies, slowing India's efforts to cut global emissions in the



fight against climate change (M K Ranjitsinh & Ors vs Union of India, 2023). Hence, the government sought modification of the 2021 ruling to support power projects in solar-rich Gujarat and Rajasthan — resulting in the current judgment.

The court in the judgment whilst acknowledging the international commitments of India towards climate change, such as the Kyoto Protocol, which requires countries to set emission reduction targets and offers mechanisms like International Emissions Trading and Clean Development Mechanism; the UNFCCC which emphasizes global cooperation to address climate change, outlining responsibilities based on respective capabilities and promoting measures to stabilize greenhouse gas concentrations and protect the climate system for present and future generations, culminating in the 2015 Paris Agreement where countries, which also includes India, pledged to limit global temperature rise. Further, the court took cognizance of the existing domestic legislations pertaining to climate change, such as the Wild Life (Protection) Act 1972, the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981, the Environment (Protection) Act 1986, the National Green Tribunal Act 2010, amongst others. However, the Court also pointed out that there is “no single or umbrella legislation in India which relates to climate change” (M K Ranjitsinh & Ors vs Union of India, 2023). This can be interpreted as the Judiciary’s nudge to the executive to draft legislation particularly concerning climate change because climate change litigation is on a steep rise globally particularly in the global south (as per the report by the London School of Economics' Grantham Research Institute on Climate Change and the Environment) (Times, 2024). Countries such as France, Chile, and Australia are already fighting climate change through legislation (Union, 2024).

Interpretation drawn by the Apex Court

It is remarkable to note that the court does not equate the lack of legislation as to no rights of Indian citizens against the adverse effects of climate change (M K Ranjitsinh & Ors vs Union of India, 2023). In this regard, the court refers and interprets Arts. 48A (M K Ranjitsinh & Ors vs Union of India, 2023) and Article 51A(g) (M K Ranjitsinh & Ors vs Union of India, 2023) of the Constitution of India. Although these are not justiciable provisions of the Constitution, they are indications that the Constitution recognises the importance of the natural world. The importance of the environment, as indicated by these provisions, becomes a right in other parts of the Constitution. Article 21 (M K Ranjitsinh & Ors vs Union of India, 2023) recognizes the right to life and personal liberty while Article 14 stipulates that all persons shall have equality before the law and the equal protection of laws. The SC not only acknowledges the Right against adverse effects of climate change as a distinct right under the scope of Art. 14 and Art. 21 making it fundamental. But also, further elaborates on the inherent relationship between the right against adverse effects of climate change and human rights (M K Ranjitsinh & Ors vs Union of India, 2023). The court proclaims the need to view the issue of climate change from a rights perspective and then proceeds to acknowledge the intersection between human rights and climate change (M K Ranjitsinh & Ors vs Union of India, 2023).

The nexus between the two concepts primarily flows from international agreements. The judgment substantiates its statement by citing the Paris Agreement's preamble, which



urges parties to consider their human rights obligations while addressing climate action, encompassing rights like health, indigenous rights, gender equality, and development. (M K Ranjitsinh & Ors vs Union of India, 2023) This perspective is further supported by the United Nations Environment Programme, which outlines obligations for states in both mitigating greenhouse gas emissions and adapting to climate impacts. (M K Ranjitsinh & Ors vs Union of India, 2023) Additionally, the Inter-American Court of Human Rights has affirmed the right to a healthy environment as fundamental, emphasizing state duties to prevent environmental harm that could threaten rights such as life, health, and housing. (M K Ranjitsinh & Ors vs Union of India, 2023) Further, the court takes into account Wewerinke-Singh's study emphasizes states' dual responsibility to address climate impacts while upholding human rights, reflecting the growing recognition of a healthy environment as a fundamental global right. (M K Ranjitsinh & Ors vs Union of India, 2023)

The court connects climate change with human rights by stressing that countries must reduce climate impacts while protecting basic human rights because of the inextricable link between human rights and the environment, tampering the latter certainly affects the former. The court primarily sources the link between climate change and human rights through international sources of law. The court herein cites the contribution of the UN High Commissioner for Human Rights to the 2015 Climate Conference in Paris, stating that the consequences of climate change have a direct and indirect impact on "internationally guaranteed human rights". (M K Ranjitsinh & Ors vs Union of India, 2023) The report herein referred to in the judgement emphasizes how the consequences of climate change along with altering our ecosystem have an "added feature of undercutting our important rights which include (but not limited to): Right to life- As highlighted by Renan Dalisay, Administrator of the National Food Authority of the Philippines, in his remarks about Typhoon Yolanda (internationally commonly known as an extreme weather event) which "*left a path of death and destruction, claiming no less than 7500 precious Filipino lives, mostly in economically vulnerable communities.*" (OHCHR, 2024) This threat extends to both present and future generations- the report further emphasized the detrimental effects of climate change on other human rights such as right to food, health, water, sanitation, housing, self-determination, development. The court further in its judgement made the state obligatory to ensure the fulfilment of these rights emphasizing the fact that the state owes a duty of care to its citizens and is compelled to take effective measures to mitigate climate change and ensure that all individuals have the necessary capacity to adapt to the climate crisis. (M K Ranjitsinh & Ors vs Union of India, 2023)

Additionally, the judgment derives the intersection of human rights and climate change from the preamble of the Paris Agreement, which recognizes the interconnection between climate change and various human rights, including the right to health, indigenous rights, gender equality, and the right to development.¹ (Agreement, 2015) The judgement further acknowledged the 2015 United Nations Environment Programme report, which

¹ "Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity".



outlined five human rights obligations related to climate change, including both mitigation and adaptation efforts. (M K Ranjitsinh & Ors vs Union of India, 2023) Building on this, in 2018, the UN Special Rapporteur on Human Rights and the Environment emphasized the necessity for states to establish effective laws and policies to reduce greenhouse gas emissions, aligning with the framework principles on human rights and the environment (Agreement, 2015). The 2017 advisory opinion by the Inter-American Court of Human Rights affirmed the right to a healthy environment as a fundamental human right, delineating state obligations regarding significant environmental harm, including cross-border impacts. This opinion deals with the violation of the right to a healthy environment which can reverberate across numerous rights domains, including the right to life, personal integrity, health, water, and housing, as well as procedural rights such as information, expression, association, and participation rights. (M K Ranjitsinh & Ors vs Union of India, 2023) Studies resonate with the growing global recognition of the right to a healthy environment as fundamental to environmental protection and sustainability (M K Ranjitsinh & Ors vs Union of India, 2023). Additionally, access to clean and sustainable energy, a critical component of the right to a healthy environment, was first recognized by the UN Special Rapporteur on Human Rights and the Environment in 1994, underscoring its longstanding significance. (M K Ranjitsinh & Ors vs Union of India, 2023)

The judgment highlights how the court has approached the issue of climate change through the lens of rights. In doing so, the court has recognized that climate change has a direct and indirect impact on human rights. The court not only acknowledges the direct impact that climate change has on human rights taking into consideration climate change threatens the right to a healthy environment but also indirect impacts of climate change we include rights such as the right to life, health, adequate housing, and cultural integrity, particularly for marginalized communities like indigenous peoples and migrants. (M K Ranjitsinh & Ors vs Union of India, 2023) The court further clarifies that whilst giving effect to this right, other constitutional rights are to be carefully considered. The court further exemplified this need by recognizing in its judgment the need to address climate change while safeguarding other fundamental rights, such as the right against displacement and cultural rights of affected communities (M K Ranjitsinh & Ors vs Union of India, 2023). The judgment emphasizes the necessity for courts to carefully weigh various constitutional rights before making decisions on climate-related issues. (M K Ranjitsinh & Ors vs Union of India, 2023) This includes considering cases where environmental regulations may impact indigenous communities' cultural rights or their right against displacement due to climate-related developments, ensuring a comprehensive assessment of constitutional rights before reaching legal conclusions on climate issues. (M K Ranjitsinh & Ors vs Union of India, 2023) However, it does not specify or employ any particular methods or doctrines to be considered in a scenario (similar to the present case) of competing rights. Taking into account previous cases such as the *Puttaswamy* Judgement (K.S Puttaswamy vs Union of India), applying the test of proportionality can be proposed. Or similar to that of the *Keshavananda Bharati* Case (Kesavananda Bharati vs State of Kerela, 1973) wherein the principle of Harmonious construction (Kesavananda Bharati vs State of Kerela, 1973) - which seeks to interpret constitutional provisions in a manner that harmonizes and accommodates various rights, rather than allowing one right to override another.- was promptly applied. Moreover, by recognizing India's present international human rights obligations, highlighting the duty



to prevent human rights harm caused by climate change indicates the court's changing perspective on the issue of climate change and the inclination to view it from the perspective of 'Fundamental Rights' (thus, making the application of the doctrine aforementioned more suitable). and At present, the Indian Supreme Court, further acknowledged the right to clean and sustainable energy as necessary to create a healthy environment and gave substantial importance to Solar energy in India's National Action Plan on Climate Change (M K Ranjitsinh & Ors vs Union of India, 2023) and takes into account the geographical landscape of Gujarat and Rajasthan which makes it prime for solar power generation. (M K Ranjitsinh & Ors vs Union of India, 2023)

The court ultimately converges the tripartite dilemma of the conservation of the Great Indian Bustard, sustainable development, and the right against adverse effects of climate change. This litigation is a perfect example of green versus green legislation, involving a trade-off between climate and biodiversity or other environmental aims. "It is a nuanced interplay between safeguarding biodiversity and mitigating the impact of climate change." With two equally necessary competing claims, it can be questioned whether climate change or sustainable development be subject to the test of proportionality developed by our Supreme Court over the years. In the past decade, the role of proportionality in rights adjudication in India has witnessed a remarkable evolution. The doctrine of proportionality which essentially means that the actions or measures taken by a public authority must be proportionate to the objective pursued. The proportionality test provides a "heuristic tool" to determine the constitutionality of an action that limits a fundamental right. (Chandra, 2021) It requires that a rights-limiting measure should be pursuing a proper purpose, through means that are suitable and necessary for achieving that purpose and that there is a proper balance between the importance of achieving that purpose and the harm caused by limiting the right. (Chandra, 2021) It essentially has four major limbs to it (as recognized in the Modern Dental Case): legitimate State aim, suitability, necessity, and balancing (Bhatia, 2023). The most unique contribution of proportionality is in enabling courts to assess the overall moral and factual costs associated with right infringements in the 'balancing' stage. This stage requires that the infringement of rights by a State measure, should, on balance, be outweighed by the larger public good achieved thereof (Srivastava, 2024).

The test of the proportionality was laid down in the Modern Dental College Judgment in 2016 and the doctrine was later affirmed in the Puttaswamy judgment, where he proclaimed that proportionality represents a transition from a 'culture of authority' to a 'culture of justification.' Further, the application of proportionality in the case of *Anuradha Bhasin vs Union of India* (Anuradha Bhasin vs Union of India, 2020) and the Demonetisation case (*Vivek Narayan Sharma vs Union of India*, 2023) confirmed that proportionality doctrine was here to stay (Roy, 2023). In the given case wherein there are competing claims- one on conservation of GIB and other sustainable development- the test of proportionality developed by the Supreme Court can be applied overtime to similar cases, to evaluate whether the means used to achieve environmental goals, like reducing carbon emissions through solar energy, are proportionate to the conservation objectives they seek to uphold. However, the court opines the claims in this case are not competing for claims nor do they exist in "disjunctive silos", the Court herein underscores the necessity to strike a delicate balance between the two aims and therefore, in the



ruling states the order passed by this Court on 19 April 2021 needs to be suitably modified. The order stated that a large part of the territory was not to be used for overhead transmission lines, and further gave instructions to convert to underground power lines within a year and appointed a committee to determine whether laying high voltage underground power lines would be feasible (M K Ranjitsinh & Ors vs Union of India, 2023). The court appointed an Expert Committee to determine how to protect the Great Indian Bustard the best, but certainly not at the cost of delaying the international commitments that India has towards mitigating climate change (M K Ranjitsinh & Ors vs Union of India, 2023). In doing so, the court effectively left the environmental policy to be developed by the experts- an approach often undertaken by the court when they refrain from getting into a confusion.

This judgment answers some fundamental questions on how to approach climate change from a human-centric perspective, instead of a purely developmental or security concern. Domestically, this judgment will enable greater clarity on future litigation on climate change by linking the issue holistically to the basic rights of citizens. (Zaidi, 2024)

Other cases of human right to environment vis-à-vis MK Ranjith Sinh case

The authors in this section of the paper attempt to provide a brief of the major differences between the landmarking human right to environment cases against the celebrated *MK Ranjithsinh* case to lay down the ground for the last section of the paper on the criticism to the present decision.

The *MK Ranjitsinh* case marks a significant moment in environmental litigation by integrating climate change issues into its framework. This is one of the first instances of environmental litigation being a pathway to address climate change and thus initiating the jurisprudence on climate change litigation. It is remarkable to note that the MK Ranjitsinh case is one of the cases where the claims of environmental change are not separated from climate change, moreover, the Hon'ble Supreme Court clubs the issue under one and underscores the urgency of crafting an "umbrella legislation" to address climate change issues (M K Ranjitsinh & Ors vs Union of India, 2023). Moreover, the recognition of the intersection of human rights with climate change makes this a landmark judgment. (M K Ranjitsinh & Ors vs Union of India, 2023) Whilst previously in the 2017 case of *Riddhima Pandey vs Union of India* (Riddhima Pandey vs Union of India, 2019), an attempt was made to link human rights with climate change the petition however did not result in its favour. The MK Ranjitsinh is however the first instance of the Supreme Court not only acknowledging the intersection between climate change and Human rights but also engaging in-depth by deriving the legitimacy of the intersection through international sources such as the Paris Agreement (M K Ranjitsinh & Ors vs Union of India, 2023). This is also the first instance wherein the Supreme Court overtly acknowledges the development of climate change litigation (M K Ranjitsinh & Ors vs Union of India, 2023) and is hopeful by recognizing the constitutional right against adverse effects of climate change, the discourse of climate change litigation can also be encouraged in India.



Additionally, by recognizing the constitutional right against adverse effects of climate change which (as per the judgment) flows from the fundamental rights- Article 14 and Article 21- resulting in significant expansion of the interpretation of these particular fundamental rights distinguishes it from previous environmental law cases. (M K Ranjitsinh & Ors vs Union of India, 2023) Previous environmental law cases such as *The State of Telangana vs Mohd. Abdul Qasim* (The State of Telangana vs Mohd. Abdul Qasim, 2024) or the *Bombay Environmental Action* case (Bombay environmental action vs Union of India, 2006), *MC Mehta vs UOI* (concerning the pollution of river Ganga) (M.C. Mehta vs Union Of India, 1987), *Centre for Environmental Law v. UOI* (Centre for Environmental Law v. Union of India, 2005) (dealing with the inadequacy of environmental laws) and such others were focused on the primary concerns of enforcement of existing laws, management practices, adequacy of current policies and codifying and also effective application of principles of environmental law like Polluter Pays², Precautionary Principle³, Prevention Principles⁴, Intergenerational Principle⁵ and Sustainable Development Principle⁶. However, in the *MK Ranjitsinh* case, a new fundamental right with its roots in human rights has been established indicating a broader, rights-based approach (M K Ranjitsinh & Ors vs Union of India, 2023) to addressing climate change and environmental impacts, in contrast to other environmental law cases. However, this celebrated decision needs to be revisited, substantively and procedurally.

Failure of Environmental laws

Despite these, the authors argue that Environmental laws have failed consistently since the Stockholm Conference in 1972 when for the first time, the anthropocentric dimension of protecting environmental laws were conceived. It is easily conceivable from the disastrous situation in which the world is today. Temperatures have shot (WMO), underground water level has reduced (Jasechko, 2024), desertification is rampant and human beings suffering as a result of all these. The Stockholm Conference was the first axe in severing the otherwise symbiotic relationship between the human and the non-human world. Before 1972, I would argue, there was much better interconnectedness than today because it was unknown to the most of the world that Mother Nature could be commodified or "utilised" or "used" to satiate human needs and desires. Soon

² The 'polluter pays' principle is the commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment. For instance, a factory that produces a potentially poisonous substance as a by-product of its activities is usually held responsible for its safe disposal. The polluter pays principle is part of a set of broader principles to guide sustainable development worldwide (formally known as the 1992 Rio Declaration).

³ The 'Precautionary Pay' Principle (also known as the precautionary approach) was also established in the 1992 Rio Declaration and states- In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

⁴ This principle allows action to be taken to protect the environment at an early stage. It is now not only a question of repairing damages after they have occurred, but to prevent those damages occurring at all. This principle is not as far-reaching as the precautionary principle. It means in short terms: it is better to prevent than repair.

⁵ The principle of intergenerational equity recognizes the rights of each generation to use and enjoy the natural resources of the planet, and the corresponding duty to conserve these resources for the future.

⁶ Sustainable development is most commonly defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."



thereafter with the discourse on the Right to Development and that being codified into the Declaration of 1986 (41/28, 1986). The objective of attaining “sustainable development” (Affairs) and growth was not really about the sustainability of the living world, but was about sustenance of the present and future human generations by using the minimum amount of natural “resources”. Joseph Laitos and Lauren in their article *Why environmental law fail?* (Laitos, 2014) attempts to give a perfect explanation of the consistent failures of environmental laws by analyzing the flawed assumptions (Laitos, 2014) with which the environmental laws have been crafted since 1972.

India’s attempt at protecting environment

India passed its first historic judgment on the climate change which was made available on 08th April 2024 by recognising its adverse impacts to be a violation of human right.

In substantiation to the first issues, a glance at the following paragraph from the case shall make it clear.

“24. Despite a plethora of decisions on the right to a clean environment, some decisions which recognise climate change as a serious threat, and national policies which seek to combat climate change, it is yet to be articulated that the people have a right against the adverse effects of climate change. This is perhaps because this right and the right to a clean environment are two sides of the same coin. As the havoc caused by climate change increases year by year, it becomes necessary to articulate this as a distinct right. It is recognised by Articles 14 and 21” (M K Ranjitsinh & Ors vs Union of India, 2023).

The Court has itself opined that it is not new, but only a distinct right in itself, so what is the repercussions of that? To draw an analogy, while Art. 15 of the Constitution of India lays down equality for all human beings in India, Art. 15(3) allows for better protection of certain sections of the society who are more vulnerable than the others. So specific special legislations have been introduced to protect their rights. But, having recognized a human right against adverse impacts of climate change it is as good as human right to clean and healthy environment because invariably the outcomes of both would be to ensure environment is protected so that humans survive in a healthy environment. So, there isn’t a lot of value addition in that sense, except for academic and jurisprudential standpoint.

In substantiation of the second issues, the following paragraph is significant:

“53... It is imperative 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. Unlike the conventional notion of sustainable development, which often pits economic growth against environmental conservation, the dilemma here involves a nuanced interplay between safeguarding biodiversity and mitigating the impact of climate change. It is not a binary choice between conservation and



development but rather a dynamic interplay between protecting a critically endangered species and addressing the pressing global challenge of climate change” (M K Ranjitsinh & Ors vs Union of India, 2023).

So, the major difference between the erstwhile environmental case laws in India and the present Ranjithsinh decision is the conflicting interests, in this case, were between protecting the environment itself and was not about human right to development or sustainable development and protecting environment which the court clearly states in the paragraph so quoted. In other words, the choice was between the rights of the endangered species and the human right against adverse impacts of climate change. Now, the follow-up question here then takes us back to the first question of how is this case then different from the earlier judgments because both of them essentially dealt with the human right to be protected against environmental concerns. In other words, it is the same anthropocentric idea of environmental protection, the one that argues for protecting environment for the well-being of the human beings and not for the well-being the Mother Nature.

The following paragraphs as being quoted from the judgment will clearly give an idea of the fact that irrespective of whether the dichotomy is of human rights vis-à-vis environmental protection or development vis-à-vis human rights, it is the Human Rights to HAVE and ENJOY a HEALTHY and CLEAN ENVIRONMENT that takes precedence wherein we tend to read in all petitions for protecting environment to being petitions for protecting human right to environment.

“20. Article 48A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Clause (g) of Article 51A stipulates that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.....The importance of the environment, as indicated by these provisions, becomes a right in other parts of the Constitution. Article 21 recognises the right to life and personal liberty while Article 14 indicates that all persons shall have equality before law and the equal protection of laws. These articles are important sources of the right to a clean environment and the right against the adverse effects of climate change...” (M K Ranjitsinh & Ors vs Union of India, 2023).

In this case too, finally the court concluded that for the purposes of economic growth the need to have the solar powerplants- a matter of contention in this matter partially, is crucial.

*54. India's commitment to promoting renewable energy sources, particularly in regions like Gujarat and Rajasthan, aligns with its broader sustainable development objectives. By transitioning towards solar power and other renewable energy sources, India aims to not only reduce carbon emissions but also **improve energy access**, foster **economic***



growth, and create employment opportunities.” (M K Ranjitsinh & Ors vs Union of India, 2023)

This time it was furthermore justified by citing the international commitments of India owing to the Kyoto Protocol and UNFCCC and such others, as explained above, on which a good 10 pages of the judgment has been occupied. It is quite ironic that the Apex Court is concerned that the international commitments that India has made be fulfilled. This also been reflected in the subsequent paragraphs and in the operative part of the judgment in paragraph 52(k):

"55. India's commitment to sustainable development is also underpinned by its international obligations and commitments. As a signatory to various international conventions and agreements, including the UNFCCC and the Convention on Biological Diversity, India has pledged to uphold principles of environmental stewardship, biodiversity conservation, and climate action on the global stage. Through partnerships, knowledge sharing, and collaborative action, India seeks to amplify the impact of its sustainable development efforts, contributing to collective efforts aimed at addressing global challenges...."

58. Beyond mere adherence to international agreements, India's pursuit of sustainable development reflects the complex interplay between environmental conservation, social equity, economic prosperity and climate change. Its national goals in this regard require a holistic understanding of sustainable development that balances immediate needs with long-term sustainability, ensuring that present actions do not compromise the well-being of future generations. It acknowledges that solutions to today's challenges must not only address pressing issues but also lay the groundwork for a resilient and equitable future" (M K Ranjitsinh & Ors vs Union of India, 2023).

But, where did the discussion on the renewable energy and solar panels emerge? That leads to the final question- the pivotal question here that will depict the fact-in-issue and how far from that the *ratio decidendi* it seems to be.

The facts of the case, as explained earlier, were about modifying a 2021 order of the Supreme Court about the decreasing rate of the IUCN recognized "critically endangered species" of the Great Indian Bustard from the regions of Rajasthan and Gujarat where they mostly habit. One of the causes was identified to be the high voltage overhead power transmission from these solar power plants and the Supreme Court ordering for underground channels being made for the same which was in tandem with the petitioner's plea. The Supreme Court had constituted a committee to look into the matter and complete the work in a year. While there has been no reference to that report in the present judgment of the court, the court constituted another committee (citing the matter was of environmental policy voicing in the same manner, like it did in the recent *Supriyo vs. Union of India* (Supriyo v. Union of India, 2023) decision) to chalk out plans of how to protect the bird while maintaining overhead power transmission constantly harping upon the impossibility of such underground channels to be even made citing



several technical arguments focused on the high voltage that runs through those and accusing the bench that passed the 2021 order on their impractical wisdom.

What is alarming here is that the subject-matter of the case was the bird and their protection against these overhead high voltage power transmissions that was causing their death and solutions to protect them from becoming extinct. In other words it was about the protection of the Rights of the birds which is in tandem with Rights of Nature jurisprudence. But the court made it out to be a matter of the importance of solar power and its significance in cutting down on contributors to pollution that causes climate change because human beings have a human right against adverse impacts of climate change. Finally, it also praised the governmental initiatives so taken akin to the international commitments and for reduction of carbon footprint in India which was unnecessary in this regard.

So, was the fact-in-issue in tandem with the famous and news breaking *ratio decidendi* of the case? In fact, the court balanced its rationale stating that-

"60. If this Court were to direct that the power transmission lines be undergrounded in the entire area delineated above, many other parts of the environment would be adversely impacted. Other endangered species may suffer due to the emission of harmful gases from fossil fuels. Rising temperatures and the attendant evils of climate change may not be halted in a timely fashion, leading to disastrous consequences for humankind and civilisation as a whole. The existential threat may not be averted" (M K Ranjitsinh & Ors vs Union of India, 2023).

So, here again we are at no progress made from the erstwhile plethora of judgments that have always played out the human right to pollution-free environment than that of the rights of another sector of living beings- the birds, Mother Nature at large. We forget Mother Nature and consider the environment only by forgetting that Nature is a culmination of all living creatures where humans are only one part.

Conclusion

India has undoubtedly contributed to the environmental jurisprudence in the world for several decades now. It has mostly abided by the international commitments on the subject-matter, but collectively we have failed in protecting Mother Earth. Taking inspiration from a few scholars who propel us to think beyond Human Right to Environment to a holistic environmental protection, inclusive of all living creatures, the authors argue that the recent Ranjitsinh decision of the Supreme Court of India was yet another missed opportunity to recognise the wholesomeness of Mother Nature. The otherwise historic and landmark judgment of the Supreme Court of India on Human Right against climate change, that made headlines across the world has been critiqued in this article by the authors. In the opinion of the authors, the decision of the Apex Court has been an overreach and futile exercise considering that the main issue was lost midway and priority was given to economic development citing environmental concerns and reiteration of the same principles of environmental law in India took place. The authors



have shown how the impacts of climate change are bothering the human race, however, the approach of protecting humans against climate change as the possibility of causing further damage. The delicate balance between human right to development and a harmonious living is an exercise that needs to be seriously considered in tandem with international best practices as against international commitments for a better future.

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