DAILY CURRENT AFFAIRS

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A LAW AROUND LOW-CARBON CLIMATE RESILIENT DEVELOPMENT

A law around low-carbon climate resilient development

Navroz K. Dubash
Senior Fellow at the Sustainable Futures Collaborative

Aditya Valiathan Pillai
Fellow at the Sustainable Futures Collaborative

Shibani Ghosh
Visiting Fellow at the Sustainable Futures Collaborative

In a landmark judgment, the Supreme Court of India recently recognised a right to be "free from the adverse impacts of climate change" in *M.K. Ranjitsinh and Others vs Union of India* – sourcing it from the right to life and the right to equality. In a previous article on this page in this daily, "Court on climate right and how India can enforce it" (July 1, 2024), we argued that while this is indeed an important step in establishing climate jurisprudence in India, it raises the very important question of just how this right will be protected.

Earlier, we had suggested that a patchwork of judicial interventions would fall short of the encompassing and systemic approach climate change requires. There is, therefore, a strong case for climate legislation, but only if it is tailored to the Indian context. Taking this issue forward provides an opportunity, but also a challenge, for the new government.

Law to inform development choices

Preparing India to reduce the risks of climate change and address its impacts requires nothing less than re-orienting development toward low-carbon and climate resilient futures. Any law that attempts to take this on must ensure these objectives are internalised in routine decision-making at all levels of development. Because climate change relentlessly targets the vulnerable, and because an energy transition must be just, it must be grounded in the imperative of advancing social justice.

While the concept of climate law is often associated with a top-down approach of setting and achieving targets, in a developing country, this approach is limited because addressing climate change is about more than limiting emissions.

Instead, it requires careful, ongoing, consideration of each developmental choice and its long-run synergies and tradeoffs with low-carbon and climate resilient futures. To achieve this, the substantive right of protection against adverse effects of climate change must be realised, in part, through well-defined procedures in law that are applicable across levels of government. Climate action is more credible when a well-designed institutional structure is strategising, prioritising, troubleshooting and evaluating policies behind the scenes.

Several countries (67 according to one estimate) have experimented with 'framework climate laws' that build governance capacity to address climate change. Umbrella laws that define government-wide goals and substantiate them with a set of processes and accountability measures are a known and increasingly popular way of bringing climate action to the heart of government.

However, these laws vary, and India's approach must be tailored to our context. Starting from a low base of per capita emissions – less than half the global average – India's emissions are still growing, and our objective should be to squeeze out as much development as possible from each ton of carbon and avoid locking-in to high carbon futures. Moreover, India is highly vulnerable to climate impacts, and climate resilience must be an essential element of the new law. In meeting both objectives, considerations of social equity must be central. Consequently, India's law must ensure development, but in a low-carbon direction while building resilience to ever more pervasive climate impacts.

What we arrive at, then, is a law that helps navigate developmental choices. It must create the basis for thoughtful decision-making toward achieving a low-carbon, resilient society. For example, since Indian cities are still growing and changing rapidly, what could low-carbon, climate resilient cities of the future look like? And what levers exist to shape those cities? How can city planning minimise the risk of floods and vulnerability to heatwaves? How should transport needs be met through technology shifts such as electric vehicle adoption and greater attention to public transport and lifestyle shifts?

Have a low carbon development body

A framework climate law should lay out an institutional structure capable of crafting viable answers to these questions. Our ongoing work at the Sustainable Futures Collaborative provides some suggestions. An immediate priority is to create a knowledge body in government capable of rigorously parsing policy options and the futures they might generate. We recommend an independent 'low-carbon development commission', staffed with experts and technical staff, which could offer both national and State governments practical ways of achieving low-carbon growth and resilience.

This body could also serve as a platform for deliberative decision-making. Vulnerable communities and those that may lose from technological change need to be systematically consulted. Hearing their concerns and incorporating some of their ideas could lead to longer-lasting policy outcomes. An example is South Africa's Presidential Climate Commission, which is tasked with charting a course toward just transition based on inputs and representations from stakeholders.

Effective climate governance also requires the ability to set directions, make strategic choices, and encourage the consideration of low carbon choices and climate change impacts within line ministries. Accordingly, the law could create a high-level strategic body, which we label a 'climate cabinet', a core group of Ministers plus representation from Chief Ministers of States, tasked with driving strategy through government. Across the world, climate policy is often defeated by siloed decision-making. This is one way of fixing it.

A whole-of-government approach will also require dedicated coordination mechanisms for implementation. The Ministry of Environment, Forest and Climate Change should continue to play a central role, but it needs to be complemented by higher-level coordination. Here, the pre-existing Executive Committee on Climate Change (made up of senior bureaucrats from multiple Ministries), provides a useful template but only if it is reinvigorated with clearly specified legal powers and duties.

Engagement with the federal structure

Not least, the law must pay attention to India's federal structure. Many areas crucial to reducing emissions and improving resilience – electricity, agriculture, water, health and soil – are wholly or partially the preserve of State and local governments. When a climate impact is felt, it is felt first, and most viscerally, at local levels.

Any institutional structure or regulatory instrument created to protect the Court's newly established climate right must meaningfully engage with subnational governments. First, the law must establish a channel for subnational governments to access national scientific capacity, potentially through the low-carbon development commission as an intermediary, as a step toward solving the pervasive problem of insufficient local climate scientific capacity.

Second, it could articulate ways of financing local action, for example by requiring centrally-sponsored schemes to be more aligned with climate goals or by requiring national departments to climate tag expenditure towards local climate resilience.

Third, the law could establish coordination mechanisms that allow the Centre and States to consult on major climate decisions. It could also require the Centre and States to put out periodically updated medium-term climate plans built around unified goals. To enable development of State-specific solutions, States could also build complementary institutions to those at the Centre, providing knowledge, strategy-setting, deliberation and coordination functions.

The framework law proposed here – one that enables and catalyses action across national Ministries and the federal structure – cannot be the only legal tool in the country's regulatory arsenal. Complementary sectoral laws and amendments may be required, but they would be informed by the approach laid out by the framework law.

The Court's historical pronouncement in *M.K. Ranjitsinh* opens the door to legal and governance changes that make possible an actionable right against the adverse effects of climate change. But to realise this promise, this open door has to actually be used to pass a climate law that is well suited to the Indian context, that steers Indian development choices toward a low-carbon and climate resilient future, and that also advances justice.

The 'M.K. Ranjitsinh' judgment must be used to pass a climate law that is well suited to the Indian context

Question:

Q.1 "The most significant achievement of modern law in India is the constitutionalization of environmental problems by the Supreme Court." Discuss this statement with the help of relevant case laws. (UPSC IAS/2022)

Q.2 Discuss the significance of the Supreme Court's 'climate right' as articulated in the M.K. Ranjitsinh judgement. How can potential climate legislation in India address the dual imperatives of mitigation and adaptation?

- The Supreme Court in M K Ranjitsinh & Ors. v. Union of India & Ors. ruled that people have a right to be free from the adverse effects of climate change which should be recognised by Article 14 and Article 21 of the Constitution. The ruling of the Supreme Court was rendered in response to a writ brought by a government official.
- The court acknowledged the complex interplay between environmental conservation, social equity, economic prosperity, and climate change. It stressed the need to balance the conservation of endangered species like the Great Indian Bustard (GIB) with the imperative of protecting against climate change.
- It appointed an Expert Committee to determine the best way to protect the species. This decision aimed to support India's renewable energy goals and climate commitments while ensuring environmental protection. However, the effectiveness of court rulings on climate change remains a question, as climate change is a complex, multi-dimensional problem that requires a holistic approach. The court's decision to defer to the executive on certain matters related to climate change policy has also been criticized by some experts.
- The Apex court's recent decision on M K Ranjitsinh & Ors. v. Union of India & Ors. to defer to the executive on certain matters related to climate change policy has been questioned by experts.

What was the Supreme Court's recent Landmark Judgment?

- The Supreme Court in M K Ranjitsinh & Ors. v. Union of India & Ors. ruled that that people have a right to be free from the adverse effects of climate change which should be recognised by Article 14 and Article 21 of the Constitution.
- The ruling of the Supreme Court was rendered in response to a writ brought by conservationist and retired government official M K Rnajitsinh, who sought protection for two endangered species namely the Lessor Florican and the Great Indian Bustard.
- The court acknowledged the complex interplay between environmental conservation, social equity, economic prosperity, and climate change.
- While modifying its earlier order to underground power cables in the Great Indian Bustard's habitat, the court prioritized transmission infrastructure to enable renewable energy development to address climate change.

Present challenges along the verdict of Supreme Court:

- Unresolved questions: The judgment leaves unresolved questions regarding the court's emphasis on large-scale clean energy as the main pathway to avoiding climate harm and its potential understatement of climate adaptation and local environmental resilience.

- Non-clarity: The court did not clarify how the newly recognized right against the adverse effects of climate change will be protected in practice.
- Two potential approaches to realizing this right emerge:
  - The proliferation of court-based climate litigation, which may lead to an incomplete patchwork of protections.
  - The enactment of climate legislation, which can provide an overarching framework to guide future policy.

The Need for Climate Legislation in India

- Absence of an "umbrella legislation" in India : India needs climate legislation that is tailored to its unique context, rather than blindly copying other countries.
- Framework climate legislation can set the vision for engaging with climate change across sectors and regions, create necessary institutions, and put in place processes for structured and deliberative governance in anticipation of and reaction to climate change.
- Tailoring Climate Legislation to the Indian Context should also:
  - Create a supportive regulatory environment for sustainable cities, buildings, and transport
  - Enable adaptation measures like heat action plans and climate resilient agriculture
  - Protect key ecosystems like mangroves
  - Consider social equity in achieving these goals
- A single, omnibus law covering all these areas may not be feasible given India's existing legal framework.

Lessons from International Experience:

- Climate laws in many countries, like the UK's, focus narrowly on regulating carbon emissions, which is ill-suited for India.
- Instead, India needs an "enabling law" that stimulates developmentfocused decisions across sectors towards low-carbon and climateresilient growth.
- An enabling law should be more procedurally-oriented, creating institutions, processes, and standards for mainstreaming climate change across ministries and society (emphasizing both adaptation and mitigation).

Federal Factor:

- On Decentralized approach: Many areas relevant to climate action, such as urban policy, agriculture, water, and electricity, fall under the authority of state and local level governments. An Indian climate law must set a framework for coherent national action and decentralize sufficiently to empower states and local governments.
- On Fiscal and Governing Policies: The regional states and local governments need to be provided with information and finance to take effective actions. This would enable diverse segments of society to bring their knowledge and expertise to the table in addressing climate change.

The Way Forward:

- India should learn from international experience, both in terms of what not to do and what directions to follow.
- The country's climate legislation should be tailored to its unique context of being a developing, highly vulnerable nation still building its infrastructure.

THE ANRF PLAN HAS GOT OFF ON THE WRONG FOOT

The ANRF plan has got off on the wrong foot

Binay Panda
Professor at the Jawaharlal Nehru University

In 2023, both Houses of Parliament passed the Anusandhan National Research Foundation (ANRF) Bill, marking a historic start to an initiative to seed, grow, and facilitate research in India, especially in India's universities and colleges.

The 2019 National Research Foundation (NRF) project report explicitly mentioned that "growing outstanding research cells already existing at State Universities" is one of the ANRF's top priority. The scientific community welcomed the Bill and was hoping that the ANRF would provide much-needed breathing space for Indian academia for research free from the bureaucracy, in addition to providing a funding boost and a chance to work together with industry partners.

Lack of industry representation

Nearly a year later and the ANRF has got off on the wrong foot. Recently, it announced a 15-member Governing Board and a 16-member Executive Council, which lack representation from organisations the ANRF envisioned aiding and facilitating.

For example, the ANRF aims to strengthen the research infrastructure of universities. Even acknowledging that more than 95% of students attend State universities and colleges in India, the board and the executive council do not have any members from Central or State universities or colleges. In addition to the Principal Scientific Adviser, they are represented by people who are usually in any high-powered committees of the Government of India – Secretaries from all science departments (Department of Science and Technology (DST), Department of Biotechnology (DBT), Department of Scientific and Industrial Research (DSIR), earth sciences, agriculture, health research, atomic energy, new and renewable energy, electronics and information technology), higher education and defence research and development, directors of the Indian Institute of Science and Tata Institute of Fundamental Research, the Chair of the Indian Council of Historical Research, a Princeton mathematics professor, a science administrator and former Director of the United States National Science Foundation from Brown University and a Silicon Valley serial entrepreneur.

However, the board and the council need representatives who understand the bottlenecks in the current system, especially in the university system, and know how to get things done on the ground rather than being in an advisory role.

Most importantly, the ANRF needs to avoid the confusion that can arise from multiple committees. Therefore, creating a single committee to formulate and implement strategies on the ground is crucial. This emphasis on ground-level knowledge and experience among the committee members should reassure the research community and stakeholders that the ANRF's decision-making process will be informed, competent, and timely.

The lack of adequate industry representation and diversity is one of the most glaring omissions from the current board and council, especially when the ANRF plans to raise more than 70% of its funding from non-government sources and industry. The sole industry representative, Romesh T. Wadhwani, is an Indian-American businessman based in Silicon Valley, U.S., and the sole woman representative is the Secretary of the DSIR. There is no representation from Indian industry or any entrepreneurs from the country or eminent academics from the Central and State universities on the committee.

> The composition of the Anusandhan National Research Foundation's governing board and executive council shows that it could become just another government department

R&D underfunding

India underfunds research and development. In addition to increasing the research and development budget to 4% of GDP, a significant overhaul of the current funding system is required to boost research and to make innovation coming out of Indian organisations globally competitive. To achieve this, the ANRF must: be adequately staffed; implement a robust grant management system; have an internal standard peer-review system with an incentive for reviewers; ensure timely disbursal of research grants and student fellowships with a quick turn-around time (less than six months) between application and fund disbursal; have a system free from bureaucratic hurdles both at the funding body and at grantee institutions; provide flexibility of spending money without following the government's stringent general financial rules (GFR), and permit purchases without going through the Government e-marketplace (GeM) portal.

The ANRF must function unlike any other current government science department. It should have more diverse representations of practising natural and social scientists from the university system, with more women and young entrepreneurs in its committee. Additionally, the future chief executive officer of the ANRF must have a background in both industry and academia, and be someone who can raise money for the ANRF and understand the global innovation ecosystem. A complete overhaul is required for the ANRF to avoid becoming like any other government department and to bridge research and teaching in our universities.

Question:

Q.3 Consider the following statements regarding the Anusandhan National Research Foundation Bill, 2023:

1. It repeals the Science and Engineering Research Board Act, 2008.
2. It provides for establishing the Anusandhan National Research Foundation (NRF).

Which of the statements given above is/are correct?

(a) 1 only
(b) 2 only
(c) Both 1 and 2
(d) Neither 1 nor 2

Answer: C

Notes:

Explanation:

- The Anusandhan National Research Foundation Bill, 2023 was introduced in Lok Sabha on August 4, 2023.
  - It repeals the Science and Engineering Research Board Act, 2008 and dissolves the Science and Engineering Research Board set up under it.
  - The Bill provides for establishing the Anusandhan National Research Foundation (NRF).

ON EXPUNCTION POWERS IN PARLIAMENT

On expunction powers in Parliament

Why did the Opposition engage in a war of words with the government over expunging certain remarks? What is the process to expunge remarks in Parliament? Can a member of the Lok Sabha direct a remark against a Minister? What do the various rules state?

EXPLAINER

Sumeda

The story so far:

The first special session of the 18th Lok Sabha witnessed heated discussions, with the Opposition clashing with the government over a range of issues, ultimately concluding with a war of words over the expunction of the remarks of the leaders of Opposition in both Houses. Rajya Sabha Chairman Jagdeep Dhankhar removed portions of Leader of Opposition (LoP) Mallikarjun Kharge's speech, which was critical of Prime Minister Narendra Modi and the Rashtriya Swayamsevak Sangh. Meanwhile, in the Lower House, parts of Rahul Gandhi's remarks on the PM and the BJP were expunged from the records on the orders of Speaker Om Birla, sparking allegations of different yardsticks being applied for different MPs.

When are remarks expunged?

Parliament maintains a verbatim record of everything that is spoken and takes place during proceedings. While Article 105 of the Constitution confers certain privileges and freedom of speech in Parliament on MPs, it is subject to other provisions of the Constitution and the rules of the House. On the orders of the presiding officer, that is, the Chairman in the Upper House and the Speaker in the Lower House, words, phrases and expressions which are deemed "defamatory, indecent, unparliamentary or undignified" are deleted or expunged from records. For this purpose, the Lok Sabha Secretariat maintains a comprehensive list of 'unparliamentary' words and expressions.

The rules of parliamentary etiquette, which are laid out to ensure discipline and decorum in the Rajya Sabha, say, "When the Chair holds that a particular word or expression is unparliamentary, it should be immediately withdrawn without any attempt to raise any debate over it. Words or expressions held to be unparliamentary and ordered to be expunged by the Chair are omitted from the printed debates."

War of words: Leader Of Opposition in Rajya Sabha Mallikarjun Kharge speaks in the House. ANI

There have been recorded instances where the scope of expunction has been broadened. Speakers, at their discretion, have ordered the expunction of words deemed prejudicial to national interest or detrimental to maintaining friendly relations with a foreign State, derogatory to dignitaries, likely to offend national sentiments or affect the religious susceptibilities of a section of community, likely to discredit the Army, not in good taste or otherwise objectionable or likely to bring the House into ridicule or lower the dignity of the Chair, the House or the members, authors M. N. Kaul and S. L. Shakdher note in their book *Practice and Procedure of Parliament*. For instance, Prime Minister Jawaharlal Nehru once objected when a member referred to the President of Pakistan while asking a supplementary question about the international situation. Mr. Nehru said it would "not be proper" for the Head of a foreign state to be mentioned in the language the member had used. The objectionable words were then expunged.

Members must withdraw objectionable remarks deemed irrelevant to the debate upon the Chair's request and failure to comply may lead to expunction. Similarly, quoting from an unreferenced document or speaking after being asked to desist can result in an expunction.

What about remarks against an MP?

If an MP makes an allegation against their colleague or an outsider, Rule 353 of the Lok Sabha outlines the procedural framework to be followed. "The Rule does not prohibit the making of any allegation. The only requirement is advance notice, on receipt of which the Minister concerned will conduct an inquiry into the allegation and come up with the facts when the MP makes the allegation in the House," former Lok Sabha Secretary General P.D.T. Achary says. If the allegation is neither defamatory nor incriminatory, the above rule would not apply, he adds.

"The rule does not obviously apply to an allegation against a Minister in the government. Since the Council of Ministers is accountable to Parliament, the Members of the House have the right to question Ministers and make imputations against their conduct as Ministers," Mr. Achary adds.

How do officers expunge remarks?

The Chairman and Speaker are vested with the power to order the expunction of remarks under Rule 261, and Rule 380 and 381 of the Rules of Procedure of the Rajya Sabha and Lok Sabha, respectively.

Rule 261 states, "If the Chairman is of opinion that a word or words have or have been used in debate which is or are defamatory or indecent or unparliamentary or undignified, he may in his discretion, order that such word or words be expunged from the proceedings of the Council." The Lower House has a similar provision.

The expunged portions are marked by asterisks with an explanatory footnote stating 'expunged as ordered by the Chair.' If the Chair directs that nothing will go on record during a member's speech or interruption, footnote 'not recorded' is inserted. A comprehensive list of words and phrases is circulated to media outlets at the end of the day's proceedings. Once expunged, these words or phrases cease to exist on the official record. However, the relevance of the practice of expunging remarks has lately come into question, in a digital age where expunged content remains accessible due to the live telecast of proceedings and wider circulation of screenshots and videos on social media.

THE GIST

- Rajya Sabha Chairman Jagdeep Dhankhar removed portions of Mallikarjun Kharge's speech, which was critical of Prime Minister Narendra Modi and the RSS. Meanwhile, in the Lower House, parts of Rahul Gandhi's remarks on the PM and the BJP were expunged from the records on the orders of Speaker Om Birla.
- The Chairman and Speaker are vested with the power to order the expunction of remarks under Rule 261, and Rule 380 and 381 of the Rules of Procedure of the Rajya Sabha and Lok Sabha, respectively.
- However, the relevance of the practice of expunging remarks has lately come into question, in a digital age where expunged content remains accessible due to the live telecast of proceedings and wider circulation of screenshots and videos on social media.

What is meant by Expunction?

- It means removal from the records of Parliament a word or portion or entire speech delivered by the MPs in the respective House.
- It is exercised upon by the orders of the Speaker or Chairman and is carried out in accordance with laid down rules.
- The expunged portions can no longer be reported by media houses, even though they may have been heard during the live telecast of the proceedings.

Freedom of Speech Enjoyed by the MPs and the Rules for Expunging a Speech from the Record

- Article 105 of the Constitution: It confers on members, freedom of speech in the House and immunity from interference by the court for anything said in the House.
- Respective House rules granting powers to Presiding Officers:

- Rule 380 of the Rules of procedure of the LS and Rule 261 of the RS give the power to the presiding officers of these Houses to expunge any words used in the debate which are defamatory, unparliamentary, undignified or indecent.
- It implies that if the allegation is neither defamatory nor incriminatory, the above rule would have no application.
- Once expunged they do not remain on record and if anyone publishes them thereafter, they will be liable for breach of privilege of the House.

❖ Issue of defamation: Any comment regarding the behavior of a public official in the performance of his public role or his character is not considered defamatory under Section 499 of the Indian Penal Code (IPC).
- If such a statement is made in the House against a Minister, who is a public servant, it does not provide a reason for the presiding officers to expunge portions of a speech on the ground that they are defamatory.

❖ Exception related to Ministers: The rule does not apply to an allegation against a Minister in the government.
- This is because the Council of Ministers is accountable to Parliament, and the Members of the House have the right to question Ministers and make accusations against their conduct as Ministers.

What is the Procedure Related to MPs Allegation against a Minister?

❖ A certain procedure has been laid down by Speakers in the past related to MPs, as an allegation against a Minister or the PM is considered to be a serious matter.

❖ Thus, the MP who makes an imputation against a Minister of the government should be sure about the factual basis of the allegation, and that s/he must take responsibility for it.
- If the MP complies with this stipulation, then the allegation will be allowed to remain on record.
- There have been many instances in the LS when MPs have made allegations against Ministers. Here are two.

❖ In 1965, when Prakash Vir Shastri, a LS MP, made personal allegations against Humayun Kabir, the then Minister for Education, the Minister refuted the allegation but the MP reiterated his allegation and referred to press reports.
- However, the Speaker, Sardar Hukam Singh in his ruling noted that a mere report in a newspaper about anything does not give MP the privilege to raise it in the House.

❖ In 1981, LS MP, Bapusaheb Parulekar made a reference to an allegation published in a weekly newspaper against the then Railway Minister, Kedar Pande, and his family members in connection with permanent railway card passes.
- The Deputy Speaker, G. Lakshmanan, who was in the chair also ruled that the member should, before making an allegation in the House, satisfy himself after making enquiries that there is a basis for the allegation.
- The member should also be prepared to substantiate and accept responsibility for the allegation.

Conclusion:

- Before the weapon of expunction is wielded, it needs to be ascertained whether the speech contains defamatory or incriminatory statements or only critical comments (which a MP has the right to make).
- It also needs to be ensured that the freedom of speech enjoyed by the Members in the House is not needlessly curtailed

Question:

Q.4 Consider the following term 'expunction', which is used in the day-to-day working of the parliament in India:

1. It is the removal of certain words, sentences, or portions of a speech from the records of Parliament.
2. The Presiding Officer of the House has the discretion to expunge the word or usage.
3. Rules of Procedure and Conduct of Business in Parliament provide for 'expunction'.

Which of the statements given above is/are correct?

(a) 1 and 2 only
(b) 3 only
(c) 1 and 3 only
(d) 1, 2 and 3

Answer: (d)