

EVA STALIN IAS ACADEMY

12/24, Muthuranga Mudali St, next to Deepam Hospital,
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Restoring earth's right to 'good health'

In a landmark decision, the European Court of Human Rights found the Government of Switzerland guilty of violating the rights of a group of women senior citizens of a Swiss civil society group called KlimaSeniorinnen, noting that the government's actions to curb emissions were inadequate and had failed to protect women against the impacts of climate change.

As a first of its kind decision anywhere in the world, it highlights how the climate crisis is increasingly becoming a human rights crisis.

A similar watershed moment happened in India a month ago, when the Supreme Court of India ruled that people have a right 'to be free from the adverse impacts of climate change', citing Articles 14 (equality before law and the equal protection of laws) and 21 (right to life and personal liberty) of the Indian Constitution as the sources.

The latest State of the Global Climate Report by the World Meteorological Organization reveals that most climate change indicators reached record levels in 2023. It confirmed 2023 to be the hottest year since we started recording global temperatures. Records were also broken for ocean heat, sea level rise, Antarctic Sea ice loss and glacier retreat.

A planet under stress

The health of the planet is under extreme stress, impacting people's right to live a healthy life. The UN Secretary General António Guterres's message on International Mother Earth Day 2024 underscores the dire situation, 'Humanity is acting like Mother Earth's delinquent child. We depend on nature... Yet, we have brought chaos to the natural world... These actions harm nature, and they harm humanity... Together, we must restore harmony with nature...'

As one of the world's fastest growing economies, India has made rapid strides in decoupling emissions from economic growth. It has already achieved two of its Nationally Determined Contribution (NDC) targets, viz. reducing the emissions intensity of its GDP by 33% to 35% from 2005 level, and achieving 40% cumulative electric power installed capacity from non-fossil fuel sources, well ahead of the target year of 2030.

However, the country remains highly vulnerable to climate change. More than 80% of its population lives in districts that are at risk of climate-induced disasters. Rising temperatures and natural disasters are manifesting into major crises affecting livelihoods and food security, and exacerbating existing socio-economic inequalities.

It is here that the court's observation sets an important precedent, looking at these impacts of climate change from a rights perspective,



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Recent judicial pronouncements and observations that attempt to bring the impacts of climate change within the purview of constitutional fundamental rights, pave the way for legal accountability of climate action

affecting humanity's right to health, life, liberty and much more. By bringing the impacts of climate change within the purview of constitutional fundamental rights, it paves the way for legal accountability of climate action.

The observation provides several points of departure with the potential to accelerate climate action both on the demand and supply side – on the demand side, by invoking a more rights-based approach to climate action, and on the supply side, by encouraging integrated approaches and action between government, private sector and civil society.

The first such point of departure could be the adoption of an overarching regulation on climate change which takes forward the policy-driven approach of climate action in India couched in the National and State Action Plans on Climate Change. An overarching regulation has the intended benefits of enhancing state capacities by driving allocation of funds, functions and functionalities.

A report by the London School of Economics and Political Science analysed climate change framework laws across 60 countries, concluding that they have helped establish the strategic direction for national policies that go beyond meeting targets under global environmental conventions. This includes countries from both the Global North such as Germany, Ireland, New Zealand, Finland and South Korea, as well as the Global South such as South Africa and the Philippines.

These laws have resulted in increased public sector staffing and capacity to deliver climate action, including a significant expansion in public sector resourcing. While India has several laws and regulations related to tackling climate change, a framework law can help strengthen climate governance by building effective institutional frameworks and processes, enabling more ambitious climate action.

Further, it has the potential to provide for a more stringent and distributed accountability, and promoting the exchange of knowledge and ideas. Out of all the States and Union Territories in the country, 18 are classified as moderately to highly vulnerable to climate change. A forum that enables the sharing of best practices on implementation of policies can build coherence in policies and actions between States and Union Territories.

SDGs and localisation model

A case in point is India's localisation model for the Sustainable Development Goals (SDGs), which has successfully integrated the SDGs into local-level planning through multi-tiered and multi-stakeholder processes. States and territories take ownership by creating their own SDG road maps and monitoring systems, and

friendly competition among them spurs innovation and faster progress. To ensure effective implementation, capacities of local governments are built. The model also encourages broader participation from businesses, non-governmental organisations, and citizens. This has resulted in a more efficient and collaborative approach to achieve the SDGs.

The second pathway can build inter-ministerial and inter-sectoral approaches. The One Health initiative is one such example which has brought together 13 Ministries and departments in the domains of health, environment, science and technology for disease control, research, and pandemic preparedness. We need to expand this approach to the private sector on integrating a rights-based approach to climate action in their core operations. For instance, the circular economy approaches need to engage with human rights compliant supply chains, including reverse logistics, to have a truly transformative impact.

Rights-based dialogue

The third pathway can leverage the court's observation to empower citizen groups and civil society organisations in fostering a rights-based dialogue on environment, biodiversity and climate action. Within the ambit of environmental policy, it can build consensus on overcoming potential tensions between climate mitigation and action.

This is reflected in the Supreme Court's observation, which came in the backdrop of balancing conservation of the habitat of the Great Indian Bustard, a critically endangered bird species, with developing solar energy parks to meet the country's renewable energy targets. While noting that wildlife conservation cannot come at the cost of citizens' right to be protected from climate change, for which expanding renewable energy capacity is indispensable, the Court insisted upon more dialogues to arrive at a holistic solution.

Every year since 2009, April 22 is commemorated as International Mother Earth Day. The idea of 'Mother' Earth has been embedded in India's culture and traditions for centuries, regarding nature as a 'living' entity rather than just a resource.

In 2022, the Madras High Court in Tamil Nadu, while hearing a case on changing the classification of forest land, declared 'Mother Nature' a 'living being', granting it the status of a legal person with all corresponding rights, duties and liabilities, in order to preserve and conserve it.

We now need to use these judgments and observations to restore Mother Earth's right to good health, and by doing so, protect the right of people to a future free from the impacts of climate change.

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Political space for disability rights, a sliver of hope

The release of manifestos during election season rarely occasions a discussion on the rights of persons with disabilities. However, the promise of the Congress and CPI(M) to include disability as a specific ground for discrimination under Article 15 (and Article 16) of the Constitution has sparked optimism within the disability rights movement. Currently, the provision prohibits discrimination on grounds of "religion, race, caste, sex, place of birth, or any of them" and does not expressly include disability.

Amendment as demand

A constitutional amendment of Article 15 to address this glaring omission has been a long-standing demand of the disability rights movement. In 2019, this demand was reaffirmed by the UN Committee on the Rights of Persons with Disabilities in its concluding observations while reviewing India's compliance with the UN Convention on the Rights of Persons with Disabilities (UNCRPD). To this date, no steps have been taken in this direction.

Ever since the Constituent Assembly debates, the discourse on disability rights within the constitutional scheme has continued to overlook the concerns of the disability rights movement. However, the disability rights movement in India and across the globe has made significant strides since then. The adoption of the UNCRPD in 2006 marked a significant step, recognising that persons with disabilities are entitled to enjoy their rights "on an equal basis with others". India ratified the Convention in 2007 and enacted the Rights of Persons with Disabilities Act in 2016. While no amendment was made to Article 15 in response to the ratification, Section 3 of the Act provided that no person with disabilities shall be discriminated against on grounds of disability. However, the law only extends a restricted notion of equality to persons with disabilities. This



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The promises made in manifestos of the Congress and the CPI(M) on disability rights spell hope that India could be ready to shift the Overton window on the issue

provision also says that if the act or omission is a proportionate way of achieving a 'legitimate aim', the same shall not violate the provisions of this law. As the phrase 'legitimate aim' is not defined, it leaves wide scope for legislative, administrative, and private action to be classified as a "legitimate aim".

There can be an argument that the current gap can also be rectified by amending the above Act. However, even after such an amendment, the right against discrimination guaranteed to persons with disability would remain a statutory right as opposed to a constitutional right. Considering the higher normative value of a constitutional right, the amendment would not only signify a deeper commitment but would also provide a stronger remedy in the form of a fundamental right against discriminatory acts and omissions.

The Constitution of India holds deep philosophical importance in our country's social, political, and legal structure, marking a departure from colonial rule to adopting a democratic order based on principles of liberty, equality, and fraternity. It restructured the relationship between individuals and the state by guaranteeing everyone fundamental rights against the state, and the relationship among individuals by guaranteeing equality and the right against non-discrimination. Article 15 prohibits discrimination based on certain grounds. Through these grounds, it identifies the social hierarchies amongst its citizens and how politics of exclusion can be remedied. The inclusion of disability under Article 15 will undo this historical injustice.

In 2018, the Supreme Court in *Navej Singh Johar vs Union of India* extended the protection of Article 15 on grounds of 'sexual orientation' after recognising the same as 'analogous' to the other grounds mentioned under Article 15. This

decision opened the possibility that the judiciary may extend the same protection on grounds of disability by treating it as analogous grounds. While treating disability as an analogous ground may extend the protection of Article 15 to persons with disabilities, it cannot be considered an alternative to a constitutional amendment that specifically includes disability as a ground under Article 15.

The analogous grounds approach poses a burden on the litigator to have the same recognised through the process of constitutional litigation and ignores the systemic marginalisation faced by persons with disabilities. It should be the responsibility of the government and not that of the judiciary to recognise this omission.

The possibility of political will

The promises made in manifestos of the Congress and the CPI(M) have signalled an era where there is a clear political will to act on the demands of the disability rights movement. Disability rights organisations in India deserve due credit for their consistent and aggressive advocacy behind this demand.

In February 2024, the National Centre for Promotion of Employment for Disabled People (NCPEDP) and the National Disability Network (NDN) launched a first-of-its-kind initiative by releasing a manifesto for and by persons with disabilities, which urged the political parties to prioritise and address the issues of the disabled community.

It is only hoped that other parties follow the example. Electoral promises are rarely followed in India's electoral democracy. But despite that, these promises give hope that the movement will no longer face political apathy with regard to this demand and that India is ready to shift the Overton window on this topic.