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BETWEEN RIGHTS AND TARGETS: THE RIGHT TO BE FREE FROM THE ADVERSE EFFECTS OF CLIMATE CHANGE IN INDIA AND THE INTERNATIONAL HUMAN RIGHTS LAW GAP

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Abstract

In *M K Ranjitsinh v Union of India* (2024) the Supreme Court of India declared a distinct ‘right to be free from the adverse effects of climate change’, grounded in Articles 14 and 21 of the Constitution. The existing commentary has concentrated on the domestic environmental law lineage of that right. This paper instead examines it from the standpoint of international human rights law, where India’s position is more ambivalent than the judgment suggests. It argues that the right was articulated without engaging the international human rights jurisprudence on climate change, and that it sits uneasily with India’s external posture, notably its abstention on Human Rights Council Resolution 48/13. It identifies three structural weaknesses in the right as currently framed (its ambiguous function, its lack of an operational standard, and its underdeveloped equality and procedural dimensions) and proposes ways in which courts, Parliament and the National Human Rights Commission could give it content consistent with India’s obligations.

1. Introduction

In March 2024 the Supreme Court of India decided what was formally a wildlife case. The petition concerned the Great Indian Bustard, a critically endangered bird whose habitat in Rajasthan and Gujarat overlaps with some of the country’s best solar and wind resources.¹ An order of 19 April 2021 had restricted overhead power lines across roughly 99,000 square kilometres of that territory.² In recalling that restriction, the Court held that there is a right to be free from the adverse effects of climate change, drawing on the right to equality in Article 14 and the right to life in Article 21 of the Constitution of India.³

¹*M K Ranjitsinh v Union of India* 2024 INSC 280 (SC) paras 1-3.

²*ibid* para 5.

³*ibid* para 27.

2. The Ranjitsinh Right: Reasoning And Structure

2.1 The setting

The right emerged as a means of resolving a conflict between two environmental goods. The Union sought modification of the 2021 order on the ground that a blanket requirement to place power lines underground was technically infeasible and would impede India's commitments under the Paris Agreement and its transition away from fossil fuels.⁴ The Court agreed. It recalled the injunction and constituted an expert committee to determine appropriate measures for the bustard's habitat.⁵ The declaration of a climate right appears in a preliminary section of the judgment on 'the mission to combat climate change', and its function in the outcome is therefore indirect.⁶

2.2 The Court's route to the right

The Court began by observing that, despite a series of statutes and national missions, 'there is no single or umbrella legislation in India which relates to climate change'.⁷ It then reasoned that the absence of such legislation did not mean the absence of a right. Articles 48A and 51A(g), which concern the State's duty to protect the environment and the citizen's duty to do likewise, are not justiciable, but the Court treated them as indications that the importance of the environment 'becomes a right in other parts of the Constitution', namely Articles 14 and 21.⁸

The Court relied on the established line of authority reading a right to a healthy environment into Article 21. It cited *M C Mehta v Kamal Nath* and *Virender Gaur v State of Haryana*, and noted that earlier decisions had recognised climate change as a serious threat.⁹ That line includes *Rural Litigation and Entitlement Kendra v State of Uttar Pradesh*, *Subhash Kumar v State of Bihar* and *Vellore Citizens' Welfare Forum v Union of India*, although the Court did not rely on all of these.¹⁰ The Court's step was to say that the right against the adverse effects of climate change and the right to a clean environment are 'two sides of the same coin', but

⁴ibid para 7.

⁵ibid paras 61-68.

⁶ibid paras 10-35.

⁷ibid para 19.

⁸ibid para 20.

⁹ibid paras 21-23, citing *M C Mehta v Kamal Nath* (2000) 6 SCC 213; *Virender Gaur v State of Haryana* (1995) 2 SCC 577; *Karnataka Industrial Areas Development Board v C Kenchappa* (2006) 6 SCC 371; and *Bombay Dyeing & Manufacturing Co Ltd (3) v Bombay Environmental Action Group* (2006) 3 SCC 434.

¹⁰*Rural Litigation and Entitlement Kendra v State of Uttar Pradesh* (1985) 2 SCC 431; *Subhash Kumar v State of Bihar* (1991) 1 SCC 598; *Vellore Citizens' Welfare Forum v Union of India* (1996) 5 SCC 647.

that the former should now be articulated as a distinct right.¹¹

Two features of the reasoning deserve emphasis. First, the Court tied the right to the right to health as part of Article 21, listing air pollution, shifts in vector-borne disease, drought, crop failure, storms and flooding as threats.¹² Second, and more unusually, it grounded the right in Article 14. Poorer communities, the Court said, will suffer more than richer ones when climate change produces food and water shortages. A person in the Lakshadweep Islands is disadvantaged relative to a person in Madhya Pradesh when sea levels rise. Forest dwellers and indigenous communities risk losing homes and culture.¹³ The right was therefore framed as having a distributive dimension, not only a protective one.

The Court drew its conclusion by appreciating Articles 14 and 21 ‘in the context of the decisions of this Court, the actions and commitments of the state on the national and international level, and scientific consensus.’¹⁴ It added that courts giving effect to the right must remain alive to other rights of affected communities, including the right against displacement, and that different rights must be weighed case by case.¹⁵

2.3 The international materials

The Court then turned to international law, but selectively. It cited a 2019 joint statement by five UN human rights treaty bodies, the preamble of the Paris Agreement, the Inter-American Court of Human Rights’ 2017 advisory opinion on the environment and human rights, and the work of the UN Special Rapporteur on human rights and the environment.¹⁶ It reviewed climate litigation elsewhere, including the Dutch *Urgenda* decision, the Committee on the Rights of the Child’s decision in *Sacchi*, and the New Zealand Supreme Court’s decision in *Teitiota*, while stating that these had no precedential value.¹⁷ It did not cite the UN Human Rights Committee’s General Comment No 36 or its views in the *Teitiota* communication, and it did

¹¹*Ranjitsinh* (n 1) para 24.

¹²*ibid* para 25.

¹³*ibid* paras 25-26.

¹⁴*ibid* para 27.

¹⁵*ibid*.

¹⁶*ibid* paras 28-33; Joint Statement on Human Rights and Climate Change (16 September 2019); Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) FCCC/CP/2015/10/Add.1, annex, preamble; Inter-American Court of Human Rights, *The Environment and Human Rights* (Advisory Opinion OC-23/17) (15 November 2017) Series A No 23; Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (24 January 2018) UN Doc A/HRC/37/59.

¹⁷*Ranjitsinh* (n 1) paras 44–50, discussing *State of the Netherlands v Urgenda Foundation* ECLI:NL:HR:2019:2006; *Sacchi v Argentina* CRC/C/88/D/104/2019 (22 September 2021); and *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107.

not mention the Human Rights Council's 2021 resolution on the right to a healthy environment. These omissions matter for reasons developed in Section 3.

3. The international human rights baseline

3.1 Treaty obligations

India acceded to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 10 April 1979.¹⁸ It has not accepted the individual communications procedures under either covenant, so no climate claim against India can currently be brought before the Human Rights Committee or the Committee on Economic, Social and Cultural Rights.¹⁹ The jurisprudence of those bodies is nonetheless relevant because it interprets provisions by which India is bound.

The Human Rights Committee has treated climate change as a threat to the right to life under Article 6 ICCPR. In General Comment No 36 it described environmental degradation, climate change and unsustainable development as among the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.²⁰ In *Teitiota v New Zealand* it rejected the complainant's claim on the facts but accepted that climate-related conditions could, in principle, expose individuals to a real risk of arbitrary deprivation of life such that removal would engage non-refoulement obligations.²¹ In *Billy v Australia* it found that Australia's inadequate adaptation measures violated the rights of Torres Strait Islanders under Articles 17 and 27, although it did not find a violation of Article 6.²² The Committee on Economic, Social and Cultural Rights has long recognised that the underlying determinants of the right to health under Article 12 ICESCR include a healthy environment.²³

The Court's Article 21 reasoning tracks these developments substantively. Yet it reaches them only indirectly, through a joint statement of treaty bodies and through the New Zealand Supreme Court's earlier decision in *Teitiota*, rather than through the Human Rights

¹⁸International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

¹⁹Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008, entered into force 5 May 2013) 2922 UNTS 29. India is not a party to either.

²⁰UN Human Rights Committee, 'General Comment No 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life' (3 September 2019) UN Doc CCPR/C/GC/36, para 62.

²¹*Teitiota v New Zealand* (Views of 24 October 2019) UN Doc CCPR/C/127/D/2728/2016.

²²*Billy v Australia* (Views of 22 September 2022) UN Doc CCPR/C/135/D/3624/2019.

²³UN Committee on Economic, Social and Cultural Rights, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)' (11 August 2000) UN Doc E/C.12/2000/4, para 4.

Committee's own analysis of the same facts.²⁴

3.2 Resolution 48/13 and India's abstention

On 8 October 2021 the Human Rights Council adopted Resolution 48/13, recognising 'the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights'.²⁵ The vote was 43 in favour, none against and four abstentions: China, India, Japan and the Russian Federation.²⁶ The General Assembly followed in Resolution 76/300 in July 2022.²⁷

Three observations follow. First, Council and Assembly resolutions are not binding, so India's abstention carries no legal inconsistency with the *Ranjitsinh* right. Secondly, the substantive overlap between the two is nonetheless striking: a State that declined to endorse the right internationally has, through its highest court, recognised a closely related right domestically. Thirdly, the Court did not acknowledge this. A judgment that invokes the 'actions and commitments of the state on the national and international level' as a basis for the right²⁸ would ordinarily be expected to address a State action that points the other way.

The point is not that the Court erred. It is that the right was constructed without the interpretive resources that international human rights law supplies, and without addressing the gap between India's domestic and external positions.

3.3 The ICJ advisory opinion

The International Court of Justice delivered its advisory opinion on the *Obligations of States in respect of Climate Change* on 23 July 2025.²⁹ The opinion was unanimous. The Court held that customary international law imposes obligations to protect the climate system, that States have human rights obligations to take necessary measures to protect the climate system and other parts of the environment, and that breach of these obligations engages State responsibility.³⁰ It rejected the argument that the climate treaties are *lex specialis* displacing

²⁴*Ranjitsinh* (n 1) paras 28, 49.

²⁵UN Human Rights Council, 'The Human Right to a Clean, Healthy and Sustainable Environment' (8 October 2021) UN Doc A/HRC/RES/48/13, para 1.

²⁶Voting record as reported in Yann Aguila, 'The Right to a Healthy Environment' (IUCN World Commission on Environmental Law, October 2021) <<https://iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment>> accessed 5 October 2026.

²⁷UNGA Res 76/300 (28 July 2022) UN Doc A/RES/76/300.

²⁸*Ranjitsinh* (n 1) para 27.

²⁹*Obligations of States in respect of Climate Change* (Advisory Opinion) (ICJ, General List No 187, 23 July 2025).

³⁰*ibid* para 457.

other rules, and it confirmed that the duty of prevention requires regulation of private actors.³¹ India participated in the proceedings. Analysis of the written and oral submissions indicates that India, with China, emphasised the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) and pressed for stronger obligations on developed States.³² That emphasis is orthodox. Differentiation has been a constant of India's climate diplomacy and is a core principle of the climate regime.³³ The ICJ itself treated CBDR-RC as a guiding principle.³⁴ But the Court's conclusion that human rights obligations apply alongside the climate treaties undercuts any suggestion that the climate regime exhausts a State's obligations towards persons within its jurisdiction.

3.4 The European comparator

The European Court of Human Rights' Grand Chamber decision in *Verein KlimaSeniorinnen Schweiz v Switzerland* (9 April 2024), delivered some weeks after *Ranjitsinh*, shows what a rights-based climate standard can look like in practice. The Court held that Article 8 of the European Convention encompasses a right to effective protection by the State from serious adverse effects of climate change on life, health, well-being and quality of life.³⁵ The decision generated positive obligations to adopt and effectively apply regulations and measures capable of mitigating climate change. It could not have informed the Indian judgment, which predates it by weeks, but it is a useful benchmark for the analysis that follows.

4. Receiving international norms in Indian law

India is a dualist State. Article 51(c) directs the State to 'foster respect for international law and treaty obligations', but Article 253 gives Parliament the power to legislate to implement international agreements, and the executive's power to make treaties does not itself alter domestic law. In *Jolly George Varghese v Bank of Cochin* the Supreme Court acknowledged this structure while reading domestic law in a manner consistent with the ICCPR.³⁶ In *Gramophone Co of India Ltd v Birendra Bahadur Pandey* it held that national courts should

³¹ibid paras 273, 282.

³²Overseas Development Institute, *Keeping the International Court of Justice Advisory Opinion Alive at COP30 and Beyond* (ODI 2025). The characterisation of India's submissions is that report's; the written and oral statements themselves should be consulted on the ICJ website.

³³Lavanya Rajamani, *Differential Treatment in International Environmental Law* (OUP 2006).

³⁴*Obligations of States in respect of Climate Change* (n 29).

³⁵*Verein KlimaSeniorinnen Schweiz v Switzerland* App no 53600/20 (ECtHR, 9 April 2024) para 519.

³⁶*Jolly George Varghese v Bank of Cochin* (1980) 2 SCC 360.

interpret municipal law consistently with international obligations where there is no conflict.³⁷

In *Vishaka v State of Rajasthan* it went further, relying on international conventions to fill a legislative vacuum.³⁸ *Apparel Export Promotion Council v A K Chopra* confirmed that courts must give due regard to international conventions and norms where there is no inconsistency with domestic law and there is a void.³⁹

Ranjitsinh draws on this line. The Court said it is ‘the duty of the Court to give effect to international agreements and treaties to which India is a party’, and, while accepting that India’s climate commitments ‘have not been enacted in domestic law’, held that it must nevertheless be alive to them.⁴⁰ The formulation is notable for two reasons.

The first is that the instruments mobilised were chiefly the climate treaties (the UNFCCC, the Kyoto Protocol and the Paris Agreement). These bind India as a State vis-à-vis other States, and are largely concerned with mitigation targets and means of implementation. They do not confer individual rights, although the Paris Agreement’s preamble does ask Parties to respect, promote and consider their human rights obligations when taking climate action.⁴¹ The human rights covenants, which do confer individual rights and which India has accepted, were not invoked.

The second is that Indian law already contains a statutory bridge to those covenants. The Protection of Human Rights Act 1993 defines ‘human rights’ as rights relating to life, liberty, equality and dignity guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.⁴² ‘International Covenants’ means the ICCPR and the ICESCR.⁴³ The qualifier ‘enforceable by courts in India’ limits the reach of the definition, since it makes covenant rights actionable only to the extent that Indian courts already enforce them. But it also means that the Article 21 environmental jurisprudence, once extended to climate harm, brings climate-related impacts on life and health within the statutory definition and so within the mandate of the National Human Rights Commission. That connection has not, to my knowledge, been drawn in the case law or commentary.

³⁷*Gramophone Co of India Ltd v Birendra Bahadur Pandey* (1984) 2 SCC 534.

³⁸*Vishaka v State of Rajasthan* (1997) 6 SCC 241.

³⁹*Apparel Export Promotion Council v A K Chopra* (1999) 1 SCC 759, as quoted in *Ranjitsinh* (n 1) para 57.

⁴⁰*Ranjitsinh* (n 1) paras 56, 58.

⁴¹Paris Agreement (n 16) preamble; *Ranjitsinh* (n 1) para 30.

⁴²Protection of Human Rights Act 1993, s 2(1)(d).

⁴³*ibid* s 2(1)(f).

5. Three structural weaknesses

5.1 An ambiguous function: shield or sword?

A fundamental right ordinarily operates as a claim: an individual or class asserts that the State has failed in a duty and seeks a remedy. In *Ranjitsinh* the right operated in a different way. No petitioner asserted it, no relief followed from it, and its principal function was to support the recall of a restriction imposed to protect an endangered species.⁴⁴

This is not an illegitimate use of a right, since rights may legitimately inform balancing. But it creates a risk that the right is conceptualised as an interest of the State in pursuing its energy transition, rather than a claim of persons against inadequate climate action. The Court's reasoning at several points runs together the two senses. It treats renewable energy development as part of the realisation of the right to a healthy environment, noting benefits for public health, rural women and energy access.⁴⁵ It also directs courts to weigh the right against other rights, including displacement,⁴⁶ and states that the choice between undergrounding and overhead lines is a matter of environmental policy on which the Court should rely on domain experts.⁴⁷ The risk is compounded by the benchmark the Court chose. The right is assessed in the light of India's 'international commitments', including a target of approximately 50 per cent non-fossil installed electric power capacity by 2030 and net zero by 2070.⁴⁸ If the content of the right is measured against the executive's own voluntary targets, it provides no independent check on their adequacy. Under the Paris Agreement, successive nationally determined contributions are supposed to reflect each Party's 'highest possible ambition'.⁴⁹ A rights-based standard should be capable of asking whether a State's contribution meets that threshold. As framed in *Ranjitsinh*, the right is not.

5.2 No operational standard

The second weakness is the absence of any test for when the right is infringed. The Court tells later courts to be 'alive' to other rights and to consider them 'carefully', but it does not say what a violation of the right would look like, who bears the burden, or what remedy is appropriate.⁵⁰

⁴⁴*Ranjitsinh* (n 1) paras 52-62.

⁴⁵*ibid* paras 17-18, 34-37.

⁴⁶*ibid* para 27.

⁴⁷*ibid* paras 61-62.

⁴⁸*ibid* paras 15, 38.

⁴⁹Paris Agreement (n 16) art 4(3).

⁵⁰*Ranjitsinh* (n 1) para 27.

The contrast with *KlimaSeniorinnen* is instructive. There the Grand Chamber identified Article 8 as encompassing a right to effective State protection and derived from it positive obligations to adopt and apply regulations and measures capable of mitigating climate change.⁵¹ That analysis, whatever its limitations, offers courts a structure for review. Indian courts have not been without such tools in environmental litigation. They have applied the precautionary principle and the polluter-pays principle as part of Article 21,⁵² and the National Green Tribunal Act 2010 directs the Tribunal to apply the principles of sustainable development, precaution and polluter-pays.⁵³ The *Ranjitsinh* Court did not connect these tools to the new right.

The Court's emphasis on expert deference reinforces the problem. Expert input is valuable where the factual question is technical. But where the question is whether State action is adequate to protect rights, a court that defers wholesale to an executive-appointed expert committee has declined to decide the question it has just said it can decide.⁵⁴ The right then risks becoming a procedural gate rather than a substantive standard.

5.3 Underdeveloped equality and procedural dimensions

The third weakness is that the most promising feature of the judgment is also the least developed. The Article 14 reasoning identifies climate harm as unequally distributed and recognises geographical and cultural vulnerability.⁵⁵ This resonates with a body of Article 21 jurisprudence on dignity and the minimum conditions of life, which holds that the right to live includes the right to live with human dignity and the basic necessities of life.⁵⁶ The reasoning could readily be linked to the expansive reading of Article 14 as prohibiting arbitrariness.⁵⁷ It could also be linked to the covenant obligation of non-discrimination in the enjoyment of economic and social rights.⁵⁸ The judgment does none of this. It states the equality dimension in a handful of paragraphs and does not translate it into a standard of review, for example by requiring that climate policy be assessed for its differential impact on identified vulnerable groups.

Procedural rights are similarly underdeveloped. The Court's own summary of the Inter-

⁵¹*KlimaSeniorinnen* (n 35) para 519.

⁵²*Vellore Citizens' Welfare Forum* (n 10); *Indian Council for Enviro-Legal Action v Union of India* (1996) 3 SCC 212.

⁵³National Green Tribunal Act 2010, s 20.

⁵⁴*Ranjitsinh* (n 1) paras 61-64.

⁵⁵*ibid* paras 25-26.

⁵⁶*Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608.

⁵⁷*Maneka Gandhi v Union of India* (1978) 1 SCC 248.

⁵⁸ICESCR (n 18) art 2(2).

American Court's advisory opinion notes that violations of environmental rights affect procedural rights of information, participation and association.⁵⁹ But the Court did not draw out the implication that the right to be free from climate harm carries correlative obligations to disclose climate risk information and to enable meaningful participation. Statutory machinery exists for part of this, including the Right to Information Act 2005 and environmental impact assessment processes, but its connection to the new right is left unexplored.

6. Proposals

The weaknesses identified are capable of remedy without legislative revolution. Four proposals follow.

First, courts should give the right content through established doctrinal tools. A workable approach would treat the right as engaging a due diligence standard: the State must adopt measures that are reasonably capable of protecting those within its jurisdiction from foreseeable climate harm, assessed in the light of its capabilities. The precautionary principle and the polluter-pays principle already form part of Article 21 jurisprudence and could be used to structure that inquiry.⁶⁰ The ICJ's confirmation that States owe a duty of prevention, to be discharged with due diligence and requiring regulation of private actors, supplies international support for this approach.⁶¹

Secondly, courts should engage with international human rights jurisprudence directly. The Human Rights Committee's General Comment No 36 and its views in *Teitiota* and *Billy*, the Council's resolution, and the ICJ's advisory opinion all bear on the content of Articles 14 and 21 and would enrich the analysis. Since India is bound by the ICCPR and ICESCR, the *Gramophone* and *Vishaka* line provides the necessary route. A court that is willing to look to an advisory opinion of the Inter-American Court, as in *Ranjitsinh*, is not constrained from looking to the Human Rights Committee.

Thirdly, Parliament should legislate. The Court itself acknowledged that India lacks framework climate legislation.⁶² Article 253 empowers Parliament to legislate to implement the Paris Agreement. A framework statute could set out substantive duties, procedural rights of information and participation, and institutional responsibility for monitoring, thereby converting an unarticulated judicial right into a justiciable statutory scheme.

⁵⁹*Ranjitsinh* (n 1) para 32.

⁶⁰*Vellore Citizens' Welfare Forum* (n 10).

⁶¹*Obligations of States in respect of Climate Change* (n 29) paras 273, 282.

⁶²*Ranjitsinh* (n 1) para 19.

Fourthly, the National Human Rights Commission could use its statutory functions.

Section 12(f) of the 1993 Act charges the Commission with studying treaties and other international instruments on human rights and making recommendations for their effective implementation.⁶³ Given the link drawn in Section 4 between the Article 21 environmental right and the statutory definition of human rights, a Commission study on climate change and the covenants would be a modest but meaningful step.

A final point concerns India's external posture. Insistence on CBDR-RC is a position about the allocation of burdens among States. It does not entail that obligations towards individuals are reduced because other States have contributed more to the problem. Human rights obligations under the ICCPR are owed to individuals within the State's territory and jurisdiction.⁶⁴ The ICJ's finding that the climate regime is not *lex specialis* confirms that these obligations operate in parallel with the differentiated allocation of mitigation duties.⁶⁵ There is therefore no necessary conflict between India's external advocacy of differentiation and a robust domestic right. Indeed, a credible domestic right strengthens India's claim in international negotiations to be a State that takes the human dimension of climate change seriously. This is a strategic argument, not a legal one, but it points in the same direction as the legal analysis.

7. Conclusion

Ranjitsinh is a significant development in Indian constitutional law. By recognising a right to be free from the adverse effects of climate change, and by grounding it in both Article 14 and Article 21, the Court acknowledged that climate harm is simultaneously a threat to life and an issue of distributive justice. Viewed from the standpoint of international human rights law, however, the right was constructed without the interpretive resources that law offers, and without addressing the gap between India's domestic and external positions.

The right as framed has three weaknesses. Its function is ambiguous, since it supported the recall of a protective order rather than responding to a claim. It has no operational standard, and is measured against the State's own targets rather than an independent threshold. And its equality and procedural dimensions, although the most promising, are underdeveloped. None is irremediable. Courts can give the right content through due diligence and established environmental principles, can engage directly with the jurisprudence of the Human Rights

⁶³Protection of Human Rights Act 1993, s 12(f).

⁶⁴ICCPR (n 18) art 2(1).

⁶⁵*Obligations of States in respect of Climate Change* (n 29).

Committee and the ICJ's advisory opinion, and can be assisted by legislation and by the National Human Rights Commission's existing powers.

The right is young, and its development will depend on the cases that come to be argued under it. Whether it becomes a meaningful protection for the communities the Court identified (island dwellers, forest dwellers, the rural poor) will depend on whether future courts treat it as a claim that can be made against the State, rather than a consideration that can be invoked on its behalf.

