India

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(A) Introduction

Legal system

7.01 India is a parliamentary democracy governed by a lengthy written constitution widely perceived to be a ‘living instrument’, having been amended over a hundred times since its adoption in 1950.2 India has, in part, a common law legal system, a legacy of its colonial past. The principal sources of law are: (i) legislation, including statutes passed by the Parliament and state legislatures, and subordinate legislation such as rules, notifications and orders passed under the statutes; and (ii) common law to be found in decided cases developed by courts through a reliance on precedent. Much of the law of tort and administrative law is common law based.

7.02 The Indian judicial system consists of a Supreme Court that sits in Delhi, and has original, appellate and advisory jurisdiction, and twenty-one High Courts spread across the territory of India.2 In addition, there are several specialised tribunals including the recently constituted National Green Tribunal. The law declared by the Supreme Court is binding on all courts within the territory of India.4

3 See for further information on the Indian Court system www.indiancourts.nic.in/index.html.
Policy context

India is on a mission to develop. Economic growth, and with it, poverty eradication, energy security and provision of universal access to energy, are central and enduring preoccupations of the Indian government. Justifiably so: India is placed 134th on the Human Development Index,4 41.6 per cent of its population lives on less than US$ 1.25 a day,5 and an estimated 44 per cent does not have access to electricity.6 India’s developmental mission, as framed, however, may well leave large carbon footprints, and ultimately weaken its ability to develop.

If India’s current growth rate continues,8 energy demand will more than double by 2020.9 In addition, if India’s targets on poverty, unemployment and literacy in its 11th five year plan10 – some more ambitious than the Millennium Development Goals (‘MDGs’),11 – are to be met, and energy provided to the nearly 500 million Indians without access to electricity, this will lead to much greater energy use.12 India will soon be a significant contributor to climate change.13 India is predicted by some estimates to become the third largest emitter by 2015,14 and with the United States, European Union, China and Russia, to account for two-thirds of global greenhouse gases (‘GHGs’).15

Emissions profile and energy mix

India’s energy use is currently at a low per capita emissions rate of 1.5 metric tons annually,16 and a cumulative share of 4.6%.17 Of India’s net CO₂ Eqv emissions, 58% can be sourced to the energy sector, 22% to industry, 17% to agriculture and 3% to waste. Of the emissions from the energy sector, 37.8% can be sourced to electricity, 7.5% to transport and 7.2% to residential uses.18

Coal is the mainstay of India’s energy supply, accounting for 53% of installed generation capacity.19 Hydro accounts for 22.8%, gas for 10.3%, wind for 7.2%, nuclear for 2.8% and other renewables for 2.9%.20 Coal, not surprisingly, also accounts for 40% of India’s energy consumption, combustible renewables and waste for 27%, oil for 24%, natural gas for 6%, hydroelectric power for 2% and nuclear for 1%.21 India has large reserves of coal, but limited reserves of oil. The majority of India’s substantial oil requirements is imported from the Middle East.22

6 Ibid.
12 See Integrated Energy Policy, Planning Commission, Government of India (August 2006), pp. xiii and 18–32, noting that to sustain 8 per cent growth through 2031 India would need to increase its energy supply by 3–4 times, and its electricity supply by 5–7 times. Available at www.planningcommission.nic.in.
13 The rate of growth of GHG emissions in India is approximately 4.6 per cent annually as compared to a world average of 2 per cent. See Subhodh Sharma, Sumona Bhattacharya and Amit Garg, ‘Greenhouse Gas Emissions from India: A Perspective’, Current Science, 90 (2006), 326–33.
17 The global average per capita rate is 4.5 metric tons, India’s per capita rate is low compared to most industrialised countries and less than half of China’s 3.8 metric tons rate. The USA has a per capita emissions rate of 20.6, Australia of 16.2 and Canada of 20 (see n. 7 above).
18 See n. 16 above.
20 Ibid.
22 Ibid.
The Indian government, recognising electricity supply as central to sustained growth, global competitiveness and rural development, set itself the targets of providing electricity to all by 2010, and meeting full demand by 2012. To meet these targets, the National Electricity Policy advocates ‘maximum emphasis’ on feasible hydro potential, significant increase in nuclear capacity, full exploitation of feasible non-conventional energy resources, but with recognition, however, that coal will continue ‘to remain the primary fuel’.

**Climate risks**

In the words of India’s Environment Minister, Jairam Ramesh, ‘no country in the world is as vulnerable, on so many dimensions, to climate change as India. Whether it is our long coastline of 7000 kms, our Himalayas with their vast glaciers, our almost 70 million hectares of forests (which incidentally house almost all of our key mineral reserves) – we are exposed to climate change on multiple fronts’. The Indian Network for Climate Change Assessment (INCCA), a network of 120 institutions and 220 scientists across India, predicts that: the annual mean surface air temperature in India is likely to rise by 1.7°C and 2.0°C in the 2030s; melting glaciers will increase flood risk and decrease water supply; sea level rise (rate of 1.3 mm/year) will threaten coastal regions; monsoons, on which agriculture depends, will become erratic and rain less plentiful; and incidence of malaria and other vector-borne diseases will increase, as will heat-related deaths and illnesses. The INCCA also highlights prospective threats to food and water security: by 2080–2100, there is a probability of 10–40 per cent loss in crop production, and before 2025 India is likely to reach a state of water stress.

**International negotiating position, actions and partnerships**

India’s economy is also likely to be significantly impaired by the impacts of climate change. The Stern Review notes that even a small change in temperature could have a significant impact on the Indian monsoon, resulting in up to a 25 per cent reduction in agricultural yield. A 2–3.5°C temperature increase could cause as much as a 0.67 per cent loss in GNP, and a 100 cm increase in sea level could cause a loss of 0.37 per cent in GNP. Recent Indian research found that southwest monsoon rainfall had decreased by 4.7 per cent between 1965 and 2006, as compared to 1931–64. A quarter of the Indian economy is dependent on agriculture, and any impact on this sector will fundamentally impair India’s ability to meet its development goals. Climate change, therefore, is an issue that is increasingly being taken seriously by India.

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24 Ibid.
25 Indian Network for Climate Change Assessment, Climate Change and India: A 4X4 Assessment – A Sectoral and Regional Analysis for 2030s, Ministry of Environment and Forests, Government of India (16 November 2010), p. 3.
26 See generally Ibid. 27 Ibid.
33 See for a representative sample, Climate Change Negotiations: India’s Submissions to the UNFCCC, Ministry of Environment and Forests, Government of India (August 2009).
34 Ibid.
Nevertheless, in 2007, India promised that its per capita emissions would not exceed the levels of developed countries.\textsuperscript{36} India believes that this will incentivise developed countries to achieve timely reductions in their per capita emissions.\textsuperscript{37} The OECD average per capita emissions is 13.2.\textsuperscript{38}

India has also offered to embark on a path of decarbonisation. Decarbonisation, according to India, refers to an economy with lower carbon intensity over time.\textsuperscript{39} Decarbonisation includes enhanced energy efficiency, a shift in primary energy use from fossil fuels to renewable energies (including hydropower) and nuclear energy, and changes in production and consumption patterns.\textsuperscript{40} In 2010, India crystallised its offer to decarbonise into a voluntary undertaking under the non-binding Copenhagen Accord\textsuperscript{41} to ‘endeavour to reduce the emissions intensity of its GDP by 20–25 percent by 2020 in comparison to the 2005 level’.\textsuperscript{42} This undertaking has been mainstreamed into the FCCC process through an information document taken note of\textsuperscript{43} by the Cancun Agreements, 2010.\textsuperscript{44}

India is an enthusiastic participant in the Clean Development Mechanism;\textsuperscript{45} 21.2 per cent of all registered projects are from India (second only to China at 44.4 per cent, and followed by Brazil at 6.2 per cent); 10.8 per cent of all expected certified emissions reductions (CERs) are from India (as compared to 63.7 per cent from China and 4.7 per cent from Brazil).\textsuperscript{46}

India is part of several bilateral and plurilateral arrangements on climate change and energy. India is a part of the Asia Pacific Partnership on Clean Development and Climate,\textsuperscript{47} the Carbon Sequestration Leadership Forum,\textsuperscript{48} the Methane to Markets Partnership\textsuperscript{49} and the International Partnership for a Hydrogen Economy.\textsuperscript{50} India has bilateral partnerships with the European Union (EU),\textsuperscript{51} the United States (USA)\textsuperscript{52} and the United Kingdom (UK)\textsuperscript{53} on climate research and technology. India also participates in meetings of the G20, G8+5 and the Major Economies Forum\textsuperscript{54} that seek to resolve political issues and provide stimulus to the climate negotiations. In the negotiations, India is part of the BASIC (Brazil, South Africa, India and China) group,\textsuperscript{55} which itself is part of the G77/China, a large coalition of developing countries.\textsuperscript{56}

### Domestic policies and measures

India launched its National Climate Change Action Plan in 2008 bringing together existing and proposed efforts at decarbonisation under eight national missions: solar energy; enhanced energy efficiency; sustainable habitats; water; the Himalayan ecosystem; ‘Green India’; sustainable agriculture; and strategic knowledge for climate change.\textsuperscript{57} These missions are intended to assist India

\begin{itemize}
  \item PM’s Intervention on Climate Change at Heiligendamm, Meeting of G8 + 5, Heiligendamm, Germany, 8 June 2007, available at www.pidb.nic.in.
  \item PM’s address at the 95th Indian Science Congress, 3 January 2008, available at www.pidb.nic.in.
  \item Human Development Report: Fighting Climate Change (see n. 7 above).
  \item 'Dealing with the Threat of Climate Change', India Country Paper, the Gleneagles Summit, 2005.
  \item Ibid.
  \item Decision 2/CP.15, Copenhagen Accord, FCCC/CP/2009/1/Add.1 (30 March 2010), p. 4 ('Copenhagen Accord').
  \item India – Letter to the Executive Secretary, 30 January 2010, available at www.unfccc.int/files/meetings/application/pdf/indiacphaccord_app2.pdf.
  \item Article 12, the Kyoto Protocol.
  \item CDM Statistics, available at www.cdm.unfccc.int.
  \item Further details available at www.asiapacificpartnership.org/.
  \item Further details available at www.cdpforum.org/.
  \item Further details available at www.iphe.net/.
  \item 'Overview of the US-India Climate Change Partnership', US Department of State, available at www.state.gov.
  \item 'Working with Developing Countries – India', Department for Environment, Food and Rural Affairs, Government of the UK, available at www.defra.gov.uk.
  \item Further details available at www.majoreconomiesforum.org/.
  \item India hosted the Sixth BASIC Ministerial Meeting, 26–27 February 2011; further details available at http://moef.nic.in/downloads/public-information/BASIC-Stat-6.pdf.
  \item Further details available at www.g77.org/.
\end{itemize}
in adapting to climate change, as well as in launching its economy on a path that 'would progressively and substantially result in mitigation through avoided emissions'. The Plan, an initial cut at addressing the issue, does not contain any mechanisms to estimate the cost of climate change impacts or compliance. Neither does it mainstream climate change factors into development planning, as evidenced by the fact that no reference is made to how this Action Plan is qualified by, or qualifies, India's Integrated Energy Policy.

7.16 In the years since the release of the Plan, there have been several developments. The Indian government is in the process of developing a 'roadmap for low carbon development'. The relevant Ministries have developed comprehensive mission documents detailing objectives, strategies, plans of action, timelines, and monitoring and evaluation criteria. There are several noteworthy initiatives contained in these missions, including: the creation of a market—a perform, achieve and trade mechanism—in energy savings certificates; the adoption of a target to generate 20,000 MW of solar power by 2022; and a commitment to double the area to be afforested in the next ten years, taking the total to 20 million ha. In addition, the Indian government has announced a levy—a clean energy tax—of US$ 1 per ton on coal. State-level action plans on climate change are also in preparation.

7.17 India's domestic climate policy interventions can be located squarely within the logic of a co-benefits approach—an approach that seeks to exploit synergies between development and climate change. Given India's development imperatives, it has chosen to channel its limited resources into areas that have significant co-benefits. Hence the emphasis in India's domestic policy interventions on energy efficiency, conservation, and diversification of energy sources (with the promotion of renewable energies as an element). These interventions deliver climatic benefits, but also enhance energy security, lead to greater energy availability and access, and accelerate development.

(B) Public law

The constitutional framework, environmental rights and international law

7.18 The Constitution of India, in Part III, titled 'Fundamental Rights', creates a regime of protection for a privileged set of rights. Laws inconsistent with or in derogation of these rights are void to the extent of their inconsistency. The centrepiece of these fundamental rights is the right to life and liberty. This right has over the years been extended through judicial creativity to cover unarticulated but implicit rights such as the right to live with human dignity, the right to livelihood, the right to education, the right to health and medical care of workers and most importantly for current purposes, the 'right of enjoyment of pollution-free water and air'.

7.19 Although, thus far, no climate-related claim has been brought before the Supreme Court, it is likely, should such a claim be brought—given the Court's jurisprudence and its expansionist proclivities—that it would either interpret the environmental right to include a right to climate protection or apply a human rights optic to climate impacts.

44 This subsection draws from L. Rajamani, 'The Right to Environmental Protection in India: Many a Slip between the Cup and the Lip?', Review of European Community and International Environmental Law, 16 (2007), 274.
46 Article 21, Ibid.
47 Francis Coralie Mullin v. The Administrator, Union Territory of Delhi (1981) 1 SCC 608, at paras. 7 and 8.
There are many different formulations of the constitutionally protected environmental right in India. Some of these formulations are expansive in that they can readily encompass protection against new forms of environmental harm. Other formulations are more limiting. The less expansive definitions define the environmental right in the context of either pollution or health. So, for instance, in relation to pollution, the environmental right has been characterised as the right to 'pollution-free air and water', 'fresh air, clean water', 'pollution-free environment' and 'clean environment'. It has been defined in the context of human health, as for instance, the right to a 'humane and healthy environment', a 'hygienic environment' and 'sanitation'. It may be difficult in the context of these formulations to argue for an expansion of the environmental right to include climate protection, given that GHGs are not generally considered pollutants and do not typically contribute to localised pollution resulting in identifiable health impacts.

However, the constitutionally protected environmental right has also been characterised as the right to: environmental protection and conservation of natural resources, 'live in a healthy environment with minimal disturbance of the ecological balance', a 'decent environment', and a 'living atmosphere congenial to human existence'. These formulations leave ample scope for value judgements and judicial discretion, and hence admit the possibility of protecting against threats to the climate. Climate change will undoubtedly disturb the ecological balance, however that term is defined. It will also render the atmosphere less 'congenial' to human existence. The inhabitants of the Sundarbans, at the forefront of climate change, can testify to this.

Even if the Supreme Court is reluctant to extend the environmental right to cover climate protection, it will likely be impressed with an approach that applies a human rights (in the Indian context, a 'fundamental rights') optic to climate impacts. A host of rights and progressive realisation towards them, such as the rights to life, health and water, among others, will be at risk from climate impacts. There is a burgeoning and ever-persuasive literature arguing the case. These rights – to life, health and water – are, as we have seen, constitutionally protected in India. The Supreme Court would need but little persuasion to read climate impacts as threatening these rights.

The environmental right is complemented by relevant provisions of the Directive Principles of State Policy, in particular Articles 47 and 48A which articulate the duties of the State with respect to public health and environmental protection. Although the Directive Principles of State Policy are not intended to be 'enforceable by any court', they are nevertheless 'fundamental in the governance of the country' and it is the duty of the State to apply these principles in making laws. In addition to the relevant Directive Principles of State Policy, the Constitutional schema also includes Article 51A(g) which imposes a duty on citizens to protect and improve the environment.

India, one of the first jurisdictions to embrace an environmental right, is perceived as having 'fostered an extensive
and innovative jurisprudence on environmental rights."99 The courts have fleshed out the environmental right by integrating into Indian environmental jurisprudence numerous principles of international environmental law.90 These include the polluter pays principle,91 the precautionary principle,92 the principle of inter-generational equity,93 the principle of sustainable development94 and the notion of the State as a trustee of all natural resources.95 The Supreme Court has held these principles to be ‘essential features of sustainable development’,96 ‘imperative for preserving ecology’,97 and ‘part of environmental law of India’.98 The Court requires these principles to be ‘applied in full force for protecting the natural resources of this country’.99 The constitutionally protected environmental right complemented by these principles of international environmental law provides a fertile breeding ground for ambitious rights-based climate claims.

7.25 The principles, in particular, of precaution, public trust and inter-generational equity, as interpreted by the Indian courts, will prove useful to prospective rights-based climate claimants. The precautionary principle requires the State to take environmental measures ‘to anticipate, prevent and attack’ the causes of environmental degradation.100 It posits further that, ‘where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environment degradation’.101 Finally, it lays the onus of proof on the actor or the developer/industrialist to demonstrate that the proposed action is ‘environmentally benign’,102 an unusual and controversial interpretation of the principle. Climate change falls neatly into the category of threats that it would be wise to take early action on. This principle could be used to argue the case for ambitious mitigation and adaptation intervention, and to challenge State action that falls short.

7.26 The doctrine of public trust would add further weight to the argument. This doctrine places an affirmative duty on the State as a trustee of certain public resources to protect resources like air, sea, water and the forests for the enjoyment of the general public.103 The Court envisages that this doctrine would be equally appropriate ‘in controversies involving air pollution, the dissemination of pesticides, the location of rights of ways for utilities, and strip mining of wetland filling on private lands in a state where governmental permits are required’.104 The issue of climate change could well engage the duty of a state as trustee to protect the atmosphere from indiscriminate GHG emissions.

7.27 The principle of inter-generational equity may also be of assistance.105 The principle, formulated originally in the context of forest resources, holds that ‘the present generation has no right to deplete all the existing forests and leave nothing for the next and future generations’.106 Climate change presents the ultimate

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100 For instance principles that are contained in Principles 3, 4, 15 and 16, Rio Declaration on Environment and Development, 1992.
111 Ibid., at para. 11.
113 Citing Joseph Sax, Ibid., at para. 22.
"inter-generational" problem. Current generations inherited the problem, are exacerbating it, and will likely leave a legacy that imposes severe burdens of protection and sacrifice on future generations. All three principles – precaution, public trust and inter-generational equity – are to varying degrees recognised in the FCCC as well. These principles offer powerful building blocks in a rights-based claim seeking more aggressive State action on climate change. The Indian courts would likely provide a nurturing environment for such claims.

7.28 Rights-based claims relating to mitigation, however, may prove difficult to sustain. The principal hurdle in sanctioning State action relating to mitigation as insufficient or requiring the State to take further action will be in identifying benchmarks. How much action is appropriate for a country like India, given its, thus far, limited contribution to the problem, and its limited ability, on its own, over time, to resolve the problem? If the international regime had reached an equitable and effective burden-sharing agreement, and the Indian government was falling short of its just share of the burden, a claim may lie. However, in the absence of such an agreement, the Court would need to substitute its judgement for that of the international community, as well as that of the executive, which it may be reluctant to do. The reluctance may stem from concerns about intervening in an intensely political and polarised North-South climate debate as well as, albeit less so, stepping on the executive's toes. In the Court's jurisprudence, '[a]n excessively political role identifiable with political governance betrays the court into functions alien to its fundamental character, and tends to destroy the delicate balance envisaged in our constitutional system between its three basic institutions'.

7.29 Rights-based claims relating to adaptation may fare better. A claim may lie for instance where the government is not taking the necessary action to adapt to predicted climate change in particularly vulnerable areas such as the Sunderbans, and the resulting climate impacts breach the claimant's protected rights to life, health, water etc. In the case of adaptation, since core human rights are implicated, rather than the right to environment, which is subject to limits in the service of development, claims may prove more successful.

7.30 Rights-based claims relating to adaptation may also be able to press international law into service. Article 51(c) of the Indian Constitution requires the State to 'foster respect for international law and treaty obligations'. Implicit in this Article, according to the Supreme Court, is that '[a]ny International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these [Article 21 etc] provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee'.

7.31 The core human rights threatened by climate impacts are protected under several human rights treaties that India is a Party to, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. India has an obligation under these treaties to respect, protect and fulfil the rights contained in them. This obligation is binding on every State Party, India included, and must be given effect to in good faith. India is, also, as we have seen, a Party to the FCCC and its Kyoto Protocol.

7.32 India's treaty commitments read together arguably require it to approach climate change not just as a global environmental problem but also as a human rights issue. Such an approach would have substantive and procedural implications. Substantively, India may be required to devote greater resources to adaptation so as to lessen the human cost of climate impacts. Procedurally, India may be required to integrate the human rights implications of climate impacts into its planning and policy-making processes. India's treaty obligations could be thus interpreted by the Supreme Court to 'enlarge the
meaning and content' of the constitutional guarantees, inter alia to life, health and water.

Judicial activism and public interest litigation

The Indian judiciary is an extraordinary institution. It is, unlike in societies more deferential to separation of powers, a dynamic actor that shapes law, evolves policy, and plays a central determinative role in the governance of modern India. The Court plays this role primarily through the exercise of its self-fashioned public interest jurisdiction.

The origins of public interest jurisdiction in India can be traced to the late 1970s, early 1980s, and in particular the case of S. P. Gupta v. Union of India in which Justice Bhagwati relaxed the rule of locus standi and opened up the doors of the Supreme Court to public-spirited citizens – both those wishing to espouse the cause of the poor and oppressed (representative standing) and those wishing to enforce performance of public duties (citizen standing).116

Public interest litigation in India can be pursued either in the High Court or Supreme Court. If the complaint is of a legal wrong, Article 226 of the Constitution permits recourse to the High Court of the state. If the complaint alleges a violation of fundamental rights, Article 32 of the Constitution permits direct recourse to the Supreme Court. For violations of fundamental rights, the Supreme Court may issue an order, direction or writ, including a writ in the nature of habeas corpus, quo warranto, mandamus, prohibition or certiorari.117 The High Courts can pass similar orders for enforcement of fundamental rights as well as of other legal rights.118

At the behest of public-spirited individuals, the courts have passed (and continue to pass) orders in a range of cases. In the environmental field the Supreme Court, for instance, has passed hundreds of orders inter alia to protect the Taj Mahal from corrosive air pollution,119 rid the river Ganges of trade effluents,120 address air pollution in Delhi and other metropolitan cities,121 protect the forests and wildlife of India,122 and clear cities of their garbage.123

The power of public interest litigation in India lies in its freedom from the constraints of traditional judicial proceedings. Public interest litigations in India have come to be characterised by a collaborative approach, procedural flexibility, judicially supervised interim orders and forward-looking relief. Judges in their activist avatar reach out to numerous parties and stakeholders, form fact-finding, monitoring or policy-evolution committees, and arrive at constructive solutions to the problems flagged for their attention by public-spirited citizens. Judges have tremendous power, in particular in public interest litigations, to design innovative solutions, direct policy changes, catalyse law-making, reprimand officials and enforce orders.

The Supreme Court is constitutionally empowered to 'make such order as is necessary for doing complete justice in any cause or matter pending before it'.124 Judges are not hesitant to exercise this power in what they perceive as the public interest. 'The discretion and flexibility that the courts have arrogated to themselves in the context of public interest jurisdiction will enable them, when faced with a climate case, to tailor solutions to problems, evolve policy where a vacuum exists, and govern when they perceive a governance deficit. The case of T. N. Godavarman v. Union of India is a case in point. The Supreme Court defined a 'forest' in the absence of a definition in the Forest (Conservation) Act, 1980,125 and in so doing, the Court extended the protective framework of the statute to all forests, irrespective of the nature of their ownership or classification.126 It has since taken over the

118 Article 226, ibid.
120 M. C. Mehta v. Union of India (Ganga Pollution Case), W.P. No. 3727/1985.
121 M. C. Mehta v. Union of India (Delhi Vehicular Pollution Case), W.P. No. 13029/1985, and M. C. Mehta v. Union of India (Delhi Industrial Relocation Case), W.P. No. 4677/1985.
125 (1997) 2 SCC 267, at 269.
126 Ibid.
The newly constituted National Green Tribunal has jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved and arises in the context of a defined set of environmental laws, including those listed above. The Tribunal is empowered to hear appeals brought by a person aggrieved by the decisions or orders of authorities under the air, water, biodiversity, environment and forest legislations. In addition to the customary extension of 'person' to artificial juridical persons, there is reason to believe that the courts, as they have in the past, will read 'aggrieved person' expansively. In Prafulla Samantara v. Union of India the Delhi High Court held that the term 'aggrieved persons' includes 'public spirited interested persons, environmental activists or other such voluntary organisations working for the betterment of the community as a whole'. A range of actors will in theory be able to approach the National Green Tribunal. It is worth noting, however, that the National Green Tribunal (Practices and Procedures) Rules, 2011, impose various burdensome procedural requirements, which may in practice deter claimants from appearing in person. Nevertheless, dedicated climate litigants are likely to bring their claims before the Tribunal. Appeals lie from this Tribunal to the Supreme Court.

7.42 The Tribunal, while passing an order, is required to apply the principles of sustainable development, precaution and polluter pays. These principles, discussed earlier, have been fleshed out in case law, and are considered part of the law of the land. The application of the precautionary principle, in particular, may prove beneficial to climate litigants. The Tribunal also has far-ranging powers to order relief and compensation to victims of pollution or environmental damage, for restitution of damaged property, and even for restitution of the damaged environment.

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All environmental legislations are available at http://envfor.nic.in/legis/legis.html.

See e.g. the website of the Central Pollution Control Board, Government of India, www.cpcb.nic.in.

Section 14, National Green Tribunal Act, 2010.

Section 16, ibid.

Section 2(j), ibid.

Section 20, ibid.

Section 15, ibid.

See ibid.

Section 22, National Green Tribunal Act, 2010.
7.43 The Environment (Protection) Act, 1986, empowers the Central Government to take all necessary measures for protecting and improving the environment, and preventing, controlling and abating environmental pollution. The central government has issued several pieces of secondary legislation to regulate different aspects of the environment, including the Environment Impact Assessment notifications that may prove useful to climate litigants.

The Environment Impact Assessment regime in India requires a certain defined set of projects to obtain environmental clearances from either the Ministry of Environment and Forests or the state-level Environment Impact Assessment Authority, depending on the size of the project, before commencing operations. These authorities rely on data gathered and scrutinised by expert appraisal committees. The expert appraisal committees are required to take account of the outcomes of public consultations in arriving at their recommendations. Such public consultations provide avenues for civil society to introduce climate considerations into the decision-making process. Expert appraisal committees are also permitted to consider documents other than those submitted by the project proponent while making recommendations. These documents could include evidence relating to the potential climate impacts of the project.

7.45 Any 'aggrieved person' can challenge the grant or denial of environmental clearances before the National Green Tribunal. Clearances have been quashed before other fora on grounds such as: 'crucial impacts' were not taken into account.

7.46 The Air (Prevention and Control of Pollution) Act, 1981, defines air pollutant as 'any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment'. Although this has yet to be done, arguably, GHGs could be covered, through judicial interpretation, under this definition, and regulated. The American Environment Protection Agency, following the landmark case of Massachusetts v. EPA, found that GHG emissions from moving vehicles are 'reasonably likely' to threaten public health and welfare, therefore certified six GHGs as pollutants, and proceeded with the consultation procedure was improperly followed, environmental impact was too great, information submitted was false, decision-granting clearance was not reasoned, and data provided was inadequate to judge the environmental impact. In cases where clearances have been granted without due consideration of GHG intensity or footprints of particular projects, litigants could challenge the clearance on the grounds that these 'crucial impacts' were not taken into account. It is worth noting that notwithstanding this seemingly progressive framework, only 1 per cent of applications for environmental clearances are currently rejected.

To take an example, of the fifty-eight coal mining projects seeking environmental clearances in 2009–10, thirty-one were approved, none were rejected, and the rest are pending.

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143 Section 3, Environment (Protection) Act, 1986.
144 Gazette Notification for Environmental Impact Assessment, Ministry of Environment and Forests, Order, New Delhi, 14 September 2006. The following categories of projects, some if of a certain scale, require environmental clearances: mining, extraction of natural resources and power generation, primary processing, materials production and processing, building/construction/area/township development projects, oil/gas transportation, hazardous waste, manufacturing/fabrication and physical infrastructure.
145 Section IV, ibid. 146 Section III, ibid. 147 Section IV, ibid.
148 Section 10(5) and (6), National Green Tribunal Act, 2010.
150 Ibid.
152 ibid.
154 Section 2(a), Air (Prevention and Control of Pollution) Act, 1981.
155 Massachusetts v. EPA, 549 US 497 (2007); see Chapter 20.
to regulate these under the Clean Air Act, 1970. A similar interpretation to 'air pollutants' under the Air (Prevention and Control of Pollution) Act, 1981, would permit relevant authorities under this legislation to inter alia lay down 'standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft.'

7.47 The Forest (Conservation) Act, 1980 restricts the conversion of forestland to non-forest use. State governments have to seek prior approval from the central government before de-reserving forestland, permitting non-forest use, or assigning it for private use. The Supreme Court has carved a role for itself in forest conservation. State governments are required to obtain permission from the Supreme Court for de-reserving forestland. The central government relies on the recommendations of a government-appointed Forest Advisory Committee in making decisions relating to such approvals. The Committee can consider, inter alia, the potential climate impacts caused by the diversion of forest land to non-forest purposes, for instance the impacts attributable to the submergence of forest land by a hydro power project. 'Aggrieved persons' can challenge approvals, possibly on climate-related grounds, granted by the Central Government, before the National Green Tribunal.

7.48 Public bodies take numerous decisions, in the course of exercising their functions, that will likely have an impact, direct or indirect, on climate change. They may take decisions approving the setting-up of coal-based power plants or permitting forestland to be cleared for mining. Climate litigants may wish to challenge such decisions by seeking judicial review of administrative action. There are various techniques available to do so – writs, appeals for review, references to courts, injunctions, declarations, suits for damages for tortious actions (of government bodies/employees), etc. Of these, the technique most favoured is that of writs. The two most relevant, for current purposes, would be that of mandamus and certiorari. A writ of mandamus may be issued to compel the performance of a public legal duty by a public authority while the writ of certiorari may be issued to quash a decision of a body, administrative or quasi-judicial, that affects the rights or interests of any person.

**Grounds for judicial review**

7.49 Judicial review of administrative action can be sought on several grounds, including: illegality; irrationality; proportionality; and procedural impropriety.

7.50 **Illegality:** The decision of an administrative body or the exercise of its discretionary powers may be considered illegal if the body acted without jurisdiction, failed to exercise its jurisdiction, or abused its jurisdiction or discretionary powers. In the climate context, abuse of discretionary power due to non-inclusion of relevant considerations and non-application of mind by the administrative body may prove useful. If the statute lays down considerations, express or implied, which have to be taken into account by an administrative body while exercising its discretionary powers, the non-inclusion of such relevant considerations would render the decision illegal. Even if the statute does

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157 See Chapter 20.
158 Section 17(g), Air (Prevention and Control of Pollution) Act, 1981.
159 For a comprehensive study of the Supreme Court's interventions in the area of forest regulation, see generally R. Dutta and B. Yadav, *Supreme Court on Forest Conservation*, 3rd edn (Delhi: Universal Law Publishing, 2011).
160 Section 2, Forest (Conservation) Act, 1980.
162 Ibid. Section 3, Forest (Conservation) Act, 1980.
163 Ibid. Section 16(e), National Green Tribunal Act, 2010.
168 Ibid, p. 2177.
An administrative decision can also be challenged when the authority has not applied its mind to relevant considerations, when it acts mechanically, or it acts under dictation. If the government mechanically permits an industry or process without applying its mind to the potential climate impacts, its decision may be challenged before the courts as illegal.

Irrationality (or Wednesbury unreasonableness): A further ground on which an administrative decision can be challenged is irrationality. For an administrative decision to be considered irrational, the court has to hold, on material, that the decision is so outrageous as to be in total defiance of logic or moral standards. The intervention of the court in such cases is limited to an examination of the decision-making process, not the decision. If the court finds that the administrator acted illegally, did not perform his/her primary role well, either omitted relevant factors or took irrelevant factors into consideration, or his/her view is one which no reasonable person could have taken, then the court may quash the decision as being arbitrary and in violation of Article 14 of the Constitution. In a climate context, if it can be shown that the authority, despite enjoying the discretion, did not consider relevant climate change policies and reports while granting regulatory approvals or making policy choices, a case for irrationality could be made.

Proportionality: The test of proportionality permits the courts to undertake a closer scrutiny of the administrative decision-making process than that merited by the Wednesbury test. Since this necessarily leads to a greater intervention in what is otherwise the executive's domain, the courts apply the test of proportionality principally in the context of fundamental rights. The Supreme Court explains 'proportionality' as 'whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be'. In recent years, the Supreme Court has held in some cases that the Wednesbury test has given way to the proportionality test. But this position remains contested. As climate-related claims are likely to be founded on the fundamental right to life, the courts are likely to apply the proportionality test.

Procedural impropriety: A decision of an administrative body can be reviewed on the ground that the procedure as stated in the law has not been followed. If a statute prescribes a procedure for exercise of power, the statutory authority must exercise its power in a manner prescribed or not at all. Even if there is no statutory requirement, administrative bodies are expected to be just, fair and reasonable in their dealings or they could fall foul of Articles 14, 19 and 21 of the Constitution which have been read together to provide protection to the principles of natural justice.

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176 Chairman, Board of Mining Examination v. Ramjee (1977) 2 SCC 256, at 262.
179 Om Kumar v. Union of India (2001) 2 SCC 386, at 411.
181 Om Kumar v. Union of India (2001) 2 SCC 386, at 399.
184 Indian Banks' Association, Bombay v. M/s Devkala Consultancy Service AIR 2004 SC 2615.
185 Maneka Gandhi v. Union of India AIR 1978 SC 597.
Other aspects of judicial review

7.55 Writs are commonly dismissed on the ground that the plaintiff lacks standing, there is unreasonable delay, or that an alternative efficacious remedy exists. Cases raising climate claims are unlikely to be affected by these grounds. First, Indian courts take, as we have seen, a liberal approach to standing. Second, Articles 32 and 226 of the Constitution do not prescribe a reasonable timeframe within which a case must be brought before the court. Besides, in climate and environmental claims, the cause of action will likely be ongoing, and if there is illegality it is likely to be continuing. Third, as one of the issues in a climate claim is likely to be the violation of the fundamental right to life, the existence of an alternative efficacious remedy is not a ground for the court to reject a writ before it. 188

(C) Private law

7.56 There have been no significant private law claims in India based on allegations of actual or anticipated damage from climate change. However, should claimants be inclined to bring such claims, the two torts that offer promise are nuisance and negligence. The essential elements of both torts are drawn from the common law principles of tort evolved by the courts in England, and applied to the extent of their suitability and applicability to Indian conditions. 189

Nuisance

7.57 Although there is no strict definition of the tort of nuisance, it may be defined as ‘an inconvenience that materially interferes with the ordinary physical comfort of human existence’. 190 The Supreme Court has identified the essential elements of nuisance as an unlawful act, and damage, actual or presumed. 191 There are two kinds of nuisance - public nuisance and private nuisance. Public (or common) nuisance according to the Indian Penal Code, 1860 is an act or illegal omission which ‘causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right’. 192 Private nuisance affects one or more individuals rather than a large group.

7.59 Public nuisance may offer some (limited) hope to climate litigations. For a claim to be successful the damage need not already have occurred. It is sufficient if there is an imminent danger to the health or the physical comfort of the community in the locality in which the trade or occupation causing the nuisance is conducted. 193 In Kuldip Singh v. Subhash Chander Jain, the Supreme Court held that ‘... a future nuisance to be actionable must be either imminent or likely to cause such damage as would be irreparable once it is allowed to occur ...’. 194 This will prove useful in climate-related litigation, as the damage, while not imminent, is potentially irreparable.

Both civil and criminal remedies are available in public nuisance cases. The Code of Civil Procedure, 1908, provides that the Advocate General or, with the permission of the court, even persons to whom no damage has been caused, can file a suit. 195 This may prove useful to civil society in filing climate-related claims. However, this provision is not widely used in this fashion due to the lengthy delay in bringing civil proceedings to a close, and the liberal access provided to higher courts in India. Cases of public nuisance can also be pursued and addressed under criminal law. 196

191 Section 268, Indian Penal Code, 1860. The texts of all Indian laws are available at http://indicode.nic.in/.
193 AIR 2000 SC 1410.
194 Section 91, Code of Civil Procedure, 1908.
7.61 In a landmark case on nuisance, the Supreme Court directed a municipality to remove the public nuisance caused due to lack of sanitation and drainage facilities and improper disposal of factory effluents. The municipality pleaded lack of funds but the Supreme Court held that financial inability did not exonerate the municipality from statutory liability.

7.62 The law of public nuisance may therefore offer some promise for climate litigants. While it may be difficult to prove imminent danger related to GHG emissions, it may be possible to demonstrate irreparable damage. It could also be argued that since emission of pollutants constitutes a nuisance, by logical extension emission of GHGs can also be construed to be a nuisance.

**Absolute liability**

7.63 The Supreme Court in a landmark decision in 1987 fashioned a new rule of tortious liability that has come to be characterised as ‘absolute liability’. The court held that where an enterprise is engaged in a hazardous or inherently dangerous industrial activity and harm results on account of an accident in the operation of such hazardous or inherently dangerous activity, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident. Unlike the principle laid down in *Rylands v. Fletcher*, the absolute liability principle does not require an ‘escape’ of the thing (causing the harm) from the premises. Further, the enterprise is held liable irrespective of the care taken by it to prevent the accident. Indeed none of the exceptions allowed by the rule of strict liability in *Rylands* apply in the case of absolute liability. The justification for this type of liability is that a non-delegable duty is owed to the community to ensure that highest standards of safety are maintained. In addition, the enterprise alone is in a position to prevent and discover any harm and send out warning signals against potential harm. The court, to achieve deterrence, also held that the quantum of compensation should depend on the ‘magnitude and capacity’ of the enterprise.

7.64 In *Indian Council for Enviro-Legal Action v. Union of India* the Supreme Court held chemical industry units absolutely liable for discharging waste in the surrounding areas, polluting the soil and water, and thereby adversely affecting people living in the vicinity. The Supreme Court also, for the first time, relied on the principle of ‘polluter pays’ and held the industries responsible not only for compensating the victims but also for repairing the damage caused to the environment and restoring the water and soil to the condition it was in before the units commenced their operations. In *Deepak Nitrite v. State of Gujarat*, the Court broadened the basis of compensation and held that ‘compensation to be awarded must have some broad correlation not only with the magnitude and capacity of the enterprise, but also with the harm caused by it’.

7.65 These cases, and concepts – both of absolute liability and polluter pays – are useful tools in the arsenal of public interest environmental litigants. However, since claims can only be brought once the damage has been caused, they may prove useful only in a subset of climate-related claims.

**Negligence**

7.66 Negligence is both a tort and a crime (some forms of it are offences under the Indian Penal Code). As a tort, it has been defined as the breach of duty caused by the omission to do something that a reasonable man, guided by those considerations that ordinarily regulate the conduct of human affairs, would do, or doing something that a prudent and reasonable man would not...
do. The Supreme Court has identified the elements of negligence as:

... whether the defendant owed a duty of care to the plaintiff, whether the plaintiff is a person or a class of persons to whom the defendant owed a duty of care, whether the defendant was negligent in performing that duty or omitted to take such reasonable care in the performance of the duty, whether damage must have resulted from that particular duty of care which the defendant owed to the particular plaintiff or class of persons.

7.67 The plaintiff has to establish that the defendant owes a duty of care. This requires the plaintiff to demonstrate foreseeability of the damage, a sufficiently proximate relationship between the parties, and that it is just and reasonable to impose such a duty. In addition there ought not to be any policy considerations that negative the existence of such a duty. The courts have held the concept of duty of care to be a fluid one, 'influenced and transformed by social, economic and political development'.

7.68 The breach of the duty of care has to lead to some damage – whether in the form of economic loss or damage to person or property. A cause of action for negligence only arises when the negligent act took place.

7.69 The defendant’s negligent act must have caused the damage. However, the defendant does not have to be wholly responsible for the damage. The courts have relaxed the causal rules in some instances. In the case of Jaipur Golden Gas Victims v. Union of India, the Delhi High Court, relying on English, held that the claimant does not have to prove that the defendant’s breach of duty was the sole, or even the main, cause of damage, provided he/she can demonstrate that it made a material contribution to the damage. Although the Court borrowed and applied concepts from foreign law, it did not analyse these in sufficient detail or depth to permit sensible predictions on the direction in which causal rules will evolve. Suffice to say that the cases that the Court borrowed from find causation where a material contribution to the damage exists. They also equate a ‘material contribution to the damage’ to a ‘material increase in the risk’ of the damage occurring. This might prove helpful in climate claims, where proof of causation, given multiple contributory factors and difficulties in attribution, may also be sought to prevent the further infringement or operation of such events occurring, help locate liability and obtain compensation for victims.

7.70 For a climate claim based on negligence to be successful, the claimant would first have to establish proximity and foreseeability of damage. The person causing the GHG emission would have to be aware of the foreseeable damage that could be caused due to increased GHG emissions. Although the damage suffered by the plaintiff as a result of climate change (higher risk of disease, rising sea level, increases in extreme weather conditions etc.) may have several contributory factors, the relaxed causal rules in operation may allow the claim of the plaintiff to proceed.

7.71 Where negligence is proven, the courts can award damages that could be nominal, substantial or exemplary. An injunction may also be sought to prevent the further infringement or disturbance of a right or prevent continued breach of duty of care leading to negligence.
(D) Other law

Criminal law

Section 278, Indian Penal Code, 1860, imposes a punishment on any person (including company, association etc.) who voluntarily vitiates the air in a manner which makes it harmful to the health of persons residing or carrying on business in the area. This provision may be of limited use to climate litigants, for not only is there a requirement of physical proximity, but the fine that can be imposed is a mere 500 Rupees (approximately US$ 10).

Competition law

Although the Competition Act was passed by Parliament in 2002, significant provisions of the Act such as Sections 3 (prohibition of anti-competitive agreements) and 4 (prohibition of abuse of dominant position) came into force only in 2009. The legislation is therefore recent and is yet to reach a stage when it can be creatively interpreted so as to prohibit competitive advantage that might be enjoyed by industries that are emission-intensive.

World heritage

India has twenty-three cultural sites and five natural sites that are part of the list of World Heritage Sites. Changes in temperature and rising sea levels will likely have an adverse impact on historical monuments as well as the floral and faunal diversity of the heritage sites. One of the natural sites in India is the Sunderbans in West Bengal, featured on the cover of this book. Projected sea level rise due to climate change is the single largest threat to it. The mangroves forests of Sunderbans are known for their biodiversity, and increased salinity in the water would threaten their continued existence.

References

Section 278, Indian Penal Code, 1860.
Note 25 above, at 97.
UNESCO, Case Studies on Climate Change and World Heritage (2007), p. 36.
228 Section 12(1), ibid.
230 The procedure for processing a complaint against an advertisement, for contravention of the Code, is available at www.asclonline.org/procedure/procedure_l.htm.
The provisions of the Consumer Protection Act and the Code can be relied on in cases where companies such as those selling automobile as well as electrical and electronic equipment make claims with regard to their emissions, fuel/energy efficiency or their impact on the climate that may be false or misleading.

(E) Practicalities

This section provides an overview of the procedural aspects of the law and analyses whether the current state of law is procedurally amenable to climate claims.

Founding jurisdiction for a claim

The Civil Procedure Code, 1860, is the principal procedural legislation with regard to civil suits in India and therefore any tort-based climate change claim would be governed by it. For a person to be made a party to a civil suit, residence or domicile in India is not necessary. If the cause of action has arisen in India, the immovable property with regard to which a compensation claim has been made is situated in India or if the defendant carries on business in India, the suit can be brought before the appropriate civil court in India irrespective of the nationality or domicile of the defendant.

Criminal offences under the Indian Penal Code, 1860, can be tried either at the court in whose local jurisdiction the cause of action has arisen or at the court in whose local jurisdiction the consequences have been suffered. Therefore, offences such as public nuisance and criminal negligence can be tried in Indian courts, if the act causing the nuisance or the criminally negligent act has been committed in India or if the impact of the act is felt in India. The residence, domicile and citizenship of the person responsible for the act are not relevant. The provisions of the Indian Penal Code, 1860, are equally applicable if the offences are committed outside India by an Indian citizen.

Enforcement

There are many ways in which a civil decree can be enforced in India – delivery of property; attachment and sale of property; appointment of receiver; arrest and detention in prison (if certain conditions are met). Decrees passed by foreign courts can be executed by Indian courts as if they were decrees passed by an Indian court if the foreign court is of a "reciprocating territory". However, if the decree is not conclusive the Indian courts can refuse to execute it. An arbitral award can be executed in the same way as any other civil decree.

Foreign arbitral awards can be enforced in India under the Arbitration and Conciliation Act, 1996. The court can refuse to enforce an award on certain grounds such as the enforcement of the award is contrary to public policy, the agreement for arbitration is not valid in law or the subject matter is not capable of settlement through arbitration in India. If the court makes a finding that the arbitral award is enforceable, then it is deemed to be a decree of the court.

Ancillary orders

The Code of Civil Procedure, 1908 recognises the inherent power of courts to issue such orders as are necessary to meet the ends of justice. Among other orders, Indian courts have the power to issue temporary injunctions to restrain a defendant from causing any injury to the plaintiff or breach of contract during the continuance of suit proceedings. They can issue injunction orders to restrain the commission of any act that is likely to damage property that is the subject matter of a suit.
Courts can also pass interlocutory orders preserving property that is the subject matter of a suit or for inspecting and authorising a person to enter any property to take samples or undertake experiments necessary to bring to light full information and evidence.\textsuperscript{242}

\textbf{Litigation costs}

7.84 Costs of litigation are generally borne by the litigants unless a person is entitled to legal services from the State.\textsuperscript{243} The courts have discretion to award costs.\textsuperscript{244} In case the court decides not to award costs then it has to state the reasons in its order.\textsuperscript{245} The court can also impose costs in cases of proven false and vexatious claims\textsuperscript{246} and deliberate delay.\textsuperscript{247}

\textbf{Obtaining information}

7.85 In a civil suit, parties have to file copies of documents relied on by them to the court.\textsuperscript{248} The court has the power to order discovery either on its own or in response to an application filed with it. It can issue necessary directions with regard to delivery and answering of interrogatories (set of questions filed by either party), inspection, production, impounding and return of documents or other objects.\textsuperscript{249} It can even issue summons to a person required to give evidence or produce documents.\textsuperscript{250} In a criminal case, whenever the court or the officer in charge is of the opinion that certain documents or any other things are necessary for the case, summons or order may be issued.\textsuperscript{251} Electronic records can also be summoned by the court.

7.86 The Indian Evidence Act, 1872 imposes certain restrictions on the disclosure of information derived from unpublished official records relating to affairs of the State and communication made in official confidence.\textsuperscript{252} However, if there is a conflict between the provisions of the Right to Information Act, 2005\textsuperscript{253} and the Indian Evidence Act, 1872, the former will override the latter.\textsuperscript{254}

The Right to Information Act, 2005 provides statutory recognition to a hitherto uncodified fundamental right to information.\textsuperscript{255} This legislation is intended to promote transparency and accountability in the governance of the country.\textsuperscript{256} Citizens can file Right to Information applications seeking information from public authorities, i.e. government bodies and bodies that are owned, controlled or substantially financed by the government.\textsuperscript{257} Information can also be obtained from private bodies as long as these can be lawfully accessed by a public authority.\textsuperscript{258} Certain types of information are exempt from disclosure such as trade secrets, intellectual property etc.\textsuperscript{259} However, even exempt information can be provided if public interest warrants disclosure.\textsuperscript{260} The Right to Information Act, 2005 lays down a strict timeline within which the information has to be provided,\textsuperscript{261} and non-compliance with the timeline, without reasonable cause, can lead to individual liability of the concerned official.\textsuperscript{262}

7.88 The Right to Information Act, 2005 can be a useful mechanism to obtain information on actions initiated by government agencies to respond to climate change;\textsuperscript{263} on reasons, if on record, for governmental inaction; on decisions taken by such agencies which may result in GHG emissions or reduction in carbon sink, etc. This information would be admissible as evidence in litigation, and as the source would be the government, it would be difficult for the government to challenge its authenticity/accuracy.

\textsuperscript{252} Sections 123, 124, Indian Evidence Act, 1872.

\textsuperscript{253} See paras. 7.87-7.90, below.

\textsuperscript{254} Section 22, Right to Information Act, 2005.

\textsuperscript{255} Preamble, Right to Information Act, 2005.

\textsuperscript{256} Section 2(h), ibid.

\textsuperscript{257} Rule 7, ibid.

\textsuperscript{258} Section 2(f), ibid.

\textsuperscript{259} See Order XXA and Section 35, Code of Civil Procedure, 1908.

\textsuperscript{260} Sections 8(1)(d), ibid. 8(1)(d), (2), ibid.

\textsuperscript{261} Section 20(1), (2), ibid.

\textsuperscript{262} The Right to Information Initiative of the Climate Revolution, a Gurgaon-based organisation, has filed several applications with the Ministry of Environment and Forests, the Prime Minister’s Office and other government departments seeking information relating to the government’s policy on climate change. The information received is publicly available at http://climaterevolution.net/rti/.
Government bodies are under an obligation to retain documents for a certain period of time. Each department is expected to formulate 'weeding out' rules clearly stating the length of time a type of record is to be maintained. Companies are also required to retain certain records for a stipulated length of time.

Under the Right to Information Act, 2005, public authorities are under an obligation to suo moto disclose information relating to them – such as details about their organisation, functions, work practices, budget, remuneration of employees, recipients of concessions, minutes of meetings etc. The Companies Act, 1956 and other provisions of corporate law require companies to disclose certain information about the company. For instance, when there is a public issue of shares, the offer document would include important up-to-date information about the company – its history and corporate structure, shareholders agreements, details about the management etc. According to the disclosure requirements, the corporate structure must include information about environmental issues.

Conclusion

Climate-related claims have yet to be litigated in India. There are a few cases in which climate change is referred to, but only in passing. This situation may, however, be set to change. Climate change and its impacts are rapidly capturing the popular imagination in India. There is a growing recognition of the importance and urgency of the climate challenge, and a slew of climate policies and initiatives have been launched in response. India has an engaged and proactive civil society, an activist judiciary, a progressive body of enviro-legal jurisprudence and an unparalleled culture of public interest litigation.

There are several hooks in Indian law for climate-related claims to be litigated. It is but a question of time before these hooks are raised and explored before the courts. Of these hooks however, the constitutional rights-based ones – whether in relation to an environmental right, or core rights to life, health, etc. – are most likely to be explored first. Not least because other cases can take up to fifteen years to be disposed of. Constitutional rights-based avenues, given the rich culture of judicial activism and public interest litigation prevalent in India, offer the most promise, and are therefore well worth tracking.

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Section 4, Right to Information Act, 2005.