

Arm air with rights

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July 23, 2023

Establishing a carbon market in India is a counter-productive solution that should be combated by bestowing air with legal personhood.



Aditi Maheshwari,

- JUL 23 2023, 23:15 IST
- UPDATED: JUL 24 2023, 01:33 IST



Representative image. Credit: iStock Photo

To protect all Indians from air pollution, the Parliament has passed an amendment to establish carbon markets. I intend to look at air as a legal person through the prism of common property and expose the duplicity posed by this ineffective solution. Before establishing why air needs to be armed with legal personhood, it is vital to classify air as a common property. This is crucial for acknowledging its importance as a shared resource in sustaining life and establishing the public interest in protecting it for future generations.

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How is air a common property? Firstly, it is non-excludable. If resources are invested in enhancing air quality, no one can be 'excluded' from reaping the advantages. Nobody owns air, but the whole world has a common claim on it. Everyone becomes a free rider, and the air falls prey to the 'Tragedy of Commons', where industries continuously externalise their costs by disposing toxic gases into the atmosphere to maximise profits. By virtue of its non-excludability, free-rider problem, and unrestricted use, air is a common property.

Public health and quality of life significantly depend on the air we breathe. Hence, it becomes consequential to award 'air' the rights of a legal person to cater to the "social and developmental needs of society". Legal personhood permits non-human entities to have rights and responsibilities similar to humans, allowing them to engage in legal activities.

Indian courts have conferred legal personhood on the Ganga and its glacier source. This radical step also includes fundamental rights. Consequently, the intention is to extend the legal personhood doctrine to air in India while it can be realised through the doctrine of *parens patriae*, which is based on the State's ability to protect common resources when citizens cannot do so themselves. Nonetheless, this doctrine is problematic when the State is a major polluter itself. To circumvent this, the *Atrato* judgement (in Columbia) can be implemented in India. It gives power to communities to choose representatives other than the government.

After arguing for the recognition of air as a legal person, the hypocrisy of carbon markets in the name of 'cleaner air' can be unravelled. Carbon credits are traded on carbon markets. While each credit represents the 'right to pollute', Indian jurisprudence on air pollution validates the 'right to clean air' as a fundamental right under Article 21. In *Subhash Kumar vs State of Bihar*, it was held that "the right to live is a fundamental right under Art 21 of the Constitution, and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life."

Naturally, the 'right to clean air' trumps the 'right to pollute' on ethical, doctrinal, and Constitutional grounds. Through Articles 47 and 48A, the Constitution endorses the 'right to clean air' by putting the onus on the State to improve public health and the environment, both of which get adversely affected due to air pollution. Furthermore, Indian cases have imported the 'polluter pays principle' and 'precautionary principle' to stress holding polluters accountable and preventing the abuse of air.

Secondly, the 'right to pollute' can be brought under the ambit of the 'right to destroy' because pollution is harmful for the atmosphere. *Jus abutendi*, the right of destruction, makes up one of the three major categories of rights under private ownership. Seeing that air is a common good owned by no one, nobody has the right to use it unreasonably.

Lastly, emissions trading puts a price tag on the natural world. This overlooks its intrinsic value and compromises “the sense of shared responsibility that increased global cooperation requires”. Carbon markets turn a fine into a fee. Emitting greenhouse gases is a harmful act that should be punished, not treated as another business cost. The term ‘fee’ removes moral responsibility and diminishes the severity of pollution. Moreover, it is easy for a business to buy more credits and pollute more.

Establishing a carbon market in India is a counter-productive solution that should be combated by bestowing air with legal personhood.

(The writer is a second-year law student at OP Jindal Global University.)

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The rapid rise of AI and the need for its regulation

AI systems like ChatGPT operate based on pre-existing algorithms and data, which raises concerns about bias, fairness and ethical decision-making



[Ravi Singh Chhikara, Rishabh Attri,](#)

- JUL 23 2023, 23:16 IST
- UPDATED: JUL 24 2023, 01:24 IST



Recently, it has been observed that AI may snatch away millions of jobs in the Indian market. As artificial intelligence (AI) technologies continue to advance, concerns arise regarding their potential implications for human workers and the constitutional rights they enjoy. In this opinion piece, we will explore the constitutional implications of replacing humans with AI. We will also examine why employers should rethink the idea of completely replacing humans with AI tools. So, do we need legislation to regulate this intrusion?

Right to livelihood and employment: The Constitution recognises the right to livelihood as an essential aspect of a citizen's right to life under Article 21. The replacement of human workers by AI systems in certain sectors could potentially infringe upon this right. If the widespread implementation of AI results in mass unemployment or disproportionately affects certain communities, it may lead to social and economic inequalities, which go against the principles of justice and equality enshrined in the Constitution.

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Right to privacy and data protection: AI systems rely on vast amounts of data for training and decision-making. The right to privacy, recognised as a fundamental right under Article 21, imposes an obligation on the state to protect an individual's personal information. The collection, storage and utilisation of personal data by AI systems should adhere to the principles of informed consent, data minimisation, purpose limitation, and security to safeguard the privacy rights of individuals.

Right to human dignity and autonomy: The Constitution upholds the right to dignity and personal autonomy as inherent to human beings. AI systems, while capable of performing tasks efficiently, lack the ability to truly comprehend human dignity and respect individual autonomy. The replacement of humans by AI in certain domains may lead to impersonal interactions, devaluing the significance of human connection and undermining the principles of dignity and autonomy.

Social and economic justice: The Constitution strives for social and economic justice, aiming to ensure equitable distribution of resources, opportunities and benefits to all citizens. The deployment of AI should be guided by principles that prioritise the welfare of all sections of society, especially marginalised communities. Measures must be taken to bridge the digital divide, provide reskilling opportunities and mitigate the potential adverse impacts of AI on vulnerable groups.

Machines can't always win

While AI tools would obviously face the above-said constitutional challenges in courts, it is essential to recognise the unique qualities that humans bring to the table. There are still some reasons why humans should not be replaced by ChatGPT or any other AI-based conversational system.

Emotional intelligence and empathy: One of the most significant limitations of AI chatbots is their inability to genuinely understand and empathise with human emotions. Humans possess emotional intelligence, which enables us to comprehend complex emotions, provide support and build meaningful connections. In contrast, ChatGPT lacks the capacity to genuinely empathise, leading to impersonal and potentially unsatisfying interactions.

In various fields such as counselling, healthcare and customer service, human empathy is crucial. Empathetic interactions foster trust, comfort and emotional support, which are fundamental for addressing the diverse needs and concerns of individuals. Replacing humans with AI chatbots would risk compromising the quality of these essential human connections.

Human conversation involves a nuanced understanding of context, cultural nuances and subtle cues. Humans possess the ability to adapt their communication style based on the individual they are interacting with, making the conversation more engaging and personalised. ChatGPT, while impressive in its capabilities, lacks the contextual understanding and adaptability that humans inherently possess. In complex situations that require critical thinking, creative problem-solving and flexibility, human intervention is irreplaceable. Humans can analyse unique circumstances, ask probing questions and navigate ambiguity effectively. The diverse experiences and perspectives we bring to conversations enable us to provide tailored solutions and adapt our approach as necessary.

AI systems like ChatGPT operate based on pre-existing algorithms and data, which raises concerns about bias, fairness and ethical decision-making. These systems can inadvertently perpetuate existing biases present in the training data, leading to discriminatory outcomes. Human oversight and intervention are essential to ensure that conversations remain unbiased, fair and adhere to ethical standards.

Furthermore, humans can be held accountable for their actions and decisions. If a human makes a mistake or behaves unethically, they can be held responsible and face consequences. In contrast, holding AI systems accountable for their actions is significantly more challenging due to their complex algorithms and opaque decision-making processes. The absence of human oversight in conversations could lead to potential harm or misinformation going unchecked.

Human beings possess unique qualities such as creativity, intuition and innovation, which have fuelled progress throughout history. These qualities enable us to think outside the box, generate novel ideas and find unconventional solutions to complex problems. AI chatbots, constrained by their programming and data, lack the creative and intuitive capabilities that humans possess.

In fields such as marketing, design and strategic planning, human creativity and intuition are invaluable.

The ability to understand abstract concepts, interpret symbolism and make imaginative connections cannot be replicated by AI chatbots. By embracing and harnessing human creativity, we can continue to push the boundaries of innovation and drive societal progress.

As we observed, we can create more meaningful and impactful interactions that cater to the diverse needs of individuals by combining the strengths of AI technology with the inherent qualities of human beings.

Therefore, there is a need for a legislation that proposes to have some minimum number of human employees in every entity. By doing so, employers would have the combination of AI's capabilities and human qualities to produce the best results and, at the same time, it would minimise the constitutional concerns we discussed above.

(Authors are practicing advocates at the Delhi High Court)

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Big tech algorithms are killing kids' sense of discovery

Algorithmic recommendations aren't just bad for kids' mental health, they're taking away the journey of discovery that comes with being human



Chris Murphy, International New York Times,

- JUL 20 2023, 23:52 IST
- UPDATED: JUL 21 2023, 01:56 IST



Kids are even more in the bag of social media companies than we think. So many of them have ceded their online autonomy so fully to their phones that they even balk at the idea of searching the internet — for them, the only acceptable online environment is one customized by big tech algorithms, which feed them customized content.

As our children's free time and imaginations become more and more tightly fused to the social media they consume, we need to understand that unregulated access to the internet comes at a cost. Something similar is happening for adults, too. With the advent of AI, a spiritual loss awaits us as we outsource countless human rituals — exploration and trial and error — to machines. But it isn't too late to change this story.

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This spring, I visited with a group of high school students in suburban Connecticut to have a conversation about the role that social media plays in their daily lives and in their mental health. More children today report feeling depressed, lonely and disconnected than ever before. More teens, especially teen girls and LGBTQ teens, are seriously considering suicide. I wanted to speak candidly about how social media helps and hurts mental health. By the end of the 90-minute dialogue, I was more worried than ever about the well-being of our kids — and of the society they will inherit.

There are numerous problems with children and adolescents using social media, from mental health deterioration to dangerous and age-inappropriate content and the lacklustre efforts tech companies employ to enforce their own age verification rules. But the high schoolers with whom I met alerted me to an even more insidious result of minors' growing addiction to social media: the death of exploration, trial and error and discovery.

Algorithmic recommendations now do the work of discovering and pursuing interests, finding community and learning about the world. Kids today are, simply put, not learning how to be curious, critical adults — and they don't seem to know what they've lost.

A week before meeting the students, I introduced the Protecting Kids on Social Media Act with three of my colleagues in the Senate, Brian Schatz, Democrat of Hawaii, and the Republicans Katie Britt of Alabama and Tom Cotton of Arkansas. The bill is a comprehensive attempt to protect young people on social media, prioritizing stronger age verification practices and placing a ban on children under 13 using social media altogether. But there was one provision of the bill that was particularly alarming to this group of students: a prohibition on social media companies using the data (what they watch and swipe on) they collect on kids to build and fuel algorithms that spoon-feed individualised content back to users. These high school students had become reliant, maybe even dependent, on social media companies' algorithms.

Their dependence on technology sounds familiar to most of us. So many of us can barely remember when we didn't have Amazon to fall back on when we needed a last-minute gift or when we waited by the radio for our favourite songs to play. Today, information, entertainment and connection are delivered to us on a conveyor belt, with less effort and exploration required of us than ever before.

A retreat from the rituals of discovery comes with a cost. We all know instinctively that the journeys in life matter just as much as the destinations. It's in the wandering that we learn what we like and what we don't like. The sweat to get the outcome makes the outcome more fulfilling and satisfying.

Why should students put in the effort to find a song or a poem they like when an algorithm will do it for them? Why take the risk to explore something new when their phones will just send them never-ending content related to the things that already interest them?

What the kids I spoke to did not know is that these algorithms have been designed in a way that inevitably makes — and keeps — users unhappy. According to an advisory issued by the surgeon general this year, “there are ample indicators that social media can also have a profound risk of harm to the mental health and well-being of children and adolescents.” A report by the non-profit Centre for Countering Digital Hate found that users could be served content related to suicide less than three minutes after downloading TikTok. Five minutes after that, they could come across a community promoting eating disorder content. Instagram is awash with soft-core pornography, offering a gateway to hard-core material on other sites (which are often equally lax about age verification). And all over social media are highly curated and filtered fake lives, breeding a sense of envy and inadequacy inside the developing brains of teenagers.

Social media companies know that content that generates negative feelings holds our attention longer than that which makes us feel good. It’s the same reason local news leads with the shooting or the house fire, not the local food drive. If you are a teenager feeling bad about yourself, your social media feed will typically keep delivering you videos and pictures that are likely to exacerbate negative feelings.

These kids may think they need the algorithm, but the algorithm is actually making many of them feel worse. It is not a coincidence that teenage rates of sadness and suicide increased just as algorithmically driven social media content took over children’s and adolescents’ lives.

The feedback from the students in Connecticut left me more convinced than ever that this law is vital. By taking steps to separate young people from their social media dependency and forcing them to engage in real exploration to find connection and fulfilment, we can recreate the lost rituals of adolescence that, for centuries, have made us who we are.

The role that social media has played in the declining mental health of teens also gives us a preview of what is coming for adults, with the quickening deployment of artificial intelligence and machine learning in our own lives. The psychological impact of the coming transition of thousands of everyday basic human tasks to machines will make the effect of social media look like child’s play. Today, machines help us find a song we like. Tomorrow, the machines won’t just find the song — they will create it, too. Just as we weren’t ready for the impact the social media algorithms would have on our kids, we likely aren’t prepared for the spiritual loss that will come as we outsource countless human functions to computers.

Regardless of whether the Protecting Kids on Social Media Act becomes law, we should get to work on a broader dialogue, with adults and kids from all walks of life, to determine if we will really be happier as a species when machines and algorithms do all the work for us, or if fulfilment only comes when humans actually do the work, like searching and discovering, of being human.

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To tackle the climate crisis, address inequality

Extreme heat could ultimately lead to a 15% decline in 'outdoor working capacity'.



Anirban Bhattacharya,

- JUL 20 2023, 23:51 IST
- UPDATED: JUL 21 2023, 01:58 IST



Every morning, when we turn the pages of the newspaper, we get a glimpse of a rather grim future. We read about the 54 bodies in the hospital in Ballia who succumbed during a heat wave; the Yamuna seemed to have avenged its neglect in the national capital. We read about the second straight year when our wheat production has taken a hit due to the heat wave and about the skyrocketing tomato prices amid extreme heat and heavy rains.

As much as 90% of India's total area is in extreme heat danger zones, says Ramit Debnath, a Cambridge scholar.

Extreme heat could ultimately lead to a 15% decline in "outdoor working capacity". This translates into a reduction in the quality of life for up to 48 crore Indians, and will cost 2.8% of GDP by 2050. Other reports are more dire.

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According to a McKinsey report, the lost labour hours due to increasing heat and humidity could put approximately 2.5–4.5% of GDP at risk by 2030. India is already losing the most in the world due to heat, a whopping US\$101 billion annually, according to a report by Nature Communications.

If we are to look for the culprits causing this global warming, they are the well-off with a consumption pattern that is unsustainable. They are the beneficiaries of a system built on the idea of insatiable greed and unending growth that is both extractive and unequal. The top 1% of emitters globally each have carbon footprints of over 50 metric tonnes of CO₂, which is more than 1,000 times greater than those of the bottom 1% of emitters.

The same is true when we look within our own boundaries. The bottom half of the population emits only 1 metric tonne per year in India, while the top 1% of the richest Indians emit 32.4 tonnes on average. In fact, in terms of emission inequality within national borders, India, China, and most of the emerging economies fare worse than the advanced economies.

Who bears the carbon brunt? Crop failures will certainly affect farmers significantly. But even otherwise, it is the poor who are disproportionately exposed to the extremes of the climate. As per a 2019 study that compared exposure to heat between low-income and other neighbourhoods in several cities of the subcontinent, including Delhi, it was revealed that it is the people in densely built, low-income neighbourhoods with no open green spaces who tend to suffer the most as the buildings of these neighbourhoods trap heat. Then again, another study shows that the cumulative cost of the Mumbai floods in 2005 was much greater for the poor as a proportion of their income than it was for the rich, as the poor had to repeatedly spend on repairs to their homes. While the rich contribute far more to the climate crisis, it is the poor who suffer.

In a letter addressed to the World Bank and the UN, more than 200 economists, including Jayati Ghosh, Joseph Stiglitz, and Thomas Piketty, have said that “Extreme poverty and extreme wealth have risen sharply and simultaneously for the first time in 25 years.” They were backed by the likes of former UN secretary general Ban Ki-moon and New Zealand’s former prime minister Helen Clark, among others. They said that “without a sharp reduction in inequality, the twin goals of ending poverty and preventing climate breakdown will be in clear conflict.”

We would need an immense amount of public investment to ensure a just transition, to build the social and material infrastructure that is climate resilient, or to mitigate and adapt to the extremes. To both address inequality and raise the resources needed to combat the climate emergency, taxing the super rich is an idea whose time has come.

Just before the global summit in Paris last month, a group of more than 100 leading economists urged taxing extreme wealth to spend on the energy transition of the poorer economies or on loss and damage. Research suggests that if the combined emissions of wealthy countries were to be accounted for the climate crisis’s impact on poorer countries, the rich would owe the poor \$6 trillion a year in reparations.

Now, while we team up and heighten the pressure by all means on the global north to pay up, the deaths and suffering won’t wait. There have been over 1,338 deaths in India due to extreme weather in 2020; the death toll was 1,750 in 2021. And last year, it was 2,220. These are the official numbers; the actual numbers are likely to be much higher.

We can’t let the poor suffer when we can make the superrich of the country (who participate in superfluous consumption and emissions) pay at least partly for the transition, mitigation, or damage through a minimal wealth and inheritance tax. Just for

the sake of demonstration, the total wealth of the top 1% of the wealthy in 2021 was about INR 427 lakh crore. Only a 2% wealth tax on the top 1% could generate about INR 8.54 lakh crore for the exchequer. In fact, over less than 10 years, such a tax could have generated what the RBI estimates to be our cumulative total expenditure (Rs 85.6 lakh crore) for adapting to climate change by 2030.

Alternatively, a progressive wealth tax of 2-6% spread over five wealth slabs on, say, the 1,007 individuals having above Rs 1,000 crore of wealth in India (as per the Hurun Rich List, 2021) could have generated Rs 2.76 lakh crores. Alongside, if we could add a modest 33% inheritance tax on just the top 1% rich (which is less than say Japan's 50% or equivalent to that of Ireland), we could cumulatively generate nearly Rs 10 lakh crore, which can help in addressing the food insecurity, health expenditure, and other welfare expenditure that the climate crisis is going to bring in its wake.

It is high time that we take such measures before more such news stories like the Ballia Hospital, floods, or food crises find their way into our newspapers.

(The writer leads the National Finance team at the Centre for Financial Accountability, New Delhi.)

(This is the ninth in a series of articles on inequality in India, curated in collaboration with the Centre for Financial Accountability, New Delhi)

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Are we ready for HPV vaccines?

Simultaneously, as many reports suggest that HPV can cause harm not only to women but also to men, it becomes crucial to target the vaccine towards young boys as well.



Prajakta Shukla,

- JUL 20 2023, 23:50 IST
- UPDATED: JUL 21 2023, 07:54 IST



As of July 2023, the Serum Institute launched the first homegrown vaccine, Cervavax, against the human papillomavirus (HPV). Gardasil and Cervarix were already available but could be bought only in private health facilities. Cervical cancer is the second-most common cancer in India. Every year, at least 125,000 women are diagnosed with cervical cancer in India, and 75,000 die from the disease. Globally, 21% of cervical cancer deaths occur in India. Cervical cancer is caused by HPV, leading to cervical, penile, neck, throat, and other genital cancers.

Who is potentially affected by HPV? Literally, anyone and everyone carries the risk of HPV, with HIV patients being highly prone to it. The risk amplifies in people who have sexual intercourse at an early age, have multiple sexual partners, maintain poor genital hygiene, smoke, and drink, as well as have a family history of cervix cancer, among other causes. Apart from sexual activities, the virus can also spread through skin-to-skin contact. The morbidity and fatality resulting from the HPV virus are highly preventable and curable in 80% of cases within two years.

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Singh and colleagues (2020) estimated that vaccinated girls were 60% less likely to have cervical cancer or die from it. When vaccinated girls were screened on a regular basis, the risk of cervix cancer was reduced by 69% to 79%. 23% of girls were married before 18 (National Family Health Survey-5) and therefore bore a higher risk of cervical cancer in the absence of vaccination.

Sexual and reproductive health is considered taboo, even in this time and age and are not a part of curriculum. Worse, educational discussions about SRH are equated with promoting perverse behaviour among children, whereas evidence has shown that sexual education does not promote young people but rather deters them from it in their teens. It is important to impart information on reproductive health.

Social norms are bound to hamper the wide dissemination of vaccines across India. Secondly, parents might have concerns regarding the side effects of the vaccine. This is where key stakeholders can play a prominent role.

While Sikkim has become the first state since 2018-19 to introduce the HPV vaccine for girls aged 9–13, covering 97% of girls with both doses, Sikkim resorted to social mobilisation, advocacy, awareness, and building effective public trust with the assistance of teachers, health staff, and community health workers. Sikkim provided the HPV vaccines free of charge by funding them from the state budget, a model that might be replicated by other states as well.

Among developing countries, Rwanda began its campaign in 2012 and has successfully covered 90% of school-going girls with the HPV vaccine. Subsidised vaccines, political commitment, and the rigorous efforts of community health workers in running door-to-door campaigns are considered the magic formula in the success story. In the Global

South, Bhutan and Thailand have managed to cover more than 90% of girls with both doses of the vaccine, whereas Sri Lanka vaccinated more than 80% of girls with dual doses.

India cannot afford to let women suffer and then perhaps die of the most curable cancer. Important here is to also strategize vaccination with regular screening for women aged 30 and above.

This has to be coupled with knowledge dissemination and effective yet sensitive campaigns run by community health workers, local leaders, teachers, etc., as major pushback can be anticipated due to the low socio-cultural acceptance of the vaccine.

Simultaneously, as many reports suggest that HPV can cause harm not only to women but also to men, it becomes crucial to target the vaccine towards young boys as well.

(The writer is a research associate at the Centre for Social and Economic Progress, New Delhi)

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