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Editorial

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A half-hearted climate change verdict

The Supreme Court of India's extension of the constitutional rights to life and equality, to the right to be free of ill-effects of climate change, is a potential ray of hope in the midst of a gloomy ecological scenario. The world is staring at multiple collapses with historically unprecedented impacts on humans and the rest of life, as we race towards a 1.5° (and who knows how much more) Celsius rise in average temperatures. Governments across the planet have failed to act on the overwhelming scientific evidence of this scenario.

The judgment has significant potential to be converted into actions that can undo, mitigate, or help adaptation to the ill-impacts of the climate crisis. The Court's observations regarding the disproportionate share of impacts felt by already marginalised sections of society, can be the basis for much-needed corrective action.

The flaws in the judgment

But the judgment also contains deep flaws that could undermine such potential. We will not go into its orders regarding the conservation of the Great Indian Bustard, the threat to whose habitat by mega-energy in western India was the core matter of the petition. Here, we deal with the power and climate aspects. The Court states that harnessing solar and wind power is crucial to meet India's climate commitments, made by the Prime Minister, Narendra Modi, at the 26th session of the Conference of the Parties in 2021. These include net zero carbon emissions by 2070, generation of 500 GW by non-fossil fuel sources and a 50% share of total power generation to renewable energy by 2030. Any obstructions to these, the judgment says, will lead to greater coal-based production, with dire consequences for the climate.

The Court has tried to balance the need for land (and airspace) for solar and wind energy production in Rajasthan and Gujarat, with the imperative of protecting the bustard. In doing so, however, it has not interrogated several problematic aspects of India's proposed energy transition.

For one, the government includes, in 'non-fossil-fuel' and 'renewable' energy, large hydropower and nuclear plants. There is nothing benign about these. Construction of mega-dams in the Himalaya has caused destabilisation, biodiversity loss, and displacement of communities. Nuclear power has led to forced displacement, curtailment of democratic rights as it is shrouded in secrecy, and the fear of centuries of contamination by untreatable nuclear wastes.

Second, mega-solar and wind projects too have huge adverse impacts. For instance, the huge Pavagada Solar Park in Karnataka, has taken away grazing and agricultural land, and destroyed wildlife. In Changthang, Ladakh, a proposed 13



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GW solar project will take up over 20,000 acres of fragile ecosystem, crucial for unique wildlife and nomadic pastoralism that produces the famous Pashmina wool.

Another one, proposed over 1,400 acres next to the Chhari Dhand Conservation Reserve in Kachchh, Gujarat, could destroy an important bird area as also the livelihoods of Maldhari pastoralists. Unfortunately, such renewable energy projects are excluded from environmental impact assessment (EIA) and clearance procedures, so their impacts are not even assessed.

Third, despite significant investment in renewable energy, the government is not reducing investments in coal. New coal mining blocks continue to be given a green signal, including in some of the country's most biologically diverse and socially sensitive (indigenous/ Adivasi) areas. In many of these, government agencies have enabled corporate entities, especially those closest to New Delhi's power corridors, to sidestep environmental laws.

Alternatives should have been considered

The Court's blanket acceptance of such an energy transition undermines its own assertion regarding a clean and healthy environment being a fundamental human right. To ensure such a right, it ought to consider the potential of alternatives to these mega-projects. For instance, rooftop and other decentralised renewable energy sources alone could yield over 600 GW. The Court itself observed: "Decentralized and distributed solar applications have brought substantial benefits to millions of people in Indian villages, addressing their cooking, lighting, and other energy needs in an environmentally friendly manner." If the Constitution's provisions for equality are to be met, these may fit the bill much more than mega-projects.

The Court could also have asked questions about how much of produced energy is wasted in inefficient transmission and use (for example, kitchen and other appliances), and luxury consumption. The absence of demand management in India's energy plans is shocking; its like any and all demand is justified. We need also to ask: what is the potential of power redistribution, from luxury consumption by the rich to poorer sections who do not get enough, thereby avoiding the need to produce that much new power?

While quoting climate-related judgments from other countries and some international agreements that India is party to, the Court has ignored others such as the increasing jurisprudence and the United Nations' declarations on rights of nature. One of the fastest-growing earth jurisprudence movements globally, it now has legal recognition in over 30 countries. It is a crucial part of just climate

action, especially where led by indigenous peoples and other local communities to safeguard nature, and their habitats for present and future generations. In India, recognition of the rights of the Ganga and Yamuna by the Uttarakhand High Court in 2017 (stayed by the Supreme Court on a plea by Uttarakhand government that the order was not implementable), is also a potential bulwark against climate-damaging actions such as big dams and other mega-projects. Compliance with global treaties on human rights (some of which the Court quotes) and on indigenous people's rights, would require critical appraisal of mega-renewable energy projects as much as of fossil-fuel sources.

The Court could still expand the positive potential of the judgment, by adding these aspects to the mandate of the expert committee it has set up: whether there are alternative, less damaging ways (including decentralised renewable energy) of generating (or obtaining, through reduction of waste and luxury consumption of already available capacity) the power to be produced by mega-projects in Rajasthan and Gujarat, or non-electricity means of meeting the same energy demand.

The problem with the Indian model

There are also broader issues of what climate rights should actually mean. India's model of development, heavily focused on mega-industrial, infrastructural and extractive projects that cause deforestation and displacement of communities, is fundamentally violative of constitutional rights. When the government proposes an infrastructure project that will deforest 130 square kilometres of pristine rainforest and take up lands reserved for Scheduled Tribes in Great Nicobar, it clearly violates this line of the Court's judgment: "the tribal population in the Nicobar islands continues to lead a traditional life which is unconnected to and separate from any other part of the country or world. Indigenous communities often lead traditional lives The destruction of their lands and forests or their displacement from their homes may result in a permanent loss of their unique culture."

If the Court were to take such observations to their logical conclusion, and achieve the positive potential of declaring climate as a fundamental right, it should be directing the government to re-examine such projects. If it does, the judgment would have provided grounds for some fundamental shifts towards real sustainability and justice. If not, it has only reinforced the ecologically flawed, undemocratic and socially disruptive path to tackle climate change that the Government of India has been promoting.

The views expressed are personal

In M.K. Ranjitsinh and Ors. vs Union of India and Ors., the top court has not looked into several problematic aspects of India's proposed energy transition