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CLIMATE JUSTICE

# Supreme Court's simplistic view on energy production undercuts its ruling on climate justice

'Greener' alternatives such as solar and hydro electricity affect the environment and the most marginalised in equally devastating, if different ways.

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A worker walks past solar modules at the Naini solar power plant in Prayagraj in March 2012. | Reuters

When some of us environmentalists woke up on April 8 to newspaper headlines about the Supreme Court pronouncing the right to be free of ill-effects of climate change as a fundamental right, it was like a ray of hope in the midst of a gloomy ecological scenario. India and the rest of the world are staring at multiple collapses with historically unprecedented impacts on humans and the rest of life, as we race towards a 1.5-degree rise in average temperatures – and who knows how much more.

Governments across the planet have failed to act on the overwhelming scientific evidence of the catastrophe we face, fossil fuel corporations continue to prioritise shareholder profits over life and the world's rich live without concern for the poor. In such a situation, such a judgment has to be welcomed.

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The Supreme Court has interpreted Articles 21 and 14 of the Indian Constitution, which guarantee the right to life and right to equality before the law, [to include protection of the climate](#). Such an extension has significant potential to be converted into actions that can undo, mitigate or help adaptation to the ill-impacts of the climate crisis.

In particular, building on its observations regarding the disproportionate share of impacts felt by already marginalised and poor sections of society, the judgement could be the basis for much-needed corrective action.

But on many counts, the verdict is also deeply flawed. We do not here go into the problematic aspects concerning the conservation of the Great Indian Bustard, whose habitat is threatened by mega-solar and wind projects in western India – the core subject matter of the petition that led to the current judgement.

Others more experienced than us [such as conservationist Debadityo Sinha](#) have already pointed them out.

Here, we deal with the other crucial aspects of the judgement, about power production. The court has stated that given India's commitments, as made by Prime Minister Narendra Modi at the 26th Climate COP in 2021 to review the progress of the United Nations Framework Convention on Climate Change, the establishment of solar and wind power parks is crucial.

The commitments included net zero carbon emissions by 2070, generating 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 Supreme Court says, are likely to lead to greater coal-based production, with dire consequences for the climate (and more pollution). It has tried to balance such actions relating to climate, needing land in Rajasthan and Gujarat, with the imperative of protecting the Great Indian Bustard.

In doing so, however, it has taken a rather simplistic view of the energy transition India needs to make. Certainly, the country needs to significantly increase renewable energy and scale down fossil fuel-based energy production. But its transition scenario is flawed on several counts.





The Great Indian Bustard in Rajasthan. Credit: SVKMBFLY, CC BY-SA 4.0, via Wikimedia Commons.

For one, in “non-fossil-fuel” and “renewable” energy, the government includes large hydropower and nuclear plants. Both have enormous ecological, social and other costs. The construction of [hydropower mega-dams in the Himalayan](#) region have caused destabilisation, ecological loss, while displacing communities and dispossessing them of their lands and other resources their livelihoods depend on.

At least two major dam-bursts in very recent times (in Uttarakhand and Sikkim) are dire warnings of the folly of such construction in fragile, unstable Himalayan areas. Nuclear power has led to forced displacement, the curtailment of democratic rights as it is shrouded in secrecy and the fear of generations of contamination by untreatable nuclear waste. Across India, people’s movements continue to resist the establishment of nuclear plants and [face enormous repression](#) from the government.

Second, even mega-solar and wind projects have enormous ecological and social impacts. Examples of those already built include the [Pavagada project in Karnataka](#) and a [project in Nagaon, Assam](#). There is also a proposal for a 13 GW solar project in the ecologically fragile Changthang plateau in Ladakh, crucial for unique wildlife and the nomadic pastoralism of Changpa communities, covering between 20,000 and 48,000 acres. Another is proposed over 1,400 acres next to the Chhari Dhand Conservation Reserve in Kachchh,

Gujarat, an Important Bird Area as also a crucial habitat for the livelihoods of Maldhari pastoralists.

Globally, such projects are being called “[green grabbing](#)” or “green colonialism”.



A temporary bamboo bridge being set up at Chungthang, where the Teesta III dam was swept away. Credit: Government of Sikkim/Facebook.

Given that renewable energy projects are excluded from the environment impact assessment and environmental clearance procedures, their impacts are not even assessed, let alone acknowledged and redressed (if it were even possible to redress them). Notably, the court has not sought a comprehensive environment impact assessment or social impact assessment of the projects in Rajasthan and Gujarat that it has accepted as justified from a climate angle.

Third, the court's fond hope that renewable energy will be more accessible to the poor is not based on evidence in the case of mega-projects. Their centralised nature means that they require long-distance transmission, so their uneven distribution to the rich and the poor will be the same as that of any fossil fuel-based electricity.

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Fourth, 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 areas, including those in which indigenous or Adivasis live. This is even happening by sidestepping, or conveniently altering, environmental laws or norms.

Several investigations have shown how government agencies have bent over backwards to enable corporate entities, including those [like Adani who are closest to the](#) power corridors in New Delhi, to get permissions for such projects in areas and ways they should never have been allowed. Not to mention the [repression of protesting villagers](#) and activists in places such as Hasdeo in Chhattisgarh.

Given these issues, the Supreme Court's blanket acceptance of the government's plans for these is in contradiction to its own words (and those of specialists like the UN Special Rapporteur on Human Rights and the Environment that it quotes). To assert that a clean and healthy environment is a fundamental human right and to not question the violations entailed in mega-projects is to be selective and tunnel-visioned.

The court ought also to have examined, or asked for an examination, of the potential of alternatives to these mega-projects. For instance, it could have easily accessed reports of the enormous potential of [rooftop and other decentralised energy sources](#), which, at well over 600 GW, is more than the target Modi announced at the 26th Climate COP.

This was all the more important given its observation: “Decentralised 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.”

It could also have asked questions about how much of produced energy is wasted in inefficient transmission (especially over long distances that are necessary when it is produced in centralised, mega-park ways), inefficient use (for example, kitchen and other appliances in homes) and luxury consumption. The complete absence of demand management in India's energy plans is shocking. It is as if any and all demand is valid, justifying ever-increasing production even though this is unsustainable.

The court could also have asked: 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? And finally, it could have gone into the fact that energy is not only electricity – it makes up less than a fourth of the total energy use in India. It is numerous other forms and sources, including biomass. The court could have asked whether there is a potential to ramp up these to reduce the need for generating extra electricity.





A protest against the damming of the Narmada River, in November 2000. Credit: Reuters.

We are not suggesting that the court should have gone into all these issues itself. But accepting mega-solar and wind projects as solutions to India's energy problems has rendered its judgement simplistic, flawed and potentially dangerous to communities and wildlife threatened by such projects. While quoting climate-related judgements from other countries and some international agreements that India is party to, it has ignored others, such as the increasing jurisprudence and United Nations declarations on rights of nature.

AD

This emerging movement, one of the fastest-growing Earth Jurisprudence movements globally, now has [legal recognition in nearly 40 countries](#), as also backing from United Nations' "Harmony with Nature" initiative. It is a crucial part of just climate action, and where led by indigenous peoples and local communities, an important tool to safeguard their habitats, as also the rights of future generations.

In India, the recognition of the inherent rights of rivers like the Ganga and Yamuna by the Uttarakhand High Court in 2017 (stayed by the Supreme Court on a plea by the Uttarakhand government that the order was not implementable) is also a potential bulwark against climate-damaging actions like big dams and other mega-projects.

These, as also global treaties on human rights (some of which the court quotes) and on indigenous people's rights, should have led it to question the validity of mega-energy projects, to look beyond the clever subterfuge of "non-fossil fuel" sources masquerading as renewable energy, and to direct a search for



available alternatives.

It can still do so – and expand the possibilities of the positive potential of the judgement – by clarifying the mandate of the expert committee it has set up to go into some aspects of Great Indian Bustard protection. The mandate could include examining whether there are alternative ways 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. It could also consider whether there are non-electricity means of meeting the same energy demand that minimise environmental and social disruption.

AD

Beyond the immediate issues of bustard protection and energy mix are also broader ones on what is a just energy transition (including the need for retraining and re-employment of workers in the fossil fuel sectors) and what climate rights should actually mean. India's model of development, heavily focused on mega-industrial, infrastructural and extractive projects, is fundamentally violative of climate and environmental rights.

When the Central government allows huge mining projects with massive deforestation and tribal displacement in the forests of central and eastern India, for instance, it is an obvious violation of such rights.

When it proposes a mega-infrastructure project that will deforest 130 sq km of pristine rainforest and take up lands reserved for scheduled tribes in Great Nicobar (and shrouds it in the language of “defence” and “security”), it clearly violates this line of the court's judgement:

“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, whose dependence on the land is of a different character from the dependence which urban populations have on the land .... The destruction of their lands and forests or their displacement from their homes may result in a permanent loss of their unique culture.”

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As researchers have shown, both ecological principles and [tribal rights are being openly violated](#) in this project.

In such projects as also in mega-renewable energy projects and in neglecting to lay out a *just* energy transition pathway, there is a violation of what the court calls “rights-based energy transitions and promoting energy justice, intertwined with human rights principles”.

There is also a violation of global treaties such as the Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous Peoples, which the court has not taken into account when stating that “it is imperative for states like India, to uphold their obligations under international law”.

If the Supreme 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.

AD

Could its judgement be taken forward by civil society groups to challenge destructive development? If such actions pressurise a paradigm shift in energy planning and execution, as also urgently needed climate

adaptation measures, the court would have done us all a big favour. The “right to climate” could become a powerful ground for some fundamental shifts towards real sustainability and justice.

But if these do not take place, this judgement would only bolster the government’s current roadmap on climate and energy. This further undermines the country’s ecological and democratic foundations, sustains inequality of various kinds and causes further displacement and dispossession of the poor.

*Ashish Kothari and Shrishtee Shrishtee Bajpai work with Kalpavriksh, Vikalp Sangam and Global Tapestry of Environment. Views here are personal.*

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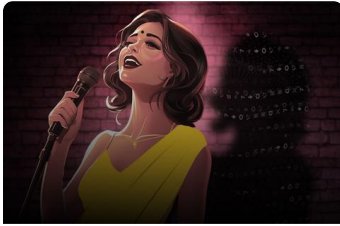
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