A partner India pale year modules at the home solar power plant in Pyapuzha in March 2021. | Reuters.

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 is equally devastating, if different ways.

Ashish Kothari & Shrishti Bajpai
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A partner India pale year modules at the home solar power plant in Pyapuzha in March 2021. | Reuters.

When some of the environmentalists woke up on April 19 to a surprise headline about the Supreme Court pronouncing the right to be free of ill-effects of climate change as a fundamental right, it was like an ingot in the midst of a growing ecological scenario. India and the rest of the world are facing ever-mounting and historically unprecedented impacts as humans and the rest of life, as we have towards a 1.5 degree rise in average temperature – and who knows how much more.

Governments across the planet have failed to act on the overwhelming scientific evidence that constitutes our best, hard-to-dispute knowledge of what is happening to our planet. The Supreme Court has taken a step in the right direction but it will require a lot more to be done to reach 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 this climate, both as harms that significant potential to be uncovered into actions that can undo, mitigate or help adaptation to the ill-impacts of the climate change.

In particular, building on its six dimensions of the fundamental dimen of aspects left by already marginalised and poor sections of society, the judgement could be basis for much needed corrective action.

But many questions, the needed to also deeply flowed, be taken up and go into the problematic aspects concerning the conservation of the Great Indian Bustard, whose habitat is threatened by renewable and wind projects in western India – the core subject matter of the petition that led to the current judgment. The court has ordered a stay on the sale of the current Bustard habitat, which have been signed by some of the companies, also with the other crucial aspects of the judgement, about power production. The court has noted that given India's commitments, as part of the Paris Agreement, to reach Net Zero by 2070, and that it is the prerogative of the Central Ministries of Power and Renewable Energy and Climate Change, the establishment of solar and wind power parks is crucial.

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The construction included on sites either exceeding in 2070, governing 100 GW by non-fossil fuel sources and a 30% share of total power generation to renewable energy by 2030, the court observes. Given the Supreme Court, our Liberty, to fuel to power and fossil production, with the consequences for the climate fuel and pollution. It has said the Indian with decision making in climate, adding and it Bustland and Gujarat, with the importance 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. Formally, the Government of India has set a target of 500 GW of non-fossil fuel based electricity production and has met energy production. But its transition scenario is flawed on several counts.

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A temporary tourism village set up at Chanjaroga, where the Nirma 10 unit was based, near Lodai Conservation of Great Indian Bustard.

Given that renewable energy projects are excluded from the environment impact assessment and environmental clearance procedures, they are being rushed through without any consideration of their impacts. Even a near-zero paradise is serious threat. Notably, the court has not sought a comprehensive environmental impact assessment or social impact assessment of the projects in Rajasthan and Gujarat that is expected to unfold from a climate angle.

Think the court's hard 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 access distribution to the rich and the poor will be the same as that of any fossil fuel based electricity.

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Second, even mega-solar and wind projects have enormous ecological and social impacts. Examples of these already built include the Pavagada Solar Park in Karnataka and a project in Nagaur, Jaisalmer. There is also a proposal for a 15 GW solar project in the ecologically fragile Changthang Plateau in Ladakh. Mega-solar projects require large tracts of land, groundwater, and hydrogen and nuclear plants, causing serious land and ecological impacts. Another is proposed over 5,400 acres near to the Dhani Dhand Conservation Reserve in Kachchh, Gujarat, an important habitat for birds, also a crucial habitat for the livelihoods of Maldhari pastoralists.

Globally, such projects are being called "green grabbing" or "green colonialism".

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Third, despite significant investment in renewable energy, the government is not reducing consumption in coal, that continuing blocks the transition to a low-carbon economy. Coal is the most polluting most biologically diverse and socially sensitive zones, including those in which indigenous or tribesome live. This is worsen happening by ultra-mega, or conveniently altering, environmental laws or norms.

Second investigations have shown how government agencies have been ever backwards to enable corporate entities, including those Jaiprakash Associates in the power corridors in New Delhi, to get permission for such projects in areas and ways they should never have been allowed. Not a surprise the expansion of coal mines and thermal power stations in places such as Hasdeo in Chhattisgarh.

Fourth, in the same, the Supreme Court, Sanjeev acceptance of the government, gives the forest is a commodities to sets worth and ignoring the rights of the people who live in the forests and depend on them for their livelihoods. It seems that for the court, the environment is a fundamental human right and is not question the violations entailed in mega projects is to be selective and remain contrived.

The court might 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 systems, which India's earlier CEA, or even the first target Modi announced at the 26th Climate COP.

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This was all the more important given its observation: "Decentralised and distributed power 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 profound energy is wasted in inefficient transmission (especially over long distances that are economically, social and environmental costs, mega-pack energy, inefficient transmission, and the ecological and social impacts of mining for the raw consumption. Has 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 decentralisation, from tenant consumption by the rich to power sections who do not get enough, thereby assisting the need to produce that much less power? And finally, it could have given into the fact that energy justice is only intuitively – it makes up less than a fourth of the total energy use in India, and is responsible for less than 1% of the GHG emissions. The court could have asked whether there is a precedent to make up there to reduce the need for generating extra electricity.

A protest against the expansion of the Hasdeo Arna, in Surguja, under Coal. 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 weakened its judgement weighed, flawed and inadequate. Its decision to stay the sale of the Great Indian Bustard habitat, protecting the grassland conservation and habitat. Ecologists, 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.

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This emerging movement, one of the home-growing Earth Jurisprudence jurisdictions globally, now has legal recognition in nearly, discussions, or also backing from United Nations "Harmony with Nature" initiative. It is a similar part of other domestic and other laws by indigenous peoples in Ecuador, Bolivia, Aotearoa New Zealand, Australia, Canada, Uganda, and Nepal, and also in Rajasthan and Gujarat.

In India, the recognition of the inherent rights of rivers like the Ganga and Yamuna, and the Great Indian Bustard, and the Great Indian Bustard, and the Great Indian Bustard

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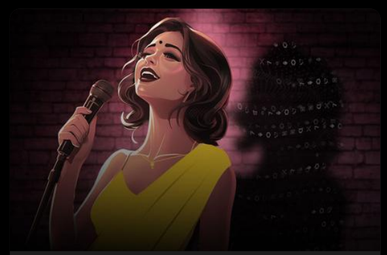

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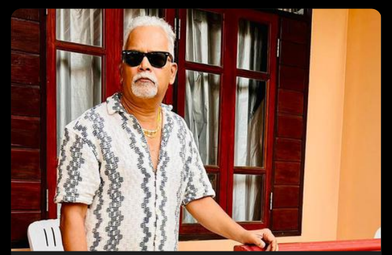

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