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EDITORIAL NOTE

FATALITIES OF LIBERAL ENVIRONMENTAL LEGALISM: EXAMINING MISSED OPPORTUNITIES AND FLAWED FRAMINGS IN THE SUPREME COURT'S M.K. RANJITSINH DECISION

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In April 2024, a three-judge bench of the Supreme Court led by former Chief Justice D.Y. Chandrachud ruled that the Constitution of India foresees far beyond the right to a healthy and clean environment, and guarantees to the Indian citizen, a right against climate change. The ruling was of a landmark character - by putting into motion, in clear terms, a jurisprudence squarely concerned with climate change, and pushing, albeit softly, for the legislating of an omnibus climate legislation, the decision has possibly opened new contours for climate litigation in India, which, all signs signify, India will inevitably witness a deluge of matters regarding in upcoming years. But the decision, simultaneously ruled in favour of installation of overhead transmission lines through a habitat of the Great Indian Bustard, a species that has been pushed to the brink of endangerment. The contradictions within the Court's rhetoric and its

material outcome is not mystical - the judgement formulates, with great logical gymnastics and informational distortion, various “flawed contestations”, as the authors call it, between the rights of GIB on one hand, and a plethora of human centered concerns on the other. The authors describe these contestations as “flawed”, since the Court relies on questionable research to overemphasize the sustainability of renewable energy in India, distorts truthful findings on research connecting energy access to gender parity, and obfuscates the basic premise of intersectional environmental politics which suggests that tending to nature and nonhuman interests has net positive outcomes on human communities, and “collaborative solutions” that do not accept for granted mass-level exploitation of any particular interest are attainable. The paper clarifies, one by one, why the Court’s emphasis that the GIB concern is trumped by renewable energy, climate equality, women’s rights, and farmer’s rights is misinformed, and sets a problematic precedent. The authors suggest that the MK Ranjitsinh decision must be viewed as a missed opportunity to introduce Rights of Nature discourse into India, and why the limits of the Supreme Court’s liberal environmental legalism, and resistance to radical ecocentric legalism, is a reflection of the Constitution’s own blindspots on the environmental concern.

I. INTRODUCTION

On 19 April 2021, the Supreme Court of India had passed an order restricting the setting up of high voltage overhead transmission lines in a 99,000 square kilometer territory in Rajasthan, known to be a habitat for the Great Indian Bustard (‘GIB’) (a species labelled as ‘threatened’ by the International Union for Conservation of Nature).¹ The overhead transmission lines were a death knell to the GIB, and even-though the Court wasn’t yet convinced at that time regarding underground cables, it said there was “consensus” that overhead lines were not an option.²

Nearly three years later, a Division Bench of Chief Justice D.Y. Chandrachud and Justices J.B. Pardiwala and Manoj Misra modified the 2021 order, permitting the establishment of the high voltage overhead lines.³ Peculiarly, for the Court, the most significant reason to allow this fatal infraction into the territory of an endangered species was protection from climate change. For the first time, the top Court recognised an express right “against the adverse effects of climate change.”⁴

¹ *M.K. Ranjitsinh v Union of India*, (2021) 15 SCC 1 : 2024 INSC 280 (2024).

² *ibid.*

³ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280 (2024).

⁴ *ibid.*

Commentators have written extensively,⁵ by now, on the affirmative consequences of the judgement⁶ - even though the right to a healthy environment has long remained a part of environmental constitutionalism in India, a right that adapts to the language and contextual elements of climate change is supposed to be seen as a welcome development. Some have argued that the judgement paves the way for India to adopt a more coherent climate legislation.⁷ The ball, they say, is now in the legislature's court.

The Court, itself, has recognised also the jurisprudential potentialities of its decision⁸ - citing the possibility of more frequent climate litigation at the constitutional court level - such as the adjudication in the Netherlands Supreme Court about the extent of enforcement power that a constitutional court has on executing a national climate change policy,⁹ or the kind of case that landed with the New Zealand Supreme Court, where the Court had to speak about the enforcement of climate policies of another sovereign,¹⁰ as the culture of climate litigation evolves more rigorously in India.

But certain aspects of the rational bolstering the decision also re-legitimise longstanding regresses of Indian environmental lawmaking, jurisprudence and legal scholarship, particularly in terms of the convoluted logic that the Court deploys while justifying its final decision in giving a clearance to the overhead transmission lines. We call the overarching reasoning scheme of the Court as one construing "flawed contestations". The Court recognises, rightly, the apparent competing considerations that exist in the story of the GIB - between conservation on one hand, and on the other, an anthropocentric conception of human development, dependency on renewable energy for the sake of climate change mitigation, climate inequality, and particular human rights related concerns, which confine two interesting discussions on women's rights, and rights of farmers cultivating in the specific site of the project under challenge. The Court, to its credit, recognises that in the presence of conflicting interests in environmental disputes, a "holistic approach" in the form of a collaborative solution must be the

⁵ Aman Mehta, 'Breathing Life into the Right to Life: The Indian Supreme Court and the Right to be Free from the Adverse Effects of Climate Change', IACL-AIDC Blog, 30 April 2024, available at <<https://blog-iacl-aidc.org/>> (Last visited on 29 November 2024).

⁶ Arpitha Kodiveri, 'The Genre-Bending of Climate Litigation in India', *Verfassungsblog*, 7 May 2024, available at <<https://verfassungsblog.de/the-genre-bending-of-climate-litigation-in-india/>> (Last visited on 29 November 2024).

⁷ Parul Kumar & Abhayraj Naik, 'India's New Constitutional Climate Right: Examining the Significance of *M.K. Ranjitsinh and Others v. Union of India and Others for Climate Litigation in India*', *Verfassungsblog*, 25 April 2024, available at <<https://verfassungsblog.de/indias-new-constitutional-climate-right/>> (Last visited on 29 November 2024).

⁸ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280, ¶¶ 44 to 50.

⁹ *State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Urgenda Foundation*, ECLI:NL:HR:2019:2006.

¹⁰ *Ioane Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment*, [2015] NZSC 107.

priority seek.¹¹ It notes that “a dilemma such as the present one does not permit the foregrounding of one of these as a priority, at the cost of the other.”¹² But as we argue, the principle argumentative methodology the Court adopts to frame these tensions is problematic. Firstly, its construction of renewable energy as a viable contending interest against conservation seems informed by inauthentic observations on the sustainability of the Indian government’s renewable energy policies. It also belies a misinformed understanding of the capability of these policies in furthering climate change mitigation. Secondly, the Court’s construction of the tension between conservation and climate inequality and rights of vulnerable communities is an overtly stretched one - attempting to center the discourse around conflicts that do not and cannot inherently exist within an informed, radical environmental legalism. These “flawed contests”, in fact, arise from a neoliberalist model of environmental legalism, reflecting its inherent limitations. In that sense, *Ranjitsinh*, despite its apparent presentation as a radical breakaway from the traditional neoliberal environmental constitutionalism of the Supreme Court, is really a perpetuation of it. This inherent limitation arises significantly from the Indian Constitution’s basic anthropocentric deficiencies, and its purposive incapability to engage with ecocentric approaches. Because of this, the Indian Supreme Court remains disjunct, and perhaps even behind models of legalism which recognise more coherently the correct jurisprudential approach towards environment human rights issues, such as the adoption of Rights of Nature fundamentals in lawmaking and decision-making in Latin America,¹³ New Zealand,¹⁴ and specific jurisdictions in the United States.¹⁵ That being said, specific dicta in *Ranjitsinh* may even, surprisingly, open the pathway for judicial decision-making that could, more coherently, introduce Rights of Nature into India.

Part II delves into the anthropocentric character of the Indian Constitution. Part III explores the problems with the competitive framework the Court adopts on conservation, renewable energy and environmental human rights. Part IV presents the uncertain, but plausible optimistic outcomes of *Ranjitsinh* in regards to ecocentric legalism in India. Part V concludes.

¹¹ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280, ¶60.

¹² *ibid.*

¹³ *Buen Vivir: The Rights of Nature in Bolivia and Ecuador*, Rapid Transition Alliance, 2 December 2018, available at <<https://rapidtransition.org/stories/the-rights-of-nature-in-bolivia-and-ecuador/>> (Last visited on 29 November 2024).

¹⁴ Hal Crimmel & Isaac Goekeritz, ‘The Rights of Nature in New Zealand: Conversations with Kirsti Luke and Christopher Finlayson’ 27(3) ISLE: Interdisciplinary Studies in Literature and Environment 563-577 (2020).

¹⁵ CELDF, *Rights of Nature: Timeline*, Community Environmental Legal Aid Defense, available at <<https://celdf.org/rights-of-nature/timeline/>> (Last visited on 29 November 2024).

II. RANJITSINH'S UNCLEAR FRAMING OF PARALLEL CONCERNS IN ENVIRONMENTAL HUMAN RIGHTS MATTERS

In the global south, courts that have developed an extensive set of socio-economic rights, due to their colonial and social histories, have been more inclined to accept environmental issues as and when they affect such rights.¹⁶ Although this does help keep the environment in mind, it can only do so much. Environmental cases in Indian courts have largely failed to achieve any actual protection. This is because, i) majority of cases fail to consider intrinsic value of environment, due to lack of any reason to do so legislatively ii) end up providing developmental needs more preference iii) use of anthropocentric climate language (derived from international documents) to support decisions that they arrived at for other reasons¹⁷ and are iv) least enforceable.¹⁸ This is because in anthropocentric extension of rights, environment protection as a goal is always secondary. As India does not yet have a legislation for climate change, the judicial challenges are confined to aspirational challenges¹⁹ instead of implementation challenges. However, these aspirational challenges are most dismissed in renewable energy cases due to the ethnocentric (i.e., Western) illusion that naively assumes the possibility of endless “sustainable” growth on a finite planet. Let alone recognition of substantive rights to the environment²⁰ that get blatantly violated, even procedural rights are largely ignored in India.

At the core of Ranjitsinh's conceptual framing of all the challenges it tackles is a fundamental acknowledgement of, what the Court has termed, a “right against the adverse effects of climate change.”²¹ The Court does so by supplying essentially a transformative reading to the constitutional provisions that engage

¹⁶ C Rodríguez-Garavito, ‘Human Rights: The Global South's Route to Climate Litigation’ in Jacqueline Peel & Jolene Lin, *Transnational Climate Litigation: The Contribution of the Global South* (eds, AJIL Unbound 2020) available at <<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/human-rights-the-global-souths-route-to-climate-litigation/02EBDC8B18F9F888532C7345B44290FF>> (Last visited on 29 November 2024).

¹⁷ See, *Singh Timber Trader v State of U.P.*, 2014 SCC OnLine All 16207.

¹⁸ S Ghosh, ‘Litigating Climate Claims in India’ in *Transnational Climate Litigation: The Contribution of the Global South* (Jacqueline Peel & Jolene Lin, eds., AJIL Unbound 2020) available at <<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/litigating-climate-claims-in-india/4BF1BFCD33474A8E7370425F3014BE26#fn28>> (Last visited on 29 November 2024); See also James R May, ‘Constituting Fundamental Environmental Rights Worldwide’ 23 Pace Envtl. L. Rev. 113 (2006), available at <<https://digitalcommons.pace.edu/pelr/vol23/iss1/5/>> (Last visited on 29 November 2024).

¹⁹ Catherine Higham, Joana Setzer & Emily Bradeen, *Challenging Government Responses to Climate Change through Framework Litigation*, Policy Report (September 2022) available at <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/09/Challenging-government-responses-to-climate-change-through-framework-litigation-final.pdf>> (Last visited on 29 November 2024).

²⁰ See, *Om Dutt Singh v State of U.P.*, 2015 SCC OnLine NGT 163 (May 7, 2015). [The NGT did not address the climate issue in its final order, preferring to let the project continue despite acknowledging its environmental impacts].

²¹ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280, ¶¶19-36.

with environmental concerns.²² It stops short of fluently acknowledging that the constitutional design as a whole might lack the framework to effectively recognise a specifically climate change concerned right, but nonetheless moves ahead with deriving this right, through interpretive glamour from Articles 48A, a Directive Principle of State Policy which requires “the state to protect and improve the environment, and to safeguard the country’s forests and wildlife”,²³ and Article 51A(g), a fundamental duty which is imposed on “every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures.”²⁴

The right to a clean environment is a fundamental right that was interpretively derived as well, by extending the aspirations of Article 48A, and seeing through its entanglement with Articles 14²⁵ and 21.²⁶ The Court simply extends this aspirational entanglement of these provisions to state that even though, as of *Ranjitsinh*, the Court had not particularly recognised a right against climate change, read alongside India’s policies combating climate change, and other parallel decisions of the Court which have rhetorically acknowledged the grave problem of climate change, it must be assumed that the right against climate change and the right to a clean environment are “two sides of the same coin.”²⁷

Although reliance on socio-economic rights for climate litigation has been long established²⁸, there is growing discernment with enforceable actions that protect only those elements of nature that serve human beings, in turn reducing nature to mere devices of humanity. Whilst there can be some hope that these anthropocentric provisions, in the case of pollution laws, inevitably help the environment as the degradation of the same is growingly recognised to directly affect human health, propensity to live and quality of life, the same hope is completely extinguished in cases where protection of other species is concerned.

Having set the stage post-recognition of this right, the judgement immediately attempts to identify and locate the right’s prospective beneficiaries as those most deeply affected by climate inequality. This is a discourse the Court inventively inculcates into the discussion since the concern regarding habitat destruction of the GIB because of electric transmission lines had not, in the course of the hearings, highlighted climate inequality as a conceptual concern to be dealt with.

²² Melanie Murcott, *Transformative Environmental Constitutionalism* (Brill 2022).

²³ Constitution of India 1950, Art. 48A.

²⁴ Constitution of India 1950, Art. 51A(g).

²⁵ *Virender Gaur v State of Haryana*, (1995) 2 SCC 577 at ¶7.

²⁶ *M.C. Mehta v Kamal Nath*, (2000) 6 SCC 213.

²⁷ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280, ¶24.

²⁸ Internationally, see, Catherine Higham, Joana Setzer & Emily Bradeen, *Challenging Government Responses to Climate Change through Framework Litigation*, Policy Report (September 2022) available at <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/09/Challenging-government-responses-to-climate-change-through-framework-litigation-final.pdf>> (Last visited on 29 November 2024).

Undoubtedly, even a rhetorical recognition²⁹ of climate inequality by the nation's top constitutional court should be seen, at some level, as a step in the right direction, particularly in how it discusses the plight of indigenous communities and Lakshadweep inhabitants.³⁰ But as we note later on, this inventive inclusion of climate inequality was not a mere rhetorical addition by the Court. In fact, "climate inequality" emerges in the judgement as tactical upholstery since the discussion in the judgement flows from climate inequality immediately to human-nature relationships.

However, Ranjitsinh does introduce the human-nature relationship paradigm by discussing how Adivasi and forest dweller communities are also prominent victims of climate inequality, since they also share a cultural bonding with nature.³¹ Here is where *Ranjitsinh* does something interesting.

Instead of noting that within the paradigm of environmental human rights concerns wherein, at times, disputes may come for adjudication where perceptibly there is a contestation between human and non-human nature rights, the end goal for Courts should always be to read both parallel interests in conjunction to arrive at a solution that best protects the victims of climate inequality and nature,³² it phrases the problem in far vaguer terms. Paragraph 27 states:

*"From these, it emerges that there is a right to be free from the adverse effects of climate change. It is important to note that while giving effect to this right, courts must be alive to other rights of affected communities such as the right against displacement and allied rights. Different constitutional rights must be carefully considered before a decision is reached in a particular case."*³³

In our opinion, this paragraph capitulates the Court's final stance, and also lays out a roadmap for future constitutional adjudicators, about how environmental human rights disputes in the future should be decided. Epidermically, one might argue there is hardly anything imprecise about the language deployed. But an alternative reading of the paragraph also suggests that the final roadmap, as

²⁹ Here, the emphasis on 'rhetoric' is in reference to Alok Prasanna Kumar's critical appraisal of Justice D.Y. Chandrachud's judgments, which he proposes, could be classified into three typologies: "The first category includes a judgment where the rhetoric matched the impact. The second category talks about a ruling where the rhetoric was high-minded but the impact minimal. And the third category details a decision where the impact was the exact opposite of the rhetoric." The M.K. Ranjitsinh decision may be sturdily articulated as falling at best in the second, at worst in the third category, *see* Alok Prasanna Kumar, 'Making Sense of DY Chandrachud's Legacy isn't Easy. It's Complicated, Confounding', *The Print*, 28 October 2024, available at <<https://theprint.in/opinion/making-sense-of-dy-chandrachuds-legacy-isnt-easy-its-complicated-confounding/2331242/>> (Last visited on 29 November 2024).

³⁰ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280, ¶26.

³¹ *ibid.*

³² Washington et al, 'Ecological and Social Justice should Proceed Hand-in-Hand in Conservation' 290 (Biological Conservation (2024)).

³³ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280, ¶27.

has been supplied by *Ranjitsinh*, states that courts actually have two alternating routes to pick from: (i) either they interpret the right against climate change (seen as a right that is primarily concerned with the environment) *in conjunction* with the rights of affected human communities, or (ii) the first set of rights should be *balanced* against the second set of rights.

The buttress to this argument, that Paragraph 27 actually opens these two, radically different objectives and methods of adjudication, comes from the Court's own final conclusion, and how it relies on the logic of Paragraph 27 to manufacture contestation between the survival of the GIB, and concerns of human livelihood, human development, and feminist interests.

III. "FLAWED CONTESTATIONS": RANJITSINH'S MISHANDLING OF THE COMPETING INTERESTS BEFORE IT

Despite its intuitive aspiration to seek a "holistic approach",³⁴ the judgement contributes to deepening the competing claims that arise in the GIB's case. This intensification of the conflict is brought about through a questionable framing of how the concern pertaining to the conservation of the GIB is countervailed by a parallel set of rights-based concerns. The inference of the Court, observably, becomes that the contests exist, and the case before it is one where though collaboration is aspirational, the only plausible solution is simply to declare a winning interest - either the human concern persists exclusively, or the nonhuman concern.

The first opposition the Court pitches against the GIB is renewable energy. Renewable energy, which the overhead transmission lines are in pursuit of, is framed as a countervailing instrument against, firstly, climate change, and secondly, rather confusingly, climate inequality. On the first note, it states, to substantiate its support for the project:

*"It is imperative for states like India, to uphold their obligations under international law, **including their responsibilities to mitigate greenhouse gas emissions, adapt to climate impacts, and protect the fundamental rights of all individuals to live in a healthy and sustainable environment.**"*³⁵

It frames renewable energy as a productive intervention against climate inequality through the following reasoning:

"The lack of reliable electricity supply for many citizens not only hinders economic development but also disproportionately affects communities, including women and low-income households, further perpetuating inequalities. Therefore, the right to a healthy environment encapsulates the

³⁴ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280, ¶60.

³⁵ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280, ¶35.

*principle that every individual has the entitlement to live in an environment that is clean, safe, and conducive to their well-being.*³⁶

At a purely logical level, such a framing is mischievous. It is also foreseeable from the vague language deployed in preceding sections of the judgement such as Paragraph 27, which should have alluded that the long, inventively inserted discussion on climate inequality would actually be deployed in a problematic way. We state that the accepted conclusion that climate inequality faces a mitigating force from renewable energy is problematic, because overwhelming evidence of the contrary position being true has emerged. Two prominent environmental thinkers of our time, Ashish Kothari and Srishtee Bajpai have argued that the Court's framing of renewable energy as so critical a concern that it could emphatically trump an endangered species conservation presents "a rather simplistic view of the energy transition India needs to make."³⁷ They argued that large renewable energy projects of the Indian government, particularly hydropower and nuclear plants have resulted in massive ecological, social and other costs, citing the example of hydropower mega-dams in Himalayas³⁸ which have caused "destabilisation." Mega-solar and wind projects across the country, such as the planned 13 GW solar project in Changthang plateau in Ladakh, are causing deep ecological and social damages.³⁹ This is a consequence of the exclusion of renewable energy projects from environmental impact assessments and environmental clearance procedures.⁴⁰ There are other considerations that emerge in a conversation about renewable energy aspirations should be pushed through in India. A working paper by National Institute of Public Finance and Policy has posited that India's renewable energy goals may deepen regional disparities within the country, with western and southern states, which are more replete with Variable Renewable Energy (VRE) sources benefitting more rapidly from a renewable transition as compared to northern and eastern states which are richer in coal reserves.⁴¹ Abundantly, the picture that emerges is that there are multiple, crucial missing elements within India's long march to renewable supremacy. In that sense, the GIB being declared

³⁶ *ibid.*

³⁷ Ashish Kothari & Srishtee Bajpai, 'Supreme Court's Simplistic View on Energy Production Undercuts its Ruling on Climate Justice', *The Scroll*, 7 June 2024, available at <<https://scroll.in/article/1067767/supreme-courts-simplistic-view-on-energy-production-undercuts-its-ruling-on-climate-justice>> (Last visited on 29 November 2024).

³⁸ Shagun, 'Himalayan Plunder: How Hydropower Projects in the Hills have Increased Disasters there', *Down to Earth*, 13 February 2023, available at <<https://www.downtoearth.org.in/urbanisation/himalayan-plunder-how-hydropower-projects-in-the-hills-have-increased-disasters-there-87660>> (Last visited on 29 November 2024).

³⁹ Jigmat Paljor, 'Power for Whom? The Cost of Renewable Energy in Ladakh', *India Development Review*, available at <<https://idronline.org/ground-up-stories/power-for-whom-the-cost-of-renewable-energy-in-ladakh/>> (Last visited on 29 November 2024).

⁴⁰ Kundan Pandey, 'As Renewable Sector Grows, Need for Regulating it Comes to the Fore', *Mongabay*, 20 April 2023, available at <<https://india.mongabay.com/2023/04/as-renewable-sector-grows-need-for-regulating-it-comes-to-the-fore/>> ((Last visited on 29 November 2024).

⁴¹ Sanjay Mitra & Rohit Chandra, *Deep De-Carbonization and Regional Equity* (NIPFP Working Series, Working Paper No. 402 2023).

a necessary casualty in the pursuit of renewable security by the top court is completely aligned with the competitive, non-collaborative nature of renewable energy project development in the country - where some sort of ecological and social disarray is viewed as unavoidable substrate.

For substantive right under article 14, the arguments put forth in favour of renewable energy in *Ranjitsinh* are majorly equal access to energy for women, equal right against climate change that has disproportionate effects for different communities. For Article 21, it is presumed that renewable energy, although a cleaner alternative, will definitely lead to better living conditions. However, the court's arguments are contradicting themselves. Whilst it recognises the unequal impact of climate change on different communities and the inevitable effect of climate change on right to live, it fails to consider the unequal impact of renewable energy projects on different communities and species, and that mass-consumption, in the way promoted by the solar projects committed by India, will affect right to life of both humans and non-humans.⁴² It only supports the hegemonic idea of sustainability deeply ingrained in Western materialist, individualist and positivist worldviews and does not acknowledge other cosmovisions, such as those of Indigenous peoples in the Global South. This is evidenced by how potential human rights violations have been completely absent from the due diligence exercises performed before these renewable energy SPVs are built. In this, the rights assessment is limited to specific aspects of labour law, and turns a blind eye to how if not managed correctly, the toxic components of discarded PV panels at the end of their life cycle can harm ecosystems and pose health risks to individuals involved in their dismantling or disposal.⁴³ Further, whilst *Ranjitsinh* itself propagate socio-economic rights in the context of right to access energy, there is no focus on how the procurement of such renewable energy vitiates these rights in the process itself. Social inclusion, along with procedural and distributional justice, has been largely overlooked, as landless and marginalized communities are excluded from development planning due to their lack of formal ownership of government land they rely on for grazing, nomadic routes, and burial grounds. Evidently, such landless and marginalised communities in Rajasthan have filed 15 cases against solar plants in the state's high court.⁴⁴ The privatisation and enclosure of indigenous territories, although posed as positive mitigation strategies,

⁴² Paola Velasco-Herrejón, Thomas Bauwens & Martin Calisto Friant, 'Challenging Dominant Sustainability Worldviews on the Energy Transition: Lessons from Indigenous Communities in Mexico and a Plea for Pluriversal Technologies', 150 *World Development* (2022), available at <<https://www.sciencedirect.com/science/article/pii/S0305750X21003405?via%3Dihub>> (Last visited on 29 November 2024).

⁴³ Asar, *Powering Ahead: An Assessment of the Socio-Economic and Environmental Impacts of Large-Scale Renewable Energy Projects and an Examination of the Existing Regulatory Context* (2019), available at <https://asar.co.in/files/Powering_Ahead.pdf> (Last visited on 29 November 2024).

⁴⁴ Council on Energy, Environment and Water Natural Resources Defense Council, *Laying the Foundation for a Bright Future Assessing Progress Under Phase 1 of India's National Solar Mission* (2012) available at <<https://www.nrdc.org/sites/default/files/layingthefoundation.pdf>> (Last visited on 29 November 2024).

mostly just impose additional burdens on communities that both struggle to adapt to this change without any aid or compensation and fail to reap the benefits of the same as well.

Kothari and Bajpai have also challenged the Court's notion that renewable power perpetuates conditions for climate equality. As they point out, there is no factual basis to the Court's argument since the long transmission required for non-fossil energy faces the same challenges of inequitable access between the "rich and the poor" as non-renewable energy transmission.⁴⁵ NIPFP's working paper supplies further nuance to this understanding - western and southern states replete with VRE resources, and which incidentally, have a higher concentration of prosperous economies and states with high Gross State Domestic Product,⁴⁶ will remain secure, but northern and eastern states which have consistently recorded a lower economic growth rate will have to firstly, slash thermal power production even if prices are competitive, and engage in inter-state import of renewable power from the better performing states, simply in order to manage sustainable grid operations.⁴⁷ Such a possibility would only deepen energy access inequality both at a regional and class level with particular concentrations of intense divide in some parts of the country.

Environmental constitutional rights⁴⁸, propagated by international documents, and accepted by Indian courts, have largely been concerned with the human effects of environmental degradation, rather than protection itself. However, this is not (for the majority part), the fault of the courts. The constitution is itself inherently anthropocentric by design⁴⁹, and thus, to a large extent disables the biocentric perspective. In this, non-humans have largely been objects of law, and not the holders of rights against human beings.⁵⁰ Further, state

⁴⁵ Ashish Kothari & Shrishtee Bajpai, 'Supreme Court's Simplistic View on Energy Production Undercuts its Ruling on Climate Justice', (*The Scroll*, 7 June 2024), available at <<https://scroll.in/article/1067767/supreme-courts-simplistic-view-on-energy-production-undercuts-its-ruling-on-climate-justice>> (Last visited on 29 November 2024).

⁴⁶ Sanjeev Sanyal & Aakanksha Arora, *Relative Economic Performance of Indian States: 1960-61 to 2023-24* (EAC-PM Working Paper Series, Working Paper No. 31 2024).

⁴⁷ Sanjay Mitra & Rohit Chandra, *Deep De-Carbonization and Regional Equity* (NIPFP Working Series, Working Paper No. 402 2023).

⁴⁸ Marc Pallemmaerts, 'The Human Right to a Healthy Environment as a Substantive Right' in Maguelonne D6Jeant-Pons & Marc Pallemmaerts, *Human Rights and the Environment* 11(eds. 2002) 11-21.

⁴⁹ Christen Maccone, 'Should Environmental Protection be through Anthropocentric Rights?', 41 Pace Envtl. L. Rev. 78 (2023), available at <<https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1890&context=pehr>> (Last visited on 29 November 2024).

⁵⁰ See generally Richard A Epstein, 'Animals as Objects, or Subjects, of Rights' (2002) available at <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=law_and_economics> (Last visited on 29 November 2024); Wendy A Adams, 'Human Subjects and Animal Objects: Animals as "Other" in Law' (2009) 3 Journal of Animal Law and Ethics 29-51, available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1632624> (Last visited on 29 November 2024); Thomas G Kelch, 'Toward a Non-Property Status for Animals' (1998) 6 N.Y.U. Envtl. L. J. 531, available at <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/>

represents anthropocentrism in its reproduction of rooted schemes of subordination, as the laws that mandate environmental protection (ie. pollution laws, forest laws, etc.), do it only to the extent of protecting human needs and interests. For non-humans and protected species, the usefulness of an animal dictates its rights.⁵¹ WPA fails due to abysmally low costs accorded to harm caused to even the most protected species and no prescribed protection to enlisted species.⁵²

Ranjitsinh traverses further beyond a general energy access position. It goes so far as to argue that gender parity in energy access is resolvable through renewable power, and hence, in a scale of priorities, the GIB interest is not as immediate. It states:

“Unequal energy access disproportionately affects women and girls due to their gender roles and responsibilities such as through time spent on domestic chores and unpaid care work. Women in many developing countries spend on average 1.4 hours a day collecting fuelwood and four hours cooking, in addition to other household tasks that could be supported by energy access.²⁷ The importance of prioritizing clean energy initiatives to ensure environmental sustainability and uphold human rights obligations cannot be understated.”⁵³

It is true that reliable research has consistently presented that the gendered gap in access to energy resources is prevalent in India. From a large scale household survey in India, Zhang et al found that women from low-WEI (Women Empowerment Index) households showed lesser preference for government subsidies in grid electricity over kerosene and solar power.⁵⁴ They use this finding to conclude empowering women is crucial to sustainable power distribution.⁵⁵ But the key to this is that without actively pursuing the social barriers that impede the empowerment of women in the first place, a unilateral pursuit of energy access is not sensible. Environmental journalists Milou Dirx and Julian Wettengel have reported that social barriers have impeded women’s participation in solar energy projects.⁵⁶ Meanwhile in a broader, global conversation around

nyuev6&div=28&id=&page=> (Last visited on 29 November 2024); The rights that protect the rights of non-humans have also largely been crystallised as them being chattel of humans that needed protection for harm; for this, see Sristi Roy, ‘A Critical Analysis of Article 51A (g) with Special Reference to Animal Cruelty in India’ (2023) 6(3) Int’l J.L. Mgmt. & Human 2419, available at <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/ijlmhs23&div=200&id=&page=>>> (Last visited on 29 November 2024).

⁵¹ Prevention of Cruelty to Animals Act 1960.

⁵² ‘Why Amendments to the Wild Life Act are Scheduled to Fail’, The Wire (2023), available at <<https://science.thewire.in/environment/wild-life-act-amendments-scheduled-to-fail/>> (Last visited on 29 November 2024).

⁵³ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280, ¶34.

⁵⁴ Zhang et al, ‘Evidence of Multidimensional Gender Inequality in Energy Services from a Large-Scale Household Survey in India’ (2022) 7(8) Nature Energy 1-10.

⁵⁵ *ibid.*

⁵⁶ Roli Srivastava, *Social Barriers Risk Leaving Women behind in India’s Greener Future*, Clean Energy Wire, 22 November 2024, available at <<https://www.cleanenergywire.org/news/>>

gender in climate politics, some have questioned fundamentally whether renewable energy should be articulated as a feminist pursuit at all. In its report, ‘Towards a feminist energy justice network’, the Danish Institute for Human Rights notes that sub-Saharan African women “are deeply affected by the development of renewable energy projects.”⁵⁷ Another briefing paper by the Global Initiative for Economic, Social and Cultural Rights demarcates the “adverse” consequences of large-scale renewable energy projects on women: poorer consultative participation in decision-making during project consultation process exclude women from compensation schemes, deepening gender based violence and posing special challenges for women human rights defenders, decreased employability within the renewable energy project, and fanned civil conflicts at a local level perpetuating greater oppression against women.⁵⁸ According to Giulia M. Minnini’s findings, large scale solar rollouts in India have directly resulted in “asymmetric power relations and energy inequalities against women and girls, which often reproduce those linked to fossil fuel.”⁵⁹

The final scheme of contesting interests that *Ranjitsinh* frames is between the rights of farmers, and the GIB. While reasoning against the feasibility of laying down underground transmission lines through the region, which would pose a less immediate threat to the GIB, the Court notes:

*“Underground power transmission cables are available only in 400 kV. The drum size for such cables is 250 m. These cables have a greater number of joints. The current is more likely to leak from joints. For a 1 km stretch, about 4 to 5 joints will be present. When laid for longer distances spanning thousands of kilometres, the number of joints will increase proportionately. As the number of joints increases, there is a corresponding rise in the risk to safety, especially to farmers under whose land the cables are laid.”*⁶⁰

The idea of subterranean transmission cables was first examined by the National Green Tribunal after the Wildlife Institute of India’s experts recommended this to be the best means of taking the project forward. In December 2020, in agreement with WII, the NGT directed to the Union Ministry of Environment, Forest and Climate Change and state governments that in marked

social-barriers-risk-leaving-women-behind-indias-greener-future> (Last visited on 29 November 2024).

⁵⁷ Danish Institute for Human Rights, *Towards a Feminist Energy Justice Framework* 4 (2023).

⁵⁸ Global Initiative for Economic, Social and Cultural Rights, *Renewable Energy and Gender Justice* 11 (2020) available at <https://geneva.fes.de/fileadmin/user_upload/documents/2020/2020_GI-ESCR_Paper.pdf> (Last visited on 29 November 2024).

⁵⁹ Giulia M. Minnini, ‘NGO versus Government’s solar energy provision in India: A feminist perspective’, (2024) 5 *Renewable and Sustainable Energy Transition*, <<https://www.sciencedirect.com/science/article/pii/S2667095X24000096>>. (The link is fine, seems to be accessible from our end)

⁶⁰ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280, ¶52(b).

regions which are GIB habitats, the transmission lines should be subterranean.⁶¹ But reportedly, there was resistance to this direction by the Union Ministry of Power and government of Rajasthan, which claimed in an internal meeting that it was not feasible to lay down high-tension transmission cables underground in the region.⁶² In that meeting, the Power ministry had also requested WII to clearly demarcate all the regions that were GIB habitats so that those could be strategically circumvented for the project. None of these records emerge in the Court's judgement which unequivocally allowed the project to be conducted within the habitat region. This is one major reason why the Court's reasoning that overhead transmission lines are in the interests of the farmers is incorrect. A report by the People's Archive of Rural India, based on interviews with farmers from villages most directly affected by the project suggests that the farming community feels disconnected from the development project.⁶³

"We are losing so much in the name of 'development'. And who is this development for?" one farmer, Sumer Singh told PARI's executive editor Priti David. PARI's report reveals another fascinating detail, which attacks a fundamental premise of the Court's strategy while deciding the case.⁶⁴ Several farmers expressed a "multispecies relationality", to borrow a phrase from Radhika Govindrajan,⁶⁵ with the GIBs, and were displeased with frequent unnatural deaths of GIBs which had already occurred because of the project.

The Court, while framing the premise of its core arguments, completely missed to engage with inter-species relatedness, whether in the context of discussing gendered assessment of unequal energy access, or while attempting to center the farming community's interest. This multispecies relatedness challenges the Court's competing interest framework, where interests of different groups is perceived as constantly clashing and in a state of negotiation. Perhaps a part of it has been the Supreme Court's resistance and non-accounting of ecocentric legality.

⁶¹ Ishan Kukreti, 'NGT Wants Underground Power Lines, Bird Diverters at Great Indian Bustard Habitat', *Down to Earth*, 23 December 2020, available at <<https://www.downtoearth.org.in/wild-life-biodiversity/ngt-wants-underground-power-lines-bird-diverters-at-great-indian-bustard-habitat-74759>> (Last visited on 29 November 2024).

⁶² Ishan Kukreti, 'Bustard Conservation: No Agreement on Underground Power Lines, Ban on New Projects', 15 December 2020, *Down to Earth*, available at <<https://www.downtoearth.org.in/wild-life-biodiversity/bustard-conservation-no-agreement-on-underground-power-lines-ban-on-new-projects-74657>> (Last visited on 29 November 2024).

⁶³ Priti David, 'Great Indian Bustard: Sacrificed for Power', People's Archive of Rural India, available at <<https://ruralindiaonline.org/en/articles/great-indian-bustard-sacrificed-for-power/>> (Last visited on 29 November 2024).

⁶⁴ *ibid.*

⁶⁵ Radhika Govindrajan, *Animal Intimacies: Interspecies Relatedness in India's Central Himalayas* (2018).

IV. RANJITSINH AS A MISSED OPPORTUNITY TO INTRODUCE ECOCENTRIC LEGALISM

How legal institutions respond to climate change is most effectively characterised by how they choose to make sense of environmental human rights concerns. An ecocentric jurisprudential framework naturally provides the most coherent framework to contain the specific dynamics and challenges that complex issues of climate change, human developmental projects, and authentic concerns towards indigenous and local communities bring with themselves.⁶⁶ On the other hand, a more classical liberal environmental legalism that functionalises through anthropocentric meaning-making would also seek solutions that would always subserve the nature concern.

In their critique, Kothari and Bajpai also have expressed that in *Ranjitsinh*, the Supreme Court “ignored...the increasing jurisprudence of United Nations declarations on rights of nature.” On that front, they further note:

*“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.”*⁶⁷

No other set of commentators, writing for any other publication, have successfully pointed out this glaring error of the Court. We desire to go deeper into Kothari and Bajpai’s concern. In our opinion, a more nuanced reading of *Ranjitsinh* reveals that at the level of “rhetoric”, as Alok Prasanna Kumar uses the term in the context of Justice Chandrachud’s judgements (which are discourse heavy but lacking any desire for an outcome),⁶⁸ the Court constantly engages with certain core tenets of ecocentric legalism. It goes so far as to acknowledge that it is inappropriate to view concerns of two protected groups - the GIB, and marginalised human communities in competitive silos, and instead their individual concerns must be perceived as having a “nuanced interplay.” Paragraph 53, particularly notes:

⁶⁶ Michael Scobie, ‘Framing Environmental Human Rights in the Anthropocene’ in *Environmental Human Rights in the Anthropocene: Concepts, Contexts, and Challenges* (Cambridge University Press 2023).

⁶⁷ Ashish Kothari & Shrishtee Bajpai, ‘Supreme Court’s Simplistic View on Energy Production Undercuts its Ruling on Climate Justice’, *The Scroll*, 7 June 2024, available at <<https://scroll.in/article/1067767/supreme-courts-simplistic-view-on-energy-production-undercuts-its-ruling-on-climate-justice>> (Last visited on 29 November 2024).

⁶⁸ Alok Prasanna Kumar, *Making Sense of DY Chandrachud’s Legacy isn’t Easy. It’s Complicated, Confounding*, *The Print*, 28 October 2024, available at <<https://theprint.in/opinion/making-sense-of-dy-chandrachuds-legacy-isnt-easy-its-complicated-confounding/2331242/>> (Last visited on 29 November 2024).

*“In addition to the reasons listed above, it is imperative to recognize the intricate interface between the conservation of an endangered species, such as the Great Indian Bustard, and the imperative of protecting against climate change. Unlike the conventional notion of sustainable development, which often pits economic growth against environmental conservation, the dilemma here involves a nuanced interplay between safeguarding biodiversity and mitigating the impact of climate change. It is not a binary choice between conservation and development but rather a dynamic interplay between protecting a critically endangered species and addressing the pressing global challenge of climate change.”*⁶⁹

The rationale expressed herein provides the thrust for the Court’s desire for a “holistic approach.”⁷⁰ Unfortunately, the only material outcome of this reasoning is the Court’s direction to form an Expert Committee that would be specifically concerned with technical conservation measures to be deployed in the region after the overhead transmission lines are installed.⁷¹ The Committee’s role is evidently mitigative after the larger decision to permit the problematic project, opposed to the interests of both GIB and local farming communities, is operationalised. Ideally, the reasoning encapsulated in Paragraph 53 should have led the Court to not rule in favour of the overhead transmission lines at the get go or completely revisit the WII’s early recommendations to circumnavigate the sensitive habitat regions, while allowing the Expert Committee to explore informed collaborative answers. In a way thus, it can be argued that the force of the discussion in Paragraph 53 was never effectuated by the Court.

Why it was not effectuated is likely because of the Supreme Court’s overarching liberal environmental legalism. Except for two stand out occasions, the Court’s decisions in *Orissa Mining Corpn. Ltd. v Ministry of Environment & Forests* (2013),⁷² wherein it decided in favour of Adivasi communities protesting Vedanta’s bauxite mining in the culturally revered Niyamgiri hill region, and *M. Nagaraj* (2006),⁷³ where it recognised, quite radically, that nonhuman animals are also guaranteed the right to life under the Constitution, the Indian Supreme Court has not been accepting of radical ecocentric legalism. Globally, the pace at which Rights of Nature jurisprudence is prominently capturing steam is noteworthy, both in the framing of constitutional visions such as in Ecuador,⁷⁴ and in shaping very significant litigations where interests of indigenous communities

⁶⁹ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280, ¶53.

⁷⁰ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280, ¶60.

⁷¹ *M.K. Ranjitsinh v Union of India*, 2024 SCC OnLine SC 570 : 2024 INSC 280, ¶61.

⁷² *Orissa Mining Corpn. Ltd. v Ministry of Environment & Forests*, (2013) 6 SCC 476.

⁷³ *M. Nagaraj v Union of India*, (2006) 8 SCC 212.

⁷⁴ Constitution of the Republic of Ecuador, 2008, Arts. 10, 71, 72, 73, 74.

and rights of mountains, rivers and lakes across New Zealand,⁷⁵ Canada,⁷⁶ Latin America⁷⁷ and patches of the United States, are being collaboratively protected against extractive neoliberal State interests.⁷⁸ The United Nation's Harmony with Nature initiative has come as a contemporary, upholstered development on the World Charter for Nature, 1982, a document that was vigorously ignored in international environmental legalism for decades until the desire for a more effective alternative to liberal environmentalism was felt. The Kunming Montreal Global Biodiversity Framework, and the strengthening push for the recognition of an international crime of ecocide being sturdily based out of a Rights of Nature framing⁷⁹ are further evidence of its crucial position in climate policymaking and litigation in the near future. For instance, rights of nature have occupied a prominent space in climate litigation by environmental groups in Uganda, another country that does not yet have, but juridically aspires for a coherent climate change policy.⁸⁰ *Ranjitsinh* may have foreseen a deluge of climate litigations greeting India's courts very soon, but has not, in any material way, prepared the jurisprudential groundwork necessary for the courts to tackle them. One must imagine, that if the Court had ruled for a solution after recognising, and in tandem with the recognition of the right of the GIB, as a validated legal person, whose interest need not be tied with any other set of considerations, *Ranjitsinh's* valuation would be much more significant.

The Indian Supreme Court has consistently, at the broad level, resisted eco-centric legalism - a strain of decision making that has become starker in recent years. In *Animal Welfare Board of India v Union of India* (2023),⁸¹ wherein it upheld a deeply exploitative cultural practice involving the taming of bulls, it overturned its own iconic conclusion from *M. Nagaraja*, noting that extending a recognition of fundamental rights to nonhuman animals would be akin to "judicial adventurism." It stated that whether such rights should be extended to animals should remain in discretion of the legislature, in a way, impeding

⁷⁵ Ronan Kennedy, 'Trees, Rivers and Mountains are Gaining Legal Status – But it's not been a Quick Fix for Environmental Problems', *The Conversation*, 17 August 2023, available at <<https://theconversation.com/trees-rivers-and-mountains-are-gaining-legal-status-but-its-not-been-a-quick-fix-for-environmental-problems-211542>> (Last visited on 29 November 2024).

⁷⁶ Chloe Barge, 'This Canadian River is Now Legally a Person. It's not the Only One', *National Geographic*, 15 April 2022, available at <<https://www.nationalgeographic.com/travel/article/these-rivers-are-now-considered-people-what-does-that-mean-for-travelers>> (Last visited on 29 November 2024).

⁷⁷ Ximena Insunza Corvalán, 'Rights of Nature in the Courts of Latin America' in Beatriz Bustos et al, *Routledge Handbook of Latin America and the Environment* (Routledge 2023).

⁷⁸ Hanaček et al, 'We are Protectors, not Protestors: Global Impacts of Extractivism on Human–Nature Bonds', (2024) 10 Sustainability Science 1789.

⁷⁹ Yasmin Dahnoun, 'Protecting the "Heart of the Earth" from Ecocide', *Ecologist*, 5 July 2023, available at <<https://theecologist.org/2023/jul/05/protecting-heart-earth-ecocide>> (Last visited on 29 November 2024).

⁸⁰ Samantha Atukunda K Mwesigwa & Peter Davis Mutesasira, 'Climate Litigation as a Tool for Enforcing Rights of Nature and Environmental Rights by NGOs: Security for Costs and Costs Limitations in Uganda' (2021) 15 Carbon & Climate Law Review 139-149.

⁸¹ *Animal Welfare Board of India v Union of India*, (2023) 9 SCC 322.

the Court's own stakes and capabilities in shaping climate jurisprudence. High Courts across the country have increasingly been adopting ecocentric legalisms. Important judgements in the Madras High Court have recognised and used Rights of Nature to protect forests,⁸² and Justice Rajiv Sharma's judgements in the Uttarakhand High Court recognised the right of rivers to accord protection to glacial rivers that have been pushed to near irreversible damage.⁸³ There is growing evidence, much of it accumulated by researchers such as Srishtee Bajpai who has documented extensively the cultural and anthropological depths of relationships between people and rivers, that our lawmaking process needs to account for these intimate relatednesses, for an effective climate change legalism to arise in India.⁸⁴ Despite this, the Supreme Court stayed the Uttarakhand orders, and a hearing on them has been delayed substantially.⁸⁵

Article 21 presumably puts life of human beings at the top of the ring, with the right to an undisturbed environment and the right to exploit natural resources being subsumed by the larger right of life of humans. Thus, even expansions of the right by the judiciary have entailed "the right to decent environment",⁸⁶ "right to enjoyment of pollution free water and air for full enjoyment of life"⁸⁷, which prioritises the preservation of the environment to the extent they serve human rights. The concept of a right to a healthy environment, which is undeniably pro-environment and has been utilised in that capacity, is also explicitly anthropocentric, as it frames a healthy environment as a human entitlement.

In *M.C. Mehta v Union of India*⁸⁸, where a petition was filed under Article 32 of the Constitution to challenge constructions made in the river bed of river Ravi which changed the flow of the river causing a massive erosion, the court, although relying on the fundamental duties to protect environment under Article 51A, only did that for recognition of importance of environment on human life. The court seems to iterate that the environment shall be protected to the extent that human beings rely on it and its decline threatens the quality of life. The issue being that factories being located in densely populated areas which affects qualities of life directly, that pollution must be curbed because of its affect to human life and not to environment generally, reliance on intergenerational principles to reiterate the principle that development rights of all generations should be protected, all point to the same. Further, even in *Vellore Citizens' Welfare Forum v. Union of India*, the court observed that to invoke principles of environmental protection, it is a prerequisite to assess the harm to humans. In part, this could be

⁸² *A. Periyakaruppan v Union of India*, 2022 SCC OnLine Mad 2077.

⁸³ *Mohd. Salim v State of Uttarakhand*, 2017 SCC OnLine Utt 367.

⁸⁴ Ashish Kothari & Shrishtee Bajpai, 'Rivers and Human Rights: We are the River, the River is Us?', EPW Engage, available at <<https://www.epw.in/engage/article/we-are-river-river-us>> (Last visited on 29 November 2024).

⁸⁵ *State of Uttarakhand v Mohd. Salim*, 2017 SCC OnLine SC 903.

⁸⁶ *Shantistar Builders v Narayan Khimalal Totame*, (1990) 1 SCC 520.

⁸⁷ *Subhash Kumar v State of Bihar*, (1991) 1 SCC 598.

⁸⁸ *M.C. Mehta v Union of India*, 1987 SCC (1) 395.

because of reliance on principles of sustainable development, where focus vision involves an alternative economic structure that emphasises the environmental costs associated with economic activities.⁸⁹ Further, the cases point towards a lack of enthusiasm to go beyond merely restating the principle in the face of non-compliance and to push for future adherence from project proponents. Perhaps, reflecting the fact that the right to a healthy environment derives its legitimacy from the fundamental right to human life, its expression in terms of ecological balance is inherently rooted in anthropocentrism as it conflates ecological threats with threats to human health.⁹⁰ Thus, even though environmental pollution caused by ‘human development’ was the cause, the end focus for enforcement remained to be human health and well-being.

Further, non-human rights have always been subject to the rule of ‘necessity’ and to the extent that they serve human needs. The PCA lists certain acts that cause unnecessary pain and suffering to animals are classified as offences; however, specific acts are exempted under the doctrine of human necessity. Prioritising human necessity over animal welfare is intrinsically anthropocentric. Additionally, human rights claim often lead to assertions of dominion over nature as a natural extension of humanity’s quest for freedom from nature. Unlike humans, nature lacks dominion over itself. The intersection of human rights and environmentalism, as it stands, frequently shifts the balance even further toward an anthropocentric perspective.

Additionally, the public trust doctrine, as established in *M.C. Mehta vs. Kamalnath* (1997) 1 SCC 388, aims to ensure equitable access for all humans to natural resources, treating these resources as property rather than life itself. In *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 388, the Supreme Court ruled that resources like air, sea, water, and forests hold immense significance for society as a whole, and by leasing ecologically sensitive land to a motel management, the State Government had violated the public trust.

The environment is no longer depicted merely as a resource to be exploited; however, it remains fundamentally framed as a “gift” for humanity. Its relevance to human rights consciousness arises primarily when it poses a threat to equitable human existence. While this marks a significant step forward, it simultaneously underscores an agenda of state intervention to protect the environment for human benefit and shape it according to human needs. The state, therefore, is legitimized as the ultimate protector of an environment conducive to human welfare. The right to a healthy environment serves as a critique of the most harmful aspects of

⁸⁹ Nupur Chowdhury, ‘Sustainable Development as Environmental Justice: Exploring Judicial Discourse in India’ (2016) 2(26) *Economic and Political Weekly*, available at <<https://lpr.adb.org/sites/default/files/resource/1636/sustainable-development-environmental-justice-nupur-2016.pdf>> (Last visited on 29 November 2024).

⁹⁰ Shibani Ghosh, *Indian Environmental Law: Key Concepts and Principles* 36 (2019), available at <https://cprindia.org/wp-content/uploads/2022/12/Indian-Environmental-Law_Key-Concepts-and-Principles.pdf> (Last visited on 29 November 2024).

the Anthropocene but also, paradoxically, reinforces that very model in a powerful way.

Zizek suggests that liberalism is rattled with contradictions,⁹¹ and in a similar way, environmental liberal legalism is grounded in a set of contradictions. Michael M'Gonigle and Louise Takeda have pointed out that the inherent limitation of environmental law within the legal paradigm in which it is studied, is that the colonial State which is consistently framed as the ultimate conservator, is more fundamentally extractive than it is compassionate.⁹² *Ranjitsinh* lays bare these characteristic contradictions of liberal environmental legalism.

V. CONCLUSION

Ranjitsinh annotates a remarkable moment in the Supreme Court of India's environmental jurisprudential record, and while, surely there are more complex environmental human rights matters that will make it the Court in upcoming years,⁹³ this judgement was significant since it predicted a future where environmental legalism in India will feel the pressure to be more mature. By recognising a right against the adverse effect of climate change, while it tried to establish a new order of environmental constitutionalism, it should also be studied for its core deficiencies.

In terms, purely, of its tangible implications, the habitat of the GIB is irretrievably pierced and the woes of the farming community has been left significantly unheard, their voices appropriated to drive home a flawed juridical point. A continuing format of monitoring over the Expert Committee is important to trace the process by which GIB conservation processes can be continued *despite* the most prominent outcomes of the judgement. But *Ranjitsinh* should be continued to be studied for (i) the flawed 'manufactured' competitiveness it produces by pitching vulnerable communities' right against climate change, in opposition to the conservation of the GIB, and (ii) how its flawed discursive tangent reflects a deeper malaise with the Court's underlying, consistent pushback against ecocentric legalism. These problems reflect the original problems with basing environmental legalism within our constitutional framework, and to prepare for a new epoch of legalism on environmental human rights complexities, there would have to be an unshackling from these traditions of juridical thinking. Perhaps, at this point, certain 'judicial adventurism' is only necessary.

⁹¹ Matthew Sharpe & Geoff Boucher, *Zizek and Politics: A Critical Introduction* 35 (Edinburgh University Press, 2010).

⁹² Michael M'Gonigle & Louise Takeda, 'The Liberal Limits of Environmental Law: A Green Legal Critique' (2013) 30 Pace Envtl. L. Rev. 1005.

⁹³ Dipanjan Sinha, 'Sundarbans' Climate Refugees Face an Uncertain Future', DW, (3 December 2022), available at <<https://www.dw.com/en/forgotten-people-sundarbans-climate-refugees-forced-to-move-again/a-61162969>> (Last visited on 29 November 2024).