

Safeguarding Biodiversity or Mitigating the Impact of Climate Change: A Novel Dilemma

In a landmark judgement delivered in March 2024, in *MK Ranjitsingh & Others vs. Union of India & Others*, the Supreme Court of India sought to balance two goals which it considered “equally crucial” – the conservation of a “critically endangered species”, the Great Indian Bustard, and the conservation of the environment.

The genesis of this judgement arose from a writ petition under Article 32 in which the petitioner asked the Supreme Court to direct the State of Rajasthan and the State of Gujarat to, among other things, not permit installation of overhead powerlines in “priority” and “potential” habitats of the Great Indian Bustard as identified by the Wildlife Institute of India.

THE GREAT INDIAN BUSTARD

The Great Indian Bustard is a fast-dwindling species. It is considered one of the heaviest flying birds in the world, about a meter in height and a wing-span of about seven feet. It has disappeared from most of its habitat except parts of Rajasthan and Gujarat. It lacks frontal vision. Due to this, it cannot detect powerlines ahead of it, from far away. As it is a heavy bird, it is unable to maneuver across powerlines. Thus, it is vulnerable to collision with overhead powerlines, causing death by electrocution.

CLIMATE CHANGE; RENEWABLE ENERGY

India has made significant international commitments in its pursuit of global environment conservation goals. India was a participant in the Kyoto Protocol, which came into force on February 16, 2005. This agreement obligates its parties to establish binding emission reduction targets. One of the key strategies in India’s efforts towards sustainability is its target for renewable energy capacity installation.

The geographical landscape of Gujarat and Rajasthan, also one of the last remaining habitat of the Great Indian Bustard, characterized by vast expanses of arid desert

terrain and an abundance of sunlight, is a prime area of solar power generation. The relatively flat topography of these areas facilitates the installation and operation of large-scale solar energy projects. By harnessing this natural advantage, India can reduce its reliance on fossil fuels and transition towards cleaner energy sources.

THE SUPREME COURT'S 2021 DIRECTIONS

By an order dated April 19, 2021, the Supreme Court imposed certain restrictions on the setting up of overhead transmission lines in “priority” and “potential” habitats of the Great Indian Bustard, a territory of about 99,000 square kilometers. It directed that all future “low voltage” powerlines in such area should in all cases be laid underground. As regards existing “low voltage” powerlines, it was directed that these be converted into underground powerlines. With respect to “high voltage” powerlines, the court directed that where feasible, these would be laid underground. The court constituted a committee comprising representatives of the Ministry of New and Renewable Energy, the Wildlife Institute of India and the Corbett Foundation to assess feasibility.

THE 2024 JUDGEMENT

The Government of India filed an application in November 2021 seeking modification of the Supreme Court’s directions issued in April 2021. The Government argued that the 2021 directions had vast adverse implications for the power sector in India and energy transition away from fossil fuels. It further argued that undergrounding of high voltage powerlines was technically not possible.

In a landmark enunciation of constitutional rights, the Supreme Court held that the right to equality under Article 14 and the right to life under Article 21 must be appreciated in the context of earlier court decisions and proceeded to read into such provisions, a “right to be free from the adverse effects of climate change.” The court recognized however that while giving effect to this right, courts be alive to other rights of affected communities. It noted that different constitutional rights must be carefully considered before a decision is reached in a particular case.

The court observed that the dilemma offered by this case 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.

The court concluded that while it is important to take proactive measures to protect the Great Indian Bustard, there is no basis to impose a general prohibition on installation of transmission lines in an area of about 99,000 square kilometers.

Noting that any decision to convert overhead power transmission lines into underground lines is a matter of environmental policy which requires consideration by domain experts, the court constituted a seven member expert committee to consider, among other things, (a) the scope, feasibility and extent of overhead and underground electricity transmission lines in the areas identified as “priority” areas (measuring about 13,663 square kilometers), and (b) identification of measures to be adopted in the priority areas to ensure the long term survival of the Great Indian Bustard.

In effect, the court limited the purview of its’ earlier 2021 directions to a more restricted “priority” area, asking the committee to recommend measures to be adopted in such area. The committee was directed to identify suitable options for laying powerlines in the future which balance the conservation of the Great Indian Bustard with the arrangement of powerlines in a manner that would facilitate the fulfillment of India’s international commitments for development of renewable energy.

The committee has been asked to deliver its report by July 31, 2024.

CONCLUSION

In an eloquent and fulsome judgement, the court has identified and appreciated a complex dilemma. It has also taken the opportunity to read into the existing constitutional framework “a right to be free from the adverse effects of climate change”.

However, the timeline of events also reveals a disconcerting fact:

1. 2019: petition filed in the Supreme Court.
2. April 2021: interim directions issued by the Supreme Court imposing an embargo on overhead transmission lines except where underground lines are not feasible.
3. April 2021: committee constituted to consider cases where underground lines are not feasible and allow overhead lines in such cases.
4. November 2021: the Government seeks modification of the April 2021 directions.
5. March 2024: the Supreme Court sets aside the April 2021 directions and constitutes a new committee with a wider mandate; such committee to deliver its report by July 31, 2024.

Five years after the Article 32 petition was filed in 2019, and after two Supreme Court decisions and two expert committees, while we may have better understood the issues at hand, we may not have advanced much from the drawing board. We may not have taken necessary action either to harness solar energy in Rajasthan and Gujarat to its

potential or to conserve the Great Indian Bustard, let alone both. At last count in 2013, there were 125 Great Indian Bustards as per an estimate from the Government of Rajasthan (this is noted in paragraph 3 of the 2024 judgement).

The Supreme Court has provided a way ahead to address the dilemma presented to it. Balanced and prompt follow up action will be critical to approach both biodiversity and climate goals in a meaningful way.

*This insight has been authored by **Rajat Sethi** (Partner); he can be reached at rsethi@snrlaw.in for any questions. This insight is intended only as a general discussion of issues and is not intended for any solicitation of work. It should not be regarded as legal advice and no legal or business decision should be based on its content.*

© 2024 S&R Associates

S&R
ASSOCIATES
ADVOCATES



NEW DELHI

Max House
Tower C, 4th Floor
Okhla Industrial Estate Phase III
New Delhi 110 020
Tel: +91 11 4069 8000

MUMBAI

One World Center
1403 Tower 2 B
841 Senapati Bapat Marg, Lower Parel
Mumbai 400 013
Tel: +91 22 4302 8000