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Insights from the region

The movement to save the River Narmada

Over the last three decades, large dams have come under harsh criticism worldwide from environmental scientists, human rights activists, economists and intellectuals. Large dams have gained notoriety for their detrimental social and environmental impacts, and the huge economic burden caused by their costs. One of the earliest critiques emerged from Nicholas Hildyard and Edward Goldsmith's famous 1986 book, *The Social and Environmental Effects of Large Dams*, in which they claimed that large dams cause 'massive ecological destruction, social misery, and increasing ill-health and impoverishment for those very people who are expected to benefit most.' This criticism of large dams has intensified in recent years, especially with the publication in November 2000 of the UN-sponsored World Commission on Dams (WCD), which criticised several aspects of dams.

India has 3600 large dams, 3300 of which have been built since the country gained its independence in 1947. It has spent a staggering 87,000 crore rupees (a crore is 10 million, making this figure approximately US$20 billion at current exchange rates) on its irrigation sector, which includes large dams, and about 50 million people have been displaced by these dams, most of whom are tribal people.[1] The enormity of these figures reveals the massive economic and social costs of these enterprises.

In India, the heated debate around the issue of the enormous social impacts caused by large dams is synonymous, often notoriously so, with a single movement, the Narmada Bachao Andolan (NBA). Literally meaning 'Movement to Save the River Narmada', the NBA is a movement of people affected by the mighty Sardar Sarovar Dam. The movement started 20 years ago in 1985, when its founder, a young teacher and social worker from Mumbai, Medha Patkar, went into the interior reaches of the Narmada Valley and began mobilising the affected people to fight for their rights.

The Narmada River flows through the three states of Madhya Pradesh (MP), Maharashtra and Gujarat; it originates at Amarkantak in MP and meets the Arabian Sea in Gujarat. The Sardar Sarovar dam and irrigation Projects (SSP) are being built on the river in the state of Gujarat. The SSP were envisioned as early as the 1950s, but the inter-state water sharing plan, as outlined in the Narmada Water Disputes Tribunal (NWDT) Award, was not ready until 1979.[2] The Award stated the water sharing plan, the height of the dam and other engineering features. While the Award clearly laid out how affected populations were to be resettled and rehabilitated,[3] it was taken for granted that the project was necessary and that people who were affected would have to move. The World Bank, notorious for pushing its ideals of 'development' upon newly independent nations in the post-World War II era, sanctioned credits and loans of $450 million for the project in 1985. Construction of the dam began in 1987; today it stands at 110 metres out of a total planned height of 139 metres.

For the first few years of the movement, the NBA tried to extract information regarding the project such as the cost-benefit analysis, the rehabilitation plan, and other details from the government. The government was unprepared and unwilling to be questioned, particularly by those they considered to be uneducated tribal villagers. They volunteered no information. It was then, in 1988, that the movement collectively decided to oppose the dam, since the people were certain that they would not be rehabilitated satisfactorily.

In 1993, due to sustained and vocal opposition to the dam by the NBA, and after a scathing World Bank-sponsored Independent Review (also called the Morse Committee Report) labeled the project as 'flawed', the World Bank was pressured to pull out of the project.[4]

In 1994, the NBA filed a Public Interest Litigation (PIL) action in the Supreme Court at Delhi against the Indian government, local governments and dam-builders, claiming that the project should be stopped. A PIL is quite a progressive legal tool. Ordinary citizens can approach the Courts if they feel aggrieved for any reason. From 1994 to 2000, the NBA fought the case in the Apex Court and opposed the construction of the dam, with the firm belief, backed by expert reports and documents and an ideological opposition to the 'disease of giganticism', that this project was not in the best public interest. The costs had been underestimated and benefits exaggerated. The NBA also argued that the environmental costs such as large-scale deforestation, downstream impacts, command area impacts, siltation, and loss of fisheries, flora and fauna were so high that they couldn't be fully understood, let alone effectively avoided or mitigated. And most of all, that the scale of human displacement, loss and tragedy were tremendous but were being undermined, or worse, being called a 'necessary sacrifice for the greater common good'.

One person's 'sacrifice' is another's water park

On 18 October 2000, the three-judge bench of the Supreme Court expressed its majority consent for the dam to be built *pari passu* in stages, along with the construction of the dam. We note that one of the

REFERENCES

1. Arundhati Roy *The Cost of Living* (1999).

2. Sanjay Sangvai *The River and Life: People's Struggle in the Narmada Valley* (2002).

3. Resettlement and rehabilitation is the process by which families affected and displaced involuntarily by large-scale development projects are enabled to regain or surpass their previous standard of living, by providing them minimum entitlements such as cultivable land, houses and civic amenities.

4. Sangvai and Morse,' Sardar Sarovar: The Report of the Independent Review' (1992). Resource Futures International Inc.

judges disagreed with the majority verdict of the other two. This was a major blow to the movement. This pro-establishment bench of judges even mildly criticised the very idea of a PIL, saying that it was a tool used by anti-development organisations to stall projects. The progressive idea of a PIL took a beating.

However, the directions clearly laid out that no submergence could take place before the rehabilitation of affected people had been completed. This means that dam construction up to, say, 90 metres (above sea level, as dam height as usually measured) could only take place after resettlement and rehabilitation of all people affected. It was required to be completed six months before submergence was likely to hit (ie, monsoon time, taken as 1 July).

The verdict was delivered amid celebrations in Gujarat and a deep sense of gloom in the Valley. People, fearing the worst, knew that rehabilitation would evade them.

The dam construction continued in stages almost every year from 2000 onwards, but rehabilitation did not keep up. The NBA filed another petition in the Apex Court in 2002 when the dam height had been raised to 95 metres, stating that rehabilitation under 95 metres had not been completed. However, 'supreme injustice' continued as the case again landed on the table of Justice Kirpal, who had delivered the majority judgment two years earlier. Justice Kirpal disposed of the detailed 339-page petition. The mechanisms for monitoring rehabilitation are in place, his order said, if an individual affected by the project has a grievance he can approach the Grievances Redressal Authority (GRA) in his state, and on failing to get relief from the GRA can come back to the Supreme Court.

The people of the villages of Jalsindhi and of Picchodi wrote to the GRA. 'Rehabilitate us right away', they pleaded. 'In our home state of Madhya Pradesh', they added. 'Give us cultivable and irrigable land as is our right', they cried. Jalsindhi is affected from 80 metres onwards, Picchodi, further upstream, from 95 metres onwards. The dam is supposed to be built *pari passu*, they said, but we have not yet been rehabilitated even at 110 metres dam height. The GRA didn't listen. So, thanks to some great volunteer lawyers in Delhi, they went back to the Court.

The Court, this time, listened. This time, the Court was harsh on the government. They observed how the governments, in their haste to raise the dam height, were perverting and distorting the *pari passu* phrase and were not rehabilitating people as they built the dam. In reality, this verdict merely reiterates what the Court has been saying about the Narmada Dam since the very first verdict. But now the governments have been castigated for not following the Court's earlier orders. The Court has stressed that land-based rehabilitation must be done for all eligible families, and that rehabilitation must be completed before the dam height is raised.

The villagers of Jalsindhi and Picchodi seem a little relaxed these days. The judgment has provided some relief. Otherwise, the clearance for the next stage of *pari passu* dam building would have been granted by now, truckloads of cement would have been already rolling towards the dam site, crushing on its way there, the hopes of the affected people that they are entitled to justice.

But at the end of the day, no truckloads of cement can crush the spirit of the people of the Narmada Valley who have spent 20 years asserting their right to live next to the river where they have always lived, those whose story of struggle has inspired many books and films.

The NBA and its struggle for justice has changed the very discourse around large dams and displacement in India and around the world, it embodies a just long-winded fight, that still has enough steam left to keep the engine of justice going.

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obviates the need to exercise compassion.[44] On the other hand, '[u]nderstanding and compassion makes the task of judging more difficult and ambiguous'.[45] 'Individuated judgment is very time-consuming; facts need to be discovered, presented and considered. Our legal system simply does not have enough time and resources to make all judgments as individuated as possible'.[46] Yet as Conley and O'Barr argue, and as the practice of some Victorian magistrates demonstrates, listening to and engaging with the litigants coming before the court need not take up an enormous amount of time, and it is possible to work through a busy list without being bureaucratic and authoritarian. Moreover, as Garry Hiskey SM has observed, magistrates have little opportunity to stand back and reflect on their work, and rarely if ever see other magistrates in action. The process of observing another magistrate from the body of the courtroom, and reflecting on and discussing the experience can be very illuminating so far as different judicial styles and modes of communication are concerned.[47]

Second, the study underlines the importance of legal representation for intervention order applicants. Although it may have been intended that applicants should be able to obtain an intervention order without the assistance of a lawyer, and while that may well be true in relation to achieving an outcome (an order) under the legislation, the presence of a lawyer does appear to make a positive difference to how litigants are treated by the magistrate and hence experience the process. This has implications for the availability both of domestic violence court support programs, and of legal aid for intervention order proceedings. Such considerations appear to fall squarely within the terms of reference of the Victorian review of family violence laws, which require the VLRC to identify any procedural and administrative, as well as legislative, changes 'which may be necessary to ensure that the *Crimes (Family Violence) Act 1987* provides the best available response to the problem of family violence'.[48]

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44. Daniel J Solove, 'Postures of Judging: An Exploration of Judicial Decisionmaking' (1997) 9 *Cardozo Studies in Law and Literature* 173, 191.

45. Ibid, 202–3.

46. Ibid, 205–6.

47. Hiskey, above n 3.

48. Victorian Law Reform Commission, above n 2, xiv.