

Building of Large Dams and the Rights of Tribes in India

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ABSTRACT

In independent India, national development has been largely equated with economic growth and surplus. Big, centralized industries, irrigation projects have been symbols of such development, which through the process of industrialization promised to set India on the path of modernization and development. One of the inevitable outcomes of this has been massive environmental degradation and development induced displacement. India is among the foremost countries in the world in developing its water resources. As per the National Register of Large dams, India has as on today 4291 large dams including the 695 dams under construction (Agarwal, Narain & Sen: 1999). India ranks third in the world in dam building, after US and China. While some of these dams were built primarily for flood control, water supply, and hydro-electric power generation, the primary purpose of most Indian dams remains irrigation. Due to favorable agro-climate, by and large the Indian economy has been traditionally based on agriculture since centuries. Agriculture contributes about one-third of Gross National Product, and remains a key sector in the national economy. In spite of the fact that this country is endowed with vast land and water resources, it is a water short country in relation to agriculture, municipal and industrial needs.

Most of the annual rainfall and run-off are concentrated in the monsoon months. During this period maximum utilization of water can be made from the run of the river with small regulation requiring very little storage. The rainfall is not evenly distributed in space and time resulting in flooding in certain areas and drought conditions in certain parts of the country. Therefore, it became necessary to store water by building large storage capacity reservoirs and storage tanks so that supplies for multiple purposes like domestic, irrigation, industries and power generation can be assured during the dry season. In fact, large dam construction has been the main form of investment in irrigation undertaken by the Indian government. But, starting in the 1980s, public investment in large dams in India has been the subject of a sustained controversy

epitomized by the Sardar Sarovar Project centering on the balance between the social, environmental, and economic costs of dams and their benefits.

Impact of Dams on Tribal People

Displacement or the involuntary and forced relocation of people has come to be acknowledged as among the most significant negative impacts of large water resources development projects such as dams. It is estimated that nearly 40.80 million people have been displaced worldwide due to the reservoirs created by large dams. A World Bank review of 192 projects worldwide for the period 1986 and 1993 estimated that 4 million people were displaced annually by the average of 300 large dams that entered into construction every year. In India alone it is estimated that dams

and reservoirs have displaced some 21 million to 42 million people (Bartolome, L.J & Mander, H: 2000:

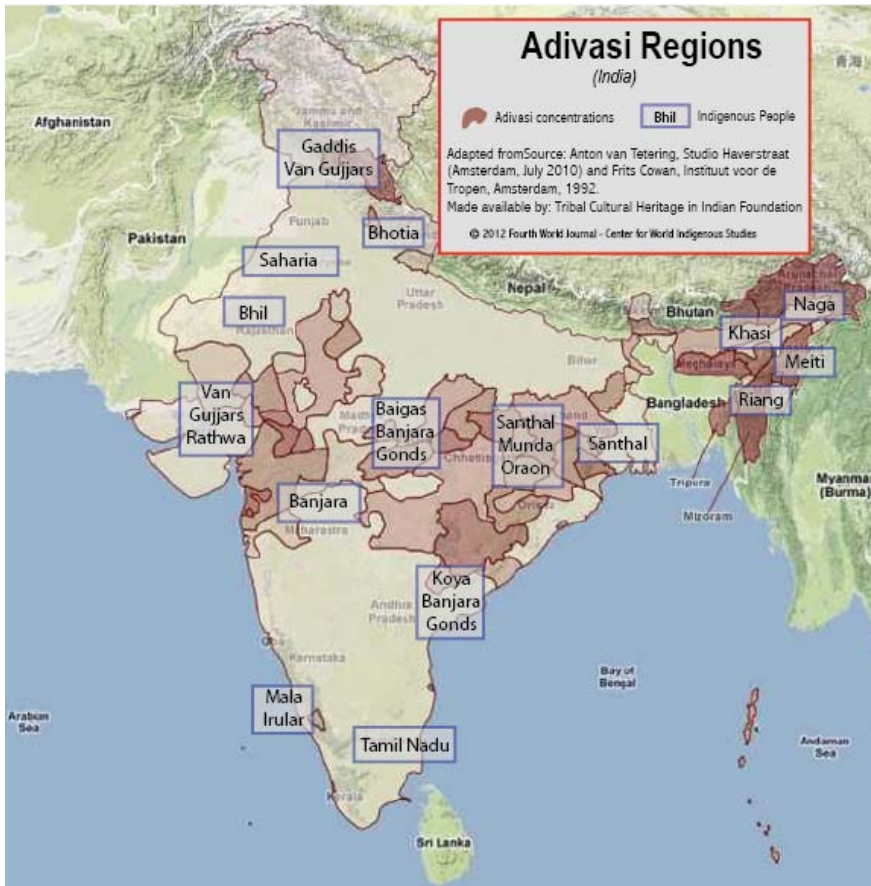
All these figures are at best only careful estimations and include mostly only those whose homes and/or lands were flooded by reservoirs: the millions more are likely to have been displaced due to other aspects of dam projects such as canals, powerhouses, and associated compensatory measures such as nature reserves. Displacement, resettlement, and rehabilitation are however more than a question of sheer numbers. Other critical issues involved include human rights, governance and accountability, participation and self-determination in development, the complexities of resettlement goals, options and strategies, and relevant legal and policy instruments. The fact that historically disadvantaged groups like tribes are disproportionately represented among the displaced also suggests inadequate capacity to negotiate higher compensation. Planning authorities facing groups that have poor capacity to negotiate may not adequately account for the costs of resettlement and compensation, overestimating the economic viability of a dam, which may also increase poverty.

Large dam construction has been an important and expensive undertaking for the Indian government. While dams have enhanced agricultural productivity in India, there is no evidence that they have been very cost effective, and they have significantly adverse distributional implications. The case of large dams suggests strongly that distributional implications of public policies should be central to any evaluation. We need to understand the institutions, and power structures that led to the implementation of these projects. The

impact of large dams on the tribal communities, their lifestyle and identity, needs to be understood against the backdrop of the long standing and yet unresolved debate about the tribal life; whether it is seen to be worthy in its own right or viewed as something inferior, worth discarding. Displacement cannot be a precondition for the tribal people to get access to basic public facilities like health care, education or transport. It is their right as citizens, to get these facilities wherever they are. Besides, it needs to be stressed that experience of the last 50 years has demonstrated that despite protective legislation and special constitutional provisions for tribal people, increased contact with the mainstream has alienated them from their natural resource base and its impact on tribal communities has been devastating.

Tribal and Dalit communities are socially, economically and politically the weak and the most deprived communities in India. Independent India promised to give equal opportunity to all her citizens by providing special protection to the weak. But it is clear that poor and marginalized communities have been further impoverished in the process of national development. They have been uprooted from their ancestral land, often forced to migrate to urban slums in search of employment or become landless labourers. They have paid the price for development of the urban areas and large farmers, by providing irrigation and electricity. In an unequal society like India, dams have served as yet another instrument of dominant classes for appropriating the two most important natural resources, water and land from less powerful communities like Adivasis. Besides, in many cases, like for example Surya dam in western Maharashtra, dams have been built in the name of tribal, deprived classes

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and eventually served the important cities like Mumbai (Singh: 1998). Most tribal people live in rural India, mostly in remote forest regions, which do not have basic civic amenities like transport, roads, health care, safe drinking water or sanitation. Tribal people have rarely shared the benefits of the projects, which have displaced them, be it irrigation or electricity. Machkunda dam in Orissa generates 720 MW of electricity annually but families displaced by the dam live in darkness (Sainath: 1996). Unfortunately the story of Machkunda is not an exception. Impact of displacement on

tribal people affected by large dams has been overwhelmingly negative in India. As summarized by McCully (1996), In almost all of the resettlement operations for which reliable information is available, the majority of Oustees have ended with lower incomes; less land than before; less work opportunities, inferior housing; less access to the resources of the commons such as fuel-wood and fodder; and worse nutrition and physical and mental health. This is how the Indian experience, particularly of the tribal communities can be stated.

Impact on Standard of Living

Most tribal people in India lead a hard, materially poor life. That is a fact, but multiple natural sources along with strong community ties makes life possible, even under difficult circumstances. Displacement destroys these two important bases of individual's life- natural resources and the community. Adivasis largely depend on agriculture as their main source of livelihood. But, minor forest produce, fish; cattle supplement their income and means of livelihood in numerous ways. They never go to work as wage laborers. The forest is their moneylender and banker. From its teak and bamboo, they built their houses. From its riches they are able to make their baskets and cots, ploughs and hoes. From its trees, eaves, herbs and roots, they get medicines. Their cattle and goats, which are their wealth, graze freely as they have always done. For all these, they would have to pay money in Gujarat (Sainath: 1996: 106-107). It has to be recognized that even a relatively liberal rehabilitation package cannot compensate for the loss of forest, river, ancestral land, which is intricately woven in the social, cultural and religious practices of a community. Common property resources are not compensated in the process of rehabilitation. Lack of grazing land and fodder forces people to sell their cattle, or a large number of them die in sites, robbing people of their important asset, which provides them nutrition, organic fertilizer, farm assistance and cash in hard times. Particularly in cases where adivasis have been given cash compensation that has led to total pauperization of entire communities. In Bargi, number of displaced farmers have been forced to migrate to Jabalpur city in search of employment and ended up as rickshaw-pullers or construction labourers. It has killed

their pride, living like animals here. Their children will never believe they were once thriving farmers. All that they have seen was this filthy living (Mc Cully: 1996).

In less known cases like Karanjwan and Haranbari in Maharashtra, or slightly more studied projects like Bargi, Ukai, Nagarjunsagar, Upper Krishna or Mahi Bajaj Sagar, displacement has led to large-scale migration. A large number of people displaced by Ukai Dam in Gujarat work in cities or on sugarcane farms as labourers. Mankodi (1992: 77-100) noted, "A regular cycle of seasonal distress migration under which between half and more than three-fourth of the population of the resettled villages migrated for work outside the area. This had serious repercussions on the development of the economy and on education in the affected area." Migration simply indicates, inability of displaced people to sustain themselves in the rehabilitation site. Lack of basic civic amenities in rehabilitation sites, absence of land or its poor quality, lack of employment avenue results in stark decrease in standard of living after displacement. Even in case of Upper Kolab in Orissa a large number of people migrated to cities, earning a livelihood as construction labourers or rickshaw-pullers. Children, sucked into the labour force worked as servants. As many as 68 percent of those who were original cultivators had become wage labourers (Patwardhan: 2000: 15). Similar is the story of Muddavat Chenna, who was displaced by Nagarjunsagar. Muddavat Chenna is a migrant labourer, one of the 28,000 people displaced by the Nagarjunsagar dam in Andhra Pradesh. The distance between the houses and their lands obviously made it difficult for the new occupant to protect their lands from encroachment by the local population. Muddavat Chenna and the

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other 50 families soon joined the vast category of landless labourers and now work for daily wages (Singh & Samantray: 1992: 54-55).

Apart from people who migrate to cities, there are many who attempt to resettle on the banks of the reservoir. In case of Hirakud, The policy adopted in resettlement was to give land for land. Originally it was planned to reclaim 80,000 acres of land for settlement of people from the submergence area. But in actual experience, it was found that most of the people preferred to settle in old established villages rather than taking land in reclaimed area because the reclaimed area was on a hilly slope and near the forest, it was alleged that the area was full of tree stumps and unsuitable for cultivation (Pattnaik, Das & Mishra: 1987: 55). Migration to urban areas or partially submerged villages both indicates a total failure of the process of rehabilitation, which does not ensure that people are able to reestablish their livelihood in a new environment and regain their standard of life, if not improve it. It is bad enough to be uprooted from a place once in a life time, but there are instances in Mirzapur where people displaced by the Rihand dam have had to move several times due to coal mines and thermal power station and have been caught in a spiral of impoverishment (Prem, Bhai: 1990: 100-103)

Distributional Implications

Given that the economic gains and losses from dams, like those from many other public investments, often accrue unevenly to different groups in society, one way to begin is to identify the putative winners and losers. Most irrigation dams in India are embankment dams. The upstream areas that feed the dam

and those submerged by its reservoir make up its “catchment” area, and the downstream areas fed by its irrigation canals make up its “command” area. Before any mitigating effects of resettlement and compensation, whether a household stands to gain or lose depends on its location relative to the placement of the dam. People living in the catchment area, who lose property and livelihood but gain little, if anything, from irrigation tend to lose out, while people living in the command area, who bear little of the social cost but gain the most from irrigation, typically gain. Proponents of large dams focus on the aggregate productivity benefits, emphasizing the role of dams in enabling irrigation. Opponents of large dams, on the other hand, emphasize the social costs of dams. They point out that the economic gains accrue disproportionately to people living in the command areas.

The losses are suffered disproportionately by people living in the catchment areas. Dam construction and submersion leads to significant loss of arable farmland and forest. Water logging and increased salinity reduce agricultural productivity in the vicinity of the reservoir. Policies to ensure adequate flow into the reservoir sometimes prohibit water harvesting in the catchment area, reducing agricultural productivity even more. Large-scale impounding of water increases exposure to vector-borne diseases, such as malaria, schistosomiasis, filariasis, and river blindness. Furthermore, the Indian government’s compensation policy towards the displaced remains insufficient in many cases. In particular, since the compensation is based on the amount of land owned, landless households were typically not compensated whatsoever. Nor were people compensated for loss of income or subsistence derived from communal hold-

ings, such as common grasslands and forests. Although dams may also increase economic activity in the catchment area through construction and economic activity around the reservoir, such as tourism and fishing these increase are either temporary or depend on the ability to learn new trades, and often cannot compensate for the loss of familiar livelihood.

Ultimately, both the aggregate economic impact of dams and their distributional impact remain complicated empirical questions. It is said that whether a household accrue net losses or gains depends in part on the placement of the dam. That, in turn, depends on several factors determine, including the political and financial power of the local governments; the relative strengths of proponent and opponent civic organizations; and the potential of improved agricultural productivity in the would-be command region. All these factors may have direct impact on both agricultural production and poverty quite independently of the construction of the dam. As such, a simple comparison of the areas in the command or the catchment areas of dams and other areas does not directly inform us about the impact of dams, since these areas are likely to differ along these other salient dimensions, and it is difficult to disentangle their effect and the effect of the dams.

Due to dams agricultural productivity in the catchment areas is unaffected, but poverty and vulnerability to rain shocks increase. In the command areas, irrigation and agricultural productivity increase, and poverty and vulnerability to rainfall shocks decline. The increase in poverty in the catchment areas suggests that, even though losers are clearly identified, as those who live in the vicinity and upstream of the dam, they are rarely adequately com-

pensated. This finding suggests that losers do not have the institutional capacity to negotiate higher compensation.

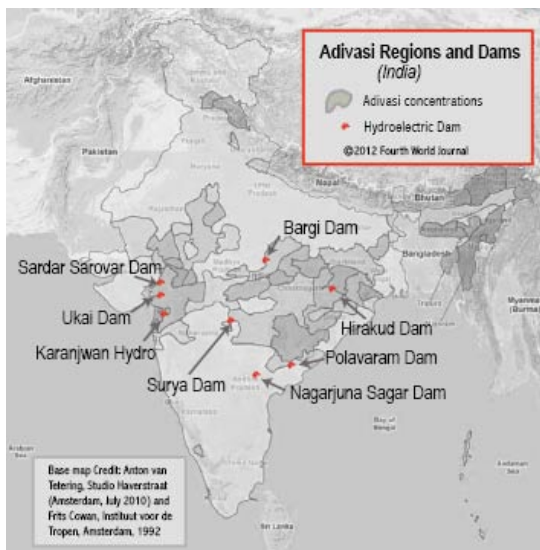
Now let's briefly look in to some of the major dams in India and their socio-economic and cultural impact with special focus on tribal people.

Hirakud Dam

The Hirakud dam was built 60 years back but the rehabilitation of the Oustees is still incomplete. In 1993, the government of Orissa had announced an ex-gratia of Rs 10,000, especially for those left out. Though initially 3,540 people were identified as Oustees, later the figure went up to 4,201. However, the number of Oustees was estimated at 10,000 by NGOs. About 1.83 lakh acres of land was submerged and the Hirakud Dam affected 294 villages. The displaced got 7,216 acres of agriculture and 206 acres of home-stand land (The Financial Express: 2006).

Jawaharlal Nehru, the first Prime Minister of India, while inaugurating it on 13th January 1957 called it a temple of modern India. But then the dam built to protect millions living in the fear of flood remained a dream. The promises remained on paper. The tale of the *Oustees* has, in fact, strengthened the arguments of the anti-dam lobbies world over. At the time of its construction the project involved submergence of 240 villages with fertile agricultural land of about 40000 hectares. The land-owning peasants were paid compensation in cash which varied from Rs.50 to 200 per acre. Around 22,000 families were displaced by the project and the problem of their displacement and rehabilitation were

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from their lands and homes without payment of compensation in time.

People's discontentment has found expression through numerous rallies, protest marches and spirited discussions and public meetings. It may be observed from the foregoing accounts that people's discontentment with regard to the dam ranges from rehabilitation of the erstwhile displaced people, non-availability of water for irrigation, repair and maintenance of the canal to the new government scheme for supply of water for industrial use. The voice of protest hardly reaches the Government.

Sardar Sarovar Dam

Sardar Sarovar Dam on river Narmada has been the most controversial dam amongst all the dam projects in India. SSP reservoir is going to displace about 41,000 families from 245 villages of Gujarat, Maharashtra and Madhya Pradesh. These are the people who are considered as PAPs. But apart from them, some 1,40,000 landholders will be affected by the huge network of canals in Gujarat. Out of them about 1,100 landholders will become landless and about 25,000 will be left with less than two hectares of land and hence will become marginal farmers. More than 100 villages will be affected by the expansion of the Shulpaneshwar sanctuary whose access to forest will be severely curtailed. Nine villages will be affected by the Garudeshwar weir and six by the power station. Since 1960s six villages were displaced in the building of Kevadia colony for engineers. Large amount of excess land acquired during that time has not been returned to the people. Several thousand fisher folks living downstream

major issues in Orissa politics in the fifties. About one and a half lakh of people were affected by the project (Mishra and Maitra: 2007). The worst sufferers were tribal people. The problems faced by the people in matters of displacement and rehabilitation were articulated in the floors of the Orissa Legislative Assembly by the Ganatantra

Parishad, a regional party of Orissa, which enjoyed the full support of the people of western Orissa where the project is located. In the original estimate an amount of 12 crores of rupees was provided for payment of compensation to the affected people which after revision was reduced to nine and half crores. It was pointed out then by the Ganatantra Parishad in the State Assembly that till April 1956 when the work of the project was nearing completion, the total amount of compensation paid to the people was 3 crores and 32 lakhs (Mishra & Maitra: 2007). A large number of people suffered heavily since they had to be evacuated

of the dam will be affected, due to reduced water flow in non-monsoon months. There is almost no estimation of the number of people affected by compensatory afforestation, catchment area treatment, and secondary displacement. Thousands of hectares of standing forest was cut down for providing land to reservoir affected people of Maharashtra. Apart from the irreversible ecological damage due to loss of forest cover, Adivasi people in Taloda who depended on that forest for sustenance (but had no legal claim over the forest) were adversely affected (Patwardhan: 2000: 13 (WCD)). In Sardar Sarovar, Gujarat has one of the most progressive rehabilitation packages, but resettling 25% of the families displaced by the reservoir have taken 15 years and there is a wide gap between the tall promises and the ground reality (Bhatia: 1997: 267-321). Once people are shifted from the submergence villages, officials do not bother about their complaints and the Oustees are often left to fend for themselves.

The Narmada Bachao Andolan continues to hold that R&R lags behind construction and does not conform to even the declared policy, and this view is supported by many writers, academics, former civil servants and others. The experience of the Sardar Sarovar and many other projects over the last 60 years reveals the inadequacy of policy - at the project, company, state or even national level to address the legal neglect of displacement and the rights of the affected people, particularly those without land or tenancy. Policy is not enforceable.

There has been general recognition among those concerned with displacement that the law must look at the entirety of loss of rights of the affected, not just the loss

of ownership and tenancy rights and that resettlement and rehabilitation should be as much the consideration of law as the land acquisition that necessitates them. While it is no doubt fundamental to consider the developmental benefits of any planned project, these cannot be weighed against human rights. Human rights thus have to be considered independently. In the case of a project like the Sardar Sarovar dam, the main human rights effects relate to the displacement of people caused by submergence. Human rights must be distinguished from economic, financial or political issues. What is at stake is not whether Sardar Sarovar can deliver the benefits it is meant to deliver, but whether it is affecting the human rights of any individuals or groups. Indeed, human rights are not competing claims of one individual or group against another. They are fundamental entitlements that all individuals have, such as the right to life.

Polavaram Dam

The Polavaram dam is a major gigantic dam proposed at Polavaram in West Godavari district in Andhra Pradesh. The purpose of the project is to transfer water to the Krishna basin and to Visakhapatnam district. The project if constructed will destroy the lives and livelihoods of tribals and destroy the little development achieved in their lands so far. The stance of most mainstream and radical political parties is ambivalent and marked by attempts to compromise with the government of Andhra Pradesh (Trinadha Rao: 2006:1437-39). It is not that irrigation projects should not be developed, but they should be carried out with the least amount of harassment and distress to the displaced persons. Rehabilitation policies in regard to

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project-affected persons have been unpredictable in Andhra Pradesh and have actually deteriorated since independence for instance as it happened with the Nagarjunasagar, Srisailem and Sripadasagar projects. And now it is Polavaram, a mighty project that is expected to submerge 276 villages in the agency areas of East and West Godavari districts and Khammam district in Andhra Pradesh. According to the 2001 Census, 2, 37,000 people will be displaced and 53.17% of the displaced will be tribals. Tribals and dalits account for 65.75% of the displaced. The natural resources, cultural systems, traditional knowledge, of all these people are closely tied to the land they inhabit. Besides displacement it submerges 37,743 hectares of land of farmland, forests and wasteland. The livelihood and habitation of many tribal and poor people are at risk. Clearance from CWC, ministry of Environment and Forests, Ministry of Tribal Welfare and the Planning Commission will be difficult because of the controversy surrounding the vast submergence of forest and farmlands, a low benefit-cost ratio, and the loss of livelihood (Ram Mohan: 2006: 604-605).

Constructing the dam is for the benefit of the developed plains areas of East and West Godavari, Krishna and Visakhapatnam districts, industrialists and civil contractors, in neglect of underdeveloped tribal areas which are home to tribal and non-tribal small farmers. Deprivation and displacement of the tribals will support the enrichment of the already irrigated lands and developed segments of society. Why should tribals and poor people sacrifice their lives and livelihood options for betterment of such segments? Surplus waters of Godavari will not reach the dry lands of agency areas of Andhra region or even the upstream dry lands of Telangana.

According to the 1991 Census, 37.89% lands in the state are irrigated but in the tribal areas it is no more than 13.13 per cent. Unequal distribution of water to regions results in regional disparities and economic imbalances.

Andhra Pradesh has the Scheduled Area Land Transfer Regulation Act, 1959, which makes any transfer of land or immovable property from tribal to non-tribal people null and void; the Regulation 1/70 and the amendment to Section 11(5) of the Mines and Minerals Act of 1957, which prohibit mining activity in Scheduled Areas by non-tribal people; and the Andhra Pradesh Scheduled Area Land Transfer Regulation (Amendment) Act, 1970, which prohibits transfer of land in the Scheduled areas to non-tribal people (Frontline: Sept.: 2004). But the existing laws are not implemented effectively in the state. This process has led the violation of the rights of substantial population of tribal people as they depend on forests and rivers. The construction of dams led to the massive displacement of tribals that eventually created havoc in the socio-economic and cultural life of tribals. Majority of the displaced tribals have never been rehabilitated properly. The compensation they got is relatively very less than that of the loss they met due to displacement. Moreover, the displaced persons are entitled for cash compensation at the cost of means of livelihood, social and cultural loss under the Land Acquisition Act. This can be viewed as gross violation of international human rights law. And also, India is not a signatory to the ILO Convention of 1989 that emphasizes on the protection and promotion of the rights of indigenous people.

These likely losses have attracted the attention of the Supreme Court, and a Centrally

Empowered Committee has been constituted to study and give recommendations to the SC. The team visited parts of the Polavaram dam-affected areas between the 29th and 31st of July 2006. But while this visit offered some sign of welcome scrutiny for such large-scale displacement plans, the three days were not enough for the team to visit the entire submergence areas; they went to Polavaram dam site, Bhadrachalam, part of Burgampadu, Koyda and through a small stretch of the Godavari river until Perantalapally via the Papikonda wildlife sanctuary area. Thereafter they left for Kolleru Lake, which isn't part of the Polavaram dam affected zone. And if the visit was a fact-finding exercise, it surely wasn't carried out as such. The CEC team visit happened like a visit sponsored by the government in power. All through it was the state administration's show - the choice of routes, the time the CEC spent on the field, the time they had to receive representations and memorandum from people. (Uma Maheswari: 2007: 2385-2387)

Nagarjunsagar Dam

The Nagarjunsagar is a multi-purpose river valley project in the valley of Nagarjuna konda in Andhra Pradesh. It is built across the river Krishna. The project is named after Nagarjuna a Buddhist philosopher of the second century A.D. Nagarjunakonda vally is well known for its rich archaeological relics, many of which were tragically submerged due to the Nagarjunsagar reservoir. The lost monuments were reconstructed but the dam Oustees were not properly rehabilitated. The project displaced around 28000 people, It was a huge project with the estimated cost of 683.75 crores (A.P. Govt. Report: 1989). The

primary objective of this dam was to irrigate 11.05 lakh hectares of semi arid land in seven districts of Andhra Pradesh. But this target was not achieved as only five districts have received irrigation (Singh & Samantray: 1992: 54-73).

The reservoir covers an area of 110 sq miles. It has submerged 29,506 acres of agricultural land, 1078 acres of government land and 147 acres of house plots and structures and a total of 26 villages and 31 hamlets. These figures are varied. Though the work at the dam site began in 1955 and displacement in 1959, the concerned government departments were not aware of the total number of affected people even in 1960. According to a government report memo on rehabilitation dated 19 January 1960 a total of 1500 families would be displaced. Unofficial figures show that 5,098 families were displaced, a total population of 28,000. According to the status report of government of Andhra Pradesh 1989, 4830 families were displaced. The affected population was given scant consideration when the dam was initiated. (A.P. Govt. Report: 1989).

At the time of the start of the dam people were not properly informed about the impending displacement and submergence of their lands. As they were illiterate, proper communication of information was not given to them. The Oustees were unable to foresee that their villages would be submerged. They were mentally unprepared for displacement and made little effort to identify alternate lands. People never thought that the displacement would be very harsh. When the waters began to rise and submergence and displacement became an irrevocable reality. As they had little time some were forced to vacate their houses,

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others moved to higher slopes close to their village. This left them feeling both insecure and unsettled. They were informed that they shall get land and house plots and civic facilities. Further, huge irregularities took place in acquiring land for the construction of the dam.

The guidelines for compensation and rehabilitation did not provide Oustees with a fair and just package. Land compensation calculated at the market value was arbitrary. A state amendment of section 11 of the Land Acquisition Act (1894) was enforced to calculate the compensation for land. This criterion was not explained to the Oustees. When some of them objected to the compensation amount, they were ordered to accept it without question. They felt that they were given much less than they were entitled to. Although their lands were acquired to bring irrigation facilities to the region, the Oustees were given only dry land. They had no share in the benefits. They were not rehabilitated in the command area. Certainly all those who were displaced were deeply affected. But it was the small and marginal farmers and tribes were the worst hit. The land compensation was inadequate. The majority of the Oustees received only 5 acres of dry land. Some landholders like Muddavat chenna were rendered landless and dependent on wage labour. Displacement and rehabilitation measures made it inevitable for the majority of the Oustees to migrate in search of daily wages. The project also had its impact on the health of the people. Studies reveal that large reservoirs are conducive to the spread of various water-borne diseases (Singh & Samantray: 1992: 54-73).

Law and Human Rights in India

Shortly before the winter session of Parliament ended, the government of India tabled the Rehabilitation and Resettlement Bill, 2007. The bill seeks to “provide for the rehabilitation and resettlement of persons affected by the acquisition of land for projects of public purpose or involuntary displacement due to any other reason”(Bill No. 98: 2007: Lok Sabha). The bill comes at a time when concerted efforts are being made by both the central and state governments to increase economic activity through the deployment of domestic and foreign private capital on a gigantic scale in new infrastructure and industry. The bill seeks to establish an R&R administration at the central and state levels. This administration will be responsible for planning for and implementing R&R. The bill describes the process to be followed while planning and implementing R&R and prescribes how ‘affected areas’ and ‘affected families’ are to be identified and the quantum of benefits for different categories of the latter. Civil courts are barred by the bill from entertaining suits on matters that are the responsibility of the R&R administration. Identification of ‘affected families’, the resettlement plan including land and amenities to be provided, and the implementation of the plan are under the R&R administration. What happens if benefits described in the bill are not forthcoming? Grievances may not be taken to courts but only to an ombudsman appointed by the government. In this respect, the situation will be no different from what prevails today--the Government will on its own determine beneficiaries and benefits of R&R. Perhaps the only recourse to courts allowed by the bill is in case of violation of the R&R process that it specifies.

Land for gigantic projects is acquired using the coercive powers provided by the colonial Land Acquisition Act of 1894. It narrowly defined persons affected by an acquisition to be either landowners or occupiers (tenants), and limited compensation to purely monetary terms. However, large-scale acquisition covered entire villages and their common property resources - tanks, grazing lands and village forests. There is widespread and determined resistance to land acquisition and it is in this context that the Government has come out with the R&R bill along with a companion bill to amend the Land Acquisition Act.

The bill prescribes conditions for project affected families to qualify as beneficiaries and makes the benefits themselves conditional on external circumstances. An area will be notified as an 'affected area' "where the appropriate Government is of the opinion that there is likely to be involuntary displacement of four hundred or more families en masse in plain areas" (the number is less for hilly and tribal areas). R&R planning is mandated by the bill only for families living in such 'affected areas'. A family that neither owns nor occupies (tenants) land such as that of an agricultural labourer, artisan, small shop keeper, etc will be considered to be an 'affected family' and entitled to any R&R benefits only if it is displaced from a notified 'affected area'. Thus the opinion of the Government on the scale of the displacement will decide if there will be planned R&R of the displaced. The scale of displacement will determine if families who neither own nor occupy land (who are the poorest) will be entitled to any benefits at all - unconscionable from the standpoint of justice. The bill also talks about a 'social impact assessment' that will be required when there is large-scale displacement, an idea

similar to the 'environment impact assessment' that is now mandatory for projects. The details of how this will work are not clear from the bill and it is early to comment if and how this will benefit people affected by a project.

If we look at the international human rights legal framework they are standards that are agreed on by states of their own free will since the U.N. is not a world government superior to states. Human rights are rights of individuals and groups that can be claimed from states. The Indian government has made pledges at the international level to recognize, protect and enforce a number of fundamental human rights which should be respected at all times, including in the case of big development projects. The significance of these pledges is that the Indian government puts its international credibility at stake if it does not respect these rights.

The main international human rights treaties to which India is a party recognize an array of rights, which range from the right to life, the freedom of movement and the freedom to choose one's residence to the right to an adequate standard of living, which includes adequate food, clothing and housing. All these rights and many others are of direct relevance in the case of large-scale displacement of people. A number of these rights are also protected by the Constitution, but there is no automatic overlap. The inadequacies of the domestic framework concerning displacement have been amply documented and it is sufficient to recall here that there is still no comprehensive policy on resettlement and rehabilitation and that the Land Acquisition Act does not uphold a number of rights such as the right to information or participation.

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International human rights do not provide in a binding form all the specific norms that should guide resettlement and rehabilitation, but there exist a number of basic principles. The required procedural guarantees from the governments include provision for genuine consultation with the project-affected people, the issue of adequate notice to all affected persons prior to the date of eviction, and the provision of legal remedies and legal aid where applicable. The recognition of any human right is a step in the right direction. However, if the implementation of human rights is not monitored, it may become extremely difficult to judge how far they are realized. At the domestic level, courts have the power to enforce rights to a large extent. It is, however, striking that courts have been rather hesitant to use international human rights standards to strengthen the domestic legal framework where the latter is not progressive enough.

On the whole, India has had a rather ambivalent attitude towards human rights. While it is a signator to international human rights instruments, it has by no means ratified all the important human rights treaties. The World Bank has had significant experience in development-related displacement. The important and contentious nature of resettlement is highlighted by the fact that the Bank is currently drafting a new operational policy on involuntary resettlement, which backtracks on some of its previous commitments. The new text would still provide that land should be offered to displaced persons whose livelihoods are land-based. However, it opens the door for cash compensation if sufficient land is not available or if land is not the preferred option of the displaced persons. Jharana Jhaveri and Arundhati Roy highlighted to members

of the international community, ranging from human rights activists to U.N. and government officials, the numerous human rights violations that have occurred and are occurring in India. Notwithstanding, the Indian government has put its credibility at stake by signing international human rights treaties. This point seems to be well taken since it attaches significant importance to its international image and a good human rights record is essential for democratic states (Philippe Cullet: 2001).

The human rights dimension of the development process has often been sidelined because it does not accommodate well with prevailing conceptions of development. The failure of development projects to respect even the most basic rights of the people who are meant to sacrifice their livelihoods for the well-being of the community at large implies that a conception of development that does not recognize the central value of human rights is bound to be a complete failure at a basic human level, whether it successfully brings development benefits to the nation at large or not. Human rights may be recognized at the international level but their real and only value consists in their application in everyday situations. It is only at this level that the human rights record of any state can be judged.

Nearly all of India's development projects, irrigation or industrial, have resulted in the violation of the rights of tribes in India. It is ironical that the rehabilitation is presented as an act of benevolence of the state, a measure to mitigate the suffering of the affected citizens to the extent permitted by the external circumstances and subject to various conditions. Any development model must take in to consideration the interests and aspirations

of all the communities and it should not result in the impoverishment of the already marginalized communities like tribes. Why is it always the weaker sections of society sacrifice and suffer for the development of rich and higher sections that are less in number? Trends toward ever greater development, despite bringing equitable development, create wider inequalities in the society. This is really unethical and undemocratic.

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