

Sardar Sarovar Dam and its Environmental Dimension: Critique of Supreme Court's

Harish Verma

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Abstract

Construction of large dams to accelerate speed of economic development of India without taking into consideration their environmental dimensions has devastating effects. It has constantly perceived that environmental conservation should be the very basis of every development process. Indian judiciary especially Supreme Court during eighties has showed a great zeal of enthusiasm to protect environment against developmental activities undertaken by governments posing threat to environment. On wake of 21st century, when development was considered inevitable in India, even then Court heavily relied on principles of sustainable development to make balance between right to environment and right to development. But in case of Sardar Sarovar dam built on Narmada River in State of Gujarat, the issue of environment

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For correspondence:



Department of Laws, L.R. Institute of Legal Studies, Solan
Himachal Pradesh, India.
Email: dr.harishthakur@gmail.com

protection was ignored. In Sardar Sarovar or Narmada dam case, the Supreme Court took U-turn from its earlier environment friendly approach and sidelined the environmental considerations of undertaking construction of this dam. Therefore, the present study is an attempt to critically examine the environmental ramifications of the role of the Supreme Court of India in the context of Sardar Sarovar dam.

Introduction

Construction of dams in India was described and considered as the “Temples of Modern India” by the first generation of leaders (Paramjit *et al.*, 2001). The supporters of dams justify construction of large dams on the grounds that dams are useful to control flood, to eradicate poverty, and to provide water for irrigation and drinking purposes. In addition to the above mentioned reasons favouring construction of dams, protagonists of dams believe that large dams and multi-purpose river valley projects have provided food security to India. But it is well documented and proven fact that dams have failed to deliver projected results. Despite this, governments are undertaking construction of more and more

large dams without taking into consideration their adverse environmental consequences. The problem of environment pollution has become so serious worldwide including in India that we can no longer ignore the issue of environmental protection in the name of development.

The Supreme Court in the past has showed a great zeal of enthusiasm to protect environment against any developmental activities and issued various directions in appropriate cases against governments and the polluters regarding protection of environment. When any developmental activities were undertaken by governments threatening environment, the Supreme Court did not forget to uphold the cause of environment over development. Even when development was considered inevitable for the Country, the Court tried its best to reconcile right to development and right to environment. It did not afraid to endorse and apply principles of sustainable development such as Polluter Pays Principal, Precautionary Principle and Inter-generational equity principle. But in Narmada dam case, Supreme Court of India ignored the issue of environment protection and permitted construction of this dam. It was clear cut deviation from its earlier environment friendly approach. Therefore, the present study is an attempt to critically examine the environmental ramifications of the role of the Supreme Court of India in the context of *Sardar Sarvovar* dam.

Sardar Sarvor Dam: Background

The Sardar Sarovar Dam is located on river Narmada in State of Gujarat. It is 170 Km (106 miles) upstream from where the river flows into the Gulf of Khambhat in the Arabian Sea. The purpose of construction of the dam was to make optimum use of Narmada waters to solve the problems of irrigation in certain parts of the

Country. Today the Sardar Sarovar Project is one of the largest water resources projects of India covering four major States - Maharashtra, Madhya Pradesh, Gujarat and Rajasthan. With 1133 cumecs (40000 cusecs) capacity at the head regulator, and 532 km. length, the Narmada Main Canal would be the largest irrigation canal in the World. The dam devastated human lives and biodiversity by inundating thousands of acres of forests and agricultural land. The Construction of the Narmada dam was opposed by Narmada Bachao Andolan (NBA) an anti-dam organization.

Environmental Dimensions of Sardar Sarovar Dam

In *Narmada Bachao Andolan vs. Union of India (AIR 2000 SC 3751)* a PIL was filed by NBA. The petitioner raised various issues including issue of environment deterioration caused by construction of Naramda dam. The petitioner contended that the construction of Narmada dam would deteriorate quality of environment in many respects such as its construction would pose threat to forest and agricultural land and *loss of biological and aquatic diversity*. NBA activists further contended that the dam will disrupt downstream fisheries and possibly inundate and salinate land along the canals, increasing the prospect of insect-borne diseases. The petitioner (NBA) further contended that environmental clearance granted in 1987 for the construction of the *Narmada dam* was without any proper application of the mind as the complete studies in that behalf were not available. The Ministry of Environment had only granted the conditional and tentative clearance in 1987, subject to environmental studies and remedial plans for the project. Therefore it was contended that till that was done, the project should not be allowed to

proceed further. However, in October 2000, the Supreme Court gave a go-ahead for the construction of the dam.

- **S.P. Bharucha's Environment Friendly views Ignored**

According to minority judgement (*Justice S.P. Bharucha*), the majority judgement fails to note that the *Sardar Sarovar Project* does not have proper environmental sanction. Having disagreed with the stand taken by majority of the judges on environmental matters Per *Bharucha, J.* had stated that “An adverse impact on the environment can have disastrous consequences for this generation and generations to come. The Supreme Court earlier in its various judgments has recognised this fact. For example, in *State of Tamil Naidu vs. Hind Stone* AIR 1981 SC 711, the Supreme Court recognized the need to conserve and protect the natural resources of the nation in wider interests of mankind. It observed that rivers, forests and minerals and such other resources constitute the natural wealth. These resources are not to be fritted away or exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. *Bharucha Judge* further stated that the Supreme Court cannot place its seal of approval on so vast an undertaking as the project without first ensuring that whose best fitted to do so have had the opportunity of gathering all necessary data on the environmental impacts of the project and of assessing it. They must then decide if environmental clearance to the project has been given, and, if it can, what environmental safeguard measures have to be adopted, and their cost. While surreys and studies on the environmental aspects of the project have been

carried out subsequent to the environmental clearance, they are not complete.

It is worthy to mention here that large dams are often ecologically unsound and economically unjustified. Justice *Bharrucha* also said that the environmental and health cost before constructing this dam are not fully accounted. These costs include the loss of forests and wildlife, water logging, siltation, loss of arable land and increase water-borne diseases (Bina Srinivasan *et.al*, 2001; Prashant Bhushan *et al.*, 2003; Kailash Thakur & H.R.Jhingta *et. al.*, 2005). He further said that in Naramda dam case environmental clearance was given to the project without taking in to account its adverse impacts on wildlife, including birds, impact on national parks and sanctuaries, on sites and monuments of historical, cultural and religious significance and on forest, agriculture, fisheries and recreation, tourism and on environmental rights. Requisite data for impact assessment was not readily available. Despite the strong dissenting judgement of *Justice Bharucha*, the majority judges still went on to approve the project and allowed it to go on without any comprehensive environmental impact assessment.

- **Impacts of Dams on Environment Ignored**

The dams have their own adverse up-stream and downstream impacts on environment. The upstream environmental and ecological impacts of big dams are: soil erosion, micro-climatic changes, loss of forests, flora and fauna, changes in fisheries, especially on spawning grounds, chain effects on catchments area due to construction and displacement etc, landslips, siltation and sedimentation, breeding of vectors in the reservoir and increase in related diseases, seism city, loss of non forest land, water-logging around reservoir and growth of weeds. The downstream

environment impacts of the large dams are: Water-logging and salinity, micro-climatic changes, reduced water flow and deposition in river, with related impacts on aquatic ecosystem, flora and fauna, flash floods, loss of land fertility along with river, vector breeding and increase in related diseases. These adverse effects have long term and irreversible loss of quality of human life and other creatures in the region.

It is interesting to mention here the majority views on the issue of environmental clearance. The Court in Narmada dam case held “there are different facets of environment and if in respect of a few of them adequate data was not available it does not mean that the decision taken to grant environmental clearance was in any way vitiated”. The attitude of the Court favouring development over the environment is clearly evident from the views expressed by the majority judges in the said case. It was a clear cut subordination of the cause of the environment as against the cause of development.

- **Refuse to Apply Precautionary Principle**

It is interesting to note here that the Supreme Court in *Narmada dam case* refused to apply the precautionary principle of sustainable development. It should not be forgotten here that the Supreme Court earlier had applied the precautionary principle in various judgements to make a balance between environment and development. For example, *Vellore Citizens Welfare Forum vs. Union of India* AIR 1996 SC 2715 and *Karnataka Industrial Areas Development Board vs. C. Kenchapa* (2006) 6 SCC 371 has been some of the cases wherein the Court applied principles of sustainable development to defend cause of environment.

But in the Narmada dam case, the Supreme Court held “It appears to us that the

Precautionary Principle and the corresponding burden of proof on the person who wants to change the *status quo* will ordinarily apply in a case of polluting or other project or industry where the extent of damage likely to be inflicted is not known. In the present case we are not concerned with the polluting industry which is being established. The dam is neither a nuclear establishment nor a polluting industry. It is surprising that the judges reached at such a conclusion. They are not treating dams as industries and harmful to environment.

- **Refuse to Apply EIA Notification 1994 Retrospectively**

Dams put several adverse impacts on environment as have been discussed earlier. It is worthy to mention here that the Supreme Court refused to apply Environmental Impact Assessment (EIA) Notifications of 1994 on the ground that environmental clearance to construct Narmada dam was given in 1987 and that time there was no procedure prescribed by any statute, rule or regulation regarding EIA. The procedure to conduct EIA provided in 1994 cannot be applied retrospectively in case of *Sardar Sarovar Project*. The reason is that its construction commenced nearly around 1989. It is true that construction started in 1989 but even then EIA could be conducted with regard to remaining work of the dam so that the possible adverse environmental effects could be mitigated. But surprisingly Supreme Court refused to apply EIA notifications of 1994 in Narmada dam case which indicated that our Courts are favouring developmental initiatives of the governments without assessing their adverse effects on surrounding environment.

Conclusion

The foregoing discussion on decision of Supreme Court on Narmada dam clearly

exhibits that judiciary favoured construction of Narmada dam without bothering much about its adverse environmental consequences. During eighties, there have been several judicial decisions of the Supreme Court wherein it straightway gave priority to environment protection. The development process was considered secondary. Then came the time where development was considered inevitable to resolve problems of under-employment and unemployment in India. The Supreme Court in such situation smartly patched both the conflicting interests' i.e. right of healthy environment of the citizens of this country and right of development. It applied principles of sustainable development as per the international mandate to protect environment. But the Narmada verdict of Supreme Court reveals that it deviated from its earlier environment friendly approach. In Narmada verdict, the Supreme Court straightway ignored the cause of environment and treated it secondary which it seldom did in the past. The Supreme Court which has been the ardent supporter of environment made environment and environmental rights, subordinate to development processes. The government of India is committed to protect environment at international level. However, the Supreme Court forgot the mandate of various International human rights documents which speak about protection and improvement of environment. The Court failed to read

Stockholm Declaration on Human Environment 1972 and Rio Declaration on Environment and Development 1992 into domestic laws of India. The changing stance of Supreme Court on environmental related issues is a cause of concern in present era wherein environmental deterioration has drawn worldwide attention. Let us hope that Indian judiciary in March of progress would not forget to uphold the cause of environment along with development.

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