

RIGHTS OF TRIBALS AFFECTED BY INDIRA SAGAR (POLAVARAM) PROJECT & ROLE OF THE GOVERNMENT

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Abstracts:

After Africa, our country India occupies second position in the world, so far as population is concerned. Report of the Working Group on Tribal Development (1978-83) recommended that the forestry plans may be prepared to satisfy the basic need of the tribal economy and uplift the communities living in the area as the counterpart of commercial forestry and intensive utilization of forest resources. The ownership rights of tribal people, protection of natural resources and the right of the indigenous peoples to participate and give their consent in the use, management and conservation of these resources and consultation in the exploration and exploitation of such resources and in the benefits from them. The Polavaram dam, an earth and rock-filled structure, will displace the largest number of people in India's history of such projects. For every five acres (2.02 hectares) that will be irrigated by the project, one tribal family will be displaced. The project is not only gigantic in size but also in degree of violation of rules and regulations. Village after village certifies that the authorities lied about complying with FRA provisions. The project has also become cause for dispute between Andhra Pradesh and two of its neighbours. The Polavaram project report says the dam will submerge four villages in Chhattisgarh's Dantewada district and eight villages in Odisha's Malkangiri district. The actual numbers are 23 in Chhattisgarh and 10 in Odisha. It urges the government to respect the cultures and spiritual values of the people. Large scale displacement in this very tribal region, submerging 276 villages in AP alone as per official figures, poses serious threat to the ethnic, linguistic and cultural identity of the Koya tribe. Displacement of the scheduled tribes under Polavaram dam is a violation of human rights and is without consent and consultation of the tribal population. Polavaram project is also in violation of the National Tribal Policy which states that "any project which displaces more than 50,000 tribal people should not be taken up". The rights of each individual tribal, his family, his community, lands under cultivation and grazing lands are to be documented along with the traditional customary rights and boundaries of the community and the Govt. should officially accept this.

Keywords: Tribals, Forest, Rights, Projects, Government.

After Africa, India occupies second position in the world, so far as tribal (Adivasi or original inhabitants or primitive or aboriginal) population is concerned. The percent of tribal population to total population is 8.68 per cent in 2011 census. Industrial revolution along with the social and cultural progress of a nation is characterized as economic development. To have an uninterrupted growth of the country's GDP, man has applied Technology to increase production, expand employment opportunities for the rising population. For this, basic and heavy industries were created, hydro electric projects were established, irrigation system were developed, roads and railways, ports were constructed, canals were dug, mines were excavated and power projects were opened in suitable areas. In recent times the large scale industrialization, privatization and globalization for sake of "development" has emerged as the biggest threat to tribal's survival – ironically, the so called "modern civilized society" has become a predator of their age-old eco-friendly, peaceful and harmonious lifestyle. These so called "developmental" activities, which do not confer any direct benefit to the tribals, merely leave them landless and without means for survival. Monetary benefits do not really count when the lifestyle for generations is changed irreparably. Land alienation of the tribals by the powerful entities has become common phenomena. It is most unfortunate that "the freedom to live in their own traditional ways" as guaranteed by the constitution is flouted by those who understand the constitution better.

The Polavaram dam, an earth and rock-filled structure, will displace the largest number of people in India's history of such projects. "For every five acres (2.02 hectares) that will be irrigated by the project, one tribal family will be displaced," says E A S Sarma, former power secretary, who has been tracking the project. It is not only gigantic in size but also in degree of violation of rules and regulations. The Polavaram dam, first proposed in 1941, was revived by former

chief minister of Andhra Pradesh, the late Y S Rajasekhara Reddy in 2004. It is creating heated debate among people from various walks of life ranging from intellectuals, politicians, news analysts, employees and common man. During these debates importance should be given to the basic question - **Who are going to be adversely affected?** Tribals are going to be displaced from their homes. The displacement problem is a very serious problem. According to "Displacement And Rehabilitation Of People Due To Developmental Projects," a document from Lok Sabha secretariat members reference note, around 50 million people have been displaced due to developmental projects over the last 50 years. The situation of the tribes is of special concern as they constitute 52.9 per cent of the displaced population. The need to avoid largescale displacement is felt by all those who are concerned with human rights and who empathise with the problems of tribals. This project is going to displace lakhs of tribals from their homes. Shifting of urban poor from one house to another vastly differs from shifting tribes from their locality. Tribes may not possess the knowledge to adjust to their new locality and even if they are shifted to another forest or other part of the same forest the produce of such a place may not resemble their natural habitat.

1. ROOT CAUSE FOR THE CALL FOR RIGHTS:

As there are number of Protective Land Laws, Legislations, Regulations, Forest Laws, Government Policies, Court Orders and Judgments, and Government Orders (GOs) which prohibit the land transfer in Scheduled Areas. In spite of all these protective and welfare laws made by the government for the welfare of tribals, the Governmental agencies have been acquiring the tribal lands in the name of National interest in contravention to all the Constitutional Provisions. Clearly the protective laws of the tribal areas are being manipulated where the legal access to tribal

lands and resources is denied. In 1990, the Global Constitution on the Realization of the Right to Development as a Human Right underlined that the most destructive and prevalent abuses of indigenous rights are a direct consequence of development strategies that fail to respect the fundamental rights of self determination. The result has been the elimination and removal of natural resources, waters, wild life, forests and food supplies from indigenous lands either through commercial exploitation or incompatible land use; the degradation of natural environment; removal of indigenous people's from their lands; and their displacement or preemption from the use of their lands by outsiders. Above all some of the root causes of protest for developmental projects by the tribals of India are as follows:-

Failure to be consulted and informed

From the inception of planning of most projects, through various stages of displacement and resettlement, it is to be expected that those likely to be negatively affected by the projects would be consulted and kept informed in such a way as to enable them to best rebuild their ravaged lives.

Absence of Advance and Comprehensive Planning for Rehabilitation

In the absence of a statutory rehabilitation law or even a national policy, there is no legal imperative for state governments or project authorities to integrate comprehensive rehabilitation planning into the planning of a project. Indeed, it has been found that even the existence of state and project-specific policies is not sufficient to ensure this. The incremental approach of allowing land acquisition and project construction activities to proceed parallel to displacement and rehabilitation, has led in practice to ad hoc, piecemeal and minimalistic rehabilitation. More often than not, project authorities are interested mainly in the relocation rather than the rehabilitation of project affected persons, in their physical transference from the

submergence zone rather than their long-term welfare.

Undervaluation of Compensation

The only significant reparation for displaced persons guaranteed by law is the payment of monetary compensation for compulsorily acquired individual assets, mainly land or houses. However, the manner in which the law is framed and interpreted ensures that the displaced land-owner or house-owner is always the loser. The practice is to pay compensation for lost fixed assets like agricultural land at the prevailing market rate, calculated as an average of registered sales prices of land of similar quality and location in the preceding three or five years. However, it is an open secret that most land transactions in India are grossly undervalued to evade registration fees. Therefore, the displaced tribal receives a rate which is much below the market rate. Land and houses are paid for at the alleged market value rather than 'replacement value'. Typically land prices shoot up sharply around any large project because of enhanced demand for land and in anticipation for irrigation; likewise houses are depreciated in value for age. In this way, oustees are not compensated for their land or houses at rates which would enable them to buy land or construct houses elsewhere similar to those that are lost.

Failure to acquire alternate cultivable lands

The only recourse for the dispossessed cultivator caught in what Cernea describes as the 'spiral of impoverishment' is typically one of two alternatives. The erstwhile land-owner either migrates to the slums of the cities in search of work, or fans out to neighbouring wastelands or forest tracts or clears them for cultivation.

Problems at Resettlement Sites

Resettlement sites are often inhospitable in a number of ways and their locations are selected without reference to availability of livelihood opportunities, or the preferences of displaced persons themselves.

Traumatic forced and delayed relocation

Involuntary relocation is always extremely painful, but a sensitive project bureaucracy can do much to relieve its trauma. In practice however, it has been observed that the driving objective of project authorities has not been to prepare and assist the families to relocate and to make a gradual and less painful transition to their new habitats. Instead frequently the only objective is to vacate the submergence zone of what are perceived to be its human encumbrances, with the brute force of the state if necessary.

Inability to handle cash compensation

Even more lethal for rural oustees is the provision that whatever compensation is fixed, is paid as a rule in cash rather than kind. Especially tribal people, but to a lesser degree most rural people, have little experience in handling cash. Many studies have recorded how cash compensation is depleted by oustees in short periods, by fraud, for repayment of old debts, in liquor and conspicuous consumption.

Besides all the above some of the other causes are **Dis-entitlement** – a process where by the tribals are gradually denied access to the support system of their livelihood. It meant loss of rights enjoyed earlier by the tribal community over the forest and land sources around them; **Multiple Displacement; Failure to provide alternative livelihoods** and **Problems of host communities**.

2. VIOLATION OF RIGHTS

Rights Related to Land and Resources

The rights of land ownership is guaranteed in the ILO Indigenous and Tribal Populations Convention No. 107 of 1957 concerning the protection and integration of indigenous and Semi-Tribal populations in independent countries, revised ILO Indigenous and Tribals in Independent Countries Convention No.169 of 1989, and UN Draft Declaration on Indigenous Rights.

All these recognizes the ownership rights of tribal people, protection of natural resources and the right of the indigenous peoples to participate and give their consent in the use, management and conservation of these resources and consultation in the exploration and exploitation of such resources and in the benefits from them. It urges the government to respect the cultures and spiritual values of the peoples concerned of their relationship with the lands and territories. It also makes the provision of adequate penalties for unauthorized intrusion upon or use of lands of the peoples.

Rights Related to Culture

The Universal Declaration of Human Rights 1948 recognizes the “right to culture” and the Article 15 of the International Covenant on Economic, Social and Cultural Rights 1966 also recognizes the right of everyone to take part in the cultural life. Article 27 of the International Covenant on Civil and Political Rights 1966 recognizes the cultural rights of minorities, which is more relevant for indigenous peoples. The Declaration of the Principles of International Cultural Cooperation 1966, Declaration on Race and Racial Prejudice 1978, ILO Convention No. 169 and many other laws states that each culture has a dignity which must be respected and preserved.

Rights Related to Development

The Declaration on Right to Development 1986 states right to development as an inalienable human right and the ILO Convention No. 169 declares that the peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or other wise use, and to exercise control, to the extent possible, over their economic, social and cultural development. The Politics of Resistance to Capitalist Development Projects The choices made by the Independent Indian state to follow a capitalist mode of profit oriented development and modern industrial growth has been based on two interrelated process: one unchecked use of earth's natural resources and the transformation of the people, often against their will, into a dispossessed working class. The earth's impoverishment has meant that communities who depend on natural base for sustenance have been deprived of their resources and caused not only alienation, and loss of material livelihood but also most profoundly a wider loss of cultural autonomy, knowledge and power. The UN document entitled 'The Practice of Forced Eviction: Comprehensive Human Rights Guidelines on Development based Displacement' states that evictions constitute prima facie violation of a wide range of internationally recognized human rights. In 1990, the Global Constitution on the Realization of the Right to Development as a Human Right underlined that the most destructive and prevalent abuses of indigenous rights are a direct consequence of development strategies that fail to respect the fundamental rights of self determination. The result has been the elimination and removal of natural resources, waters, wild life, forests and food supplies from indigenous lands either through commercial exploitation or incompatible land use; the degradation of natural environment; removal of indigenous people's from their lands; and their displacement or

Preemption from the use of their lands by outsiders.

Environment, Forests and Human Rights

The Forest Act 1878, which classified forests into three categories: Reserve, Protected

and Village forests makes available only a small portion, i.e. the village forests to the tribals and the National Forest Policy 1894 which declared the forests on the slope of the hills as protected, ultimately led to the process of shrinking tribal access to minor forest produce. Establishing industrial projects, felling trees to supply timber for laying railway tracks, building towns and collecting raw material for industries gave birth to a process of deforestation. This has unleashed a situation where more and more people are being displaced from their communities and traditional ways of life and resulted in an insecure livelihood for the tribal and indigenous communities in the hilly areas and tribal belts. No amount of compensation could be adequate for the loss of the natural habitat and the cultural milieu of the tribals. This process can be characterized as a process of – disentanglement – a process where by the tribals are gradually denied access to the support system of their livelihood. It meant loss of rights enjoyed earlier by the tribal community over the forest and land sources around them.

Rights to Education

The ILO Convention No. 169 on Indigenous and Tribal Peoples 1989, the UN Draft Declaration on Indigenous Rights recognizes and advocates for the right to education of indigenous peoples.

Besides this list of violation of Rights, several Constitutional Provisions like PESA, FRA, were also violated for the said Polavaram Project. The project is in violation of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act- 2013, which provides for "land for land" in

command area for the affected people under irrigation projects and protection to ensure that “all benefits, including the reservation benefits available to the Scheduled Tribes and the Scheduled Castes in the affected area shall continue in the resettlement area”. It is also mandatory for obtaining prior consent of concerned Gram Sabha or the Panchayats in the Scheduled Area under Panchayat Extension to Scheduled Areas Act (PESA) 1996.

3. ROLE OF GOVERNMENT:

In November 2010, Union minister of state for environment Jairam Ramesh issued a show-cause notice to the Andhra government for not holding public hearings for the project even two years after getting in-principle clearance from the ministry. While giving forest clearance in July 2010, the ministry said it was based on the “assurance of the Andhra Pradesh government that there were no forest rights that needed to be settled” under FRA. The Forest Advisory Committee (FAC) of the environment ministry noted in October 2010 that the state had not furnished the mandatory consent certificates from gram sabhas of villages in areas where forests will be submerged. On October 25, 2010, FAC recommended a thorough compliance report from the state government and suggested actions in case of violation. The project has also become cause for dispute between Andhra Pradesh and two of its neighbor Odisha and Chhattisgarh. The Polavaram project report says the dam will submerge four villages in Chhattisgarh’s Dantewada district and eight villages in Odisha’s Malkangiri district. The actual numbers are 23 in Chhattisgarh and 10 in Odisha, say the two state governments. The chief minister, Chhattisgarh Dr. Raman Singh, said the project, is “unacceptable” in any form. Odisha’s appeal against the environmental clearance to the project is already pending in the apex court.

Environmental clearance for the Polavaram dam is based on a 2005

environmental impact assessment (EIA). But the Central Water Commission (CWC) changed its flood situation estimate in 2006 which has not been incorporated in the design. The Polavaram project was designed in 1980s and updated in 2005. It went by the probable maximum flood (PMF) level of 102,000 cubic metre per second (cumecs) for designing the spillway. The CWC, however, did not accept the design; it had originally accepted the spillway designed for a flood level of 102,000 cumecs on the premise that the project was a barrage. When Godavari experienced high flood in August 2006, submerging about 370 villages for days in Andhra Pradesh, CWC made a fresh assessment of PMF at 140,000 cumecs.

Consequently, CWC directed the state government to revise the Polavaram project design to handle 142,000 cumecs flood level for its spillway. However, the National Institute of Hydrology of the Union Ministry of Water Resources estimated the PMF at 169,920 cumecs. The dam break analysis for the Polavaram dam is an essential part of its EIA. The institute found that if the dam bursts, the peak flood will be of 198,200 cumecs. This means the project’s EIA is flawed and downplays the threat of flood. “Based on recent rainfall trends and flood history, a peak flood of 250,000 cumecs is a reality. This will wash away the dam,” says T Hanumantha Rao, former chief engineer with Andhra government. Though CWC changed the maximum flood estimate from 102,000 cumecs to 142,000 for the dam’s spillway design, Andhra Pradesh has not changed the back water level estimates based on the new PMF. Odisha now says that the revised design would lead to very high inundation in Malkangiri.

The Human Rights Society, a registered NGO has voluntarily visited the affected area of the Polavaram on 5th and 6th of January 2015. A fact finding committee consisting Justice A. Gopal Rao, and other members from the field of NGOs, Law, Media etc visited the immediate affected

seven villages which are located in the dam site. The committee preliminarily recommended several points to be useful for the state as well as the central Govt. before drawing to any conclusion on the Polavaram issue the Union and the state Govt. of A.P. must consider the models of rehabilitation of experts, one of the best models of Cernea is below.

Cernea proposes a 'risks and reconstruction' model of rehabilitation. He believes that 'targeted measures – economic, technical, legal and cultural — must be undertaken to orient from the outset the planning of resettlement towards the reconstruction of livelihood, so as to prevent impoverishment'. When the state takes up a project entailing displacement, 'the people who will be displaced are subjected to huge risks, typically without their knowledge, participation or consent'. He identifies the risks as follows: 'landlessness; joblessness; homelessness; marginalization; increased morbidity and mortality; food insecurity; loss of access to common property and services; and community disarticulation'. His hypothesis is that the state can reverse the risks by the following reconstructive actions:

- From landlessness to land-based resettlement;
- From joblessness to re-employment;
- From food insecurity to safe nutrition;
- From homelessness to house reconstruction;
- From increased morbidity to better health care;
- From social disarticulation, marginalization and deprivation of common assets, to community reconstruction and social inclusion.

As Polavaram is not only the life of lakhs of tribals but the question of displacement of livelihoods of several primitive tribes. The following points are to be considered by the Union and the state Govts. :-

- Justifiability of 'public purpose';
- Establishing that this is the 'least-displacing' alternative;
- Right to information;
- Right to be consulted;
- Social Cost-Benefit Analysis;
- The Goal of Rehabilitation;
- Eligibility for Compensation and Rehabilitation;
- Principles for Assessment and Payment of Compensation;
- Land-for-Land;
- Non-land Based Activities;
- Assistance in relocation;
- Special measures to protect most vulnerable groups;
- No. of Families to be displaced and the no. of Tribal Families;
- Who is going to fund Polavaram Dam?
- The area of land to be irrigated and the area already irrigated;
- Downfall threat of the design;
- Unsafe Embankments;

4. CONCLUSION:

A common man may think why I should concern myself with the problems of tribes across India. The reason is simple. Indifference will harm society as a whole. In this context we should remember a famous poem of Niemoller Pastor Martin, which criticized the German Intellectuals following the Nazis. The poem is as follows:

*"First they came for the socialists,
and I did not speak out - Because
I was not a Socialist.
Then they came for the Trade
Unionists, and I did not speak out - Because
I was not a Trade Unionists.*

Then they came for the Jews, and I did not speak out -Because

I was not a Jew. Then they came for me - and

there was no one left to speak for me.''

Experts have suggested many alternative methods of minimising the displacement of tribes during Polavaram construction. So we must speak for the rights of tribes and explore the methods of minimum displacement.

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