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**World Environment Day –  
 “Connecting People with Nature”  
 V. Suresh**

June 5<sup>th</sup> is celebrated globally as World Environment Day, a day to remind everyone about the fragility of the environment caused by human agency, to sensitise people about the urgency of citizen action to counter environmental degradation and to get all of to rededicate ourselves to preserving nature and wildlife, protecting environment, safeguarding natural resources and persuade and push governments globally to halt environmentally destructive, polluting and hazardous industries, development projects and uncontrolled urbanization. The theme for this year's 'World Environment Day' is "Connecting People with Nature".

This year, we in India, have experienced the worst effects of climate change – we've had some of the hottest periods in the last many decades; many regions are experiencing continuous droughts; there's no predictability about rains and seasonal variations are an pressing reality we can no longer ignore. While many countries in the world are gearing themselves to counter the negative effects of climate change, many policy makers and researchers in India are denying the reality of climate change! Across the country, many regions are suffering from unimaginable pollution of air, water and land caused by highly polluting industries. Environmental oversight and monitoring bodies like the Pollution Control Boards and other expert bodies have majorly failed citizens and nature, by persistently allowing polluters to escape liability and responsibility for running environmentally destructive, hazardous and polluting industries. As though this were not enough, the Central Government has been steadily following a policy of dismantling all environment protection legislations on the plea that existing environment laws are proving a hindrance for international industries and capital to come to India.

What is worse, any community, group, organisation or person opposing a development project or an industry on environmental grounds is dubbed to be 'anti-national', 'anti-development' and an enemy of growth. The end of this logic is dubbing environmentalists and the green movement as 'eco-terrorists' carrying the real threat of persecution and prosecution. Numerous examples exist including the coercive action against Greenpeace soon after the present central government came to power in 2014.

Ironically the State, irrespective of whether it is the Central or State government, instead of implementing the Constitutional mandate in Art. 48A of the constitution that "the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife in the country", governments have been competing with each other to stress that they will not tolerate any criticism or demand for accountability of

existing industry or proposed industrial project. It is in this context that we thought we should focus this issue on the state of environmental protection in the country today. Space limitations limit us to include only a few issues from across the country. We, however, hope to be able to carry more such critical articles on the state of environment in different states, in future issues. We invite readers to contribute articles.

Before signing off, the articles carried in this issue make a striking point: that citizens need to be highly vigilant if we need to safeguard and protect our ecology and wild life,

our commons and resources. For more than at any time before, all these are under tremendous attack by forces of industrialization and urbanization. While the challenges are huge, and the difficulties seemingly insurmountable, we need to derive strength and inspiration from the people of Dhinkia and its surrounding villages in Odisha who steadfastly opposed the POSCO steel project despite massive police action, which company after facing unrelenting people's struggle for 12 long years decided to drop the steel plant project. The successful struggle of the Dongria-Kondhs against the

Vedanta project in Niyamgiri and the victory of the villagers against the proposed nuclear power project in Mithi Viridi area in Gujarat are stories to inspire (Ironically, the victory of residents of Mithi Viridi has been offset by the invitation of the AP government to set up the same nuclear power plant of Westinghouse in Kovada in AP. But that represents the actual nature of environmental threat across the country).

We salute all the brave people who have fought and are still fighting for environmental justice and human rights. **Editor** □

## And we pushed out Westinghouse Nuclear Plant from Mithi Viridi Area Krishnakant\*

The proposed 6000 MW Nuclear Power Plant at Mithi Viridi – Jaspara, Bhavnagar district has now been officially slated to be setup in Kovada, Andhra Pradesh. One struggle is over but another struggle is on and people of the Mithi Viridi area decided to extent all support and they will be part of the struggle with the people of Kovada. This is a result of sustained people's movement that began in 2013. It was a big day for the villagers of Jaspara, MithiViridi, Khadarpar and Mandva. The Environmental Public Hearing (EPH) for the proposed 6000MW Nuclear Power Plant (NPP) at MithiViridi in Bhavnagar district of Gujarat was being organised, the date 5<sup>th</sup> of March 2013. The villagers who are seldom heard by the authorities had an opportunity to express themselves.

Teams of villagers including women were actively preparing themselves for past fortnight. There were small group meetings held in surrounding 30 villages to explain to them the impacts of NPP and importance to participate in the EPH. The authorities who are supposed to do this exercise were not even bothered to supply information regarding the project.

And then thousands of villagers, usually assumed to be illiterate lined up to enter into the EPH pandal. They were frisked. Water bottles were not allowed inside. Tiffins were checked, yes people had brought their own food to the EPH. Metal detectors were active and there was security and police everywhere. But the villagers were unrelenting.

The Public hearing started, the whole atmosphere of the EPH was intimidating with the hundreds of security and police in and around the pandal. The Collector of Bhavnagar who was chairing the EPH also stopped the leaders and Sarpanch of villages from raising issues relating to procedure. Thus the leaders, villagers all got to know that the hearing was only held to complete a flawed procedure in favour of NPCIL (Nuclear Power Corporation of India Ltd.) and it was announced from the mic that the Public Hearing committee is not interested in hearing the issues and hence a walk-out was declared by the community leaders. Within few minutes people started walking out without any slogans peacefully. The pandal was emptied and only media persons, government and GPCB officials and the NPCIL staff

remained in the huge pandal.

The Central and Gujarat State Governments are now both led by Modi, whose election slogan was the Development Model of Gujarat. And here is a case where a Nuclear Power giant, a Sector Holier than Cow and an equally autocratic government were pushed out due to the relentless and sustained peoples' resistance, added with many other reasons including the unfortunate and ongoing Nuclear accident in Fukushima, Japan.

We would also like to outline unconstitutional and illegal actions and means adopted by the Government of India and Government of Gujarat to push the nuclear power plant through since its inception.

Forest land measuring 81 hectares in addition to the other land for the nuclear power plant. To facilitate this the Taluka Development Officer (TDO) of Gujarat State sent a letter dated July 15, 2013 to *Sarpanch* of Jaspara directing him to pass a resolution on the lines of the copy that he had sent, so as to have the village body's stamp of approval for the state government transfer of forest land to the NPCIL. In this letter the TDO instead of seeking the opinion of *Gram sabha*

as per the law for the land transfer, illegally and unconstitutionally orders the *Sarpanch* to pass the readymade resolution. This is the new way of getting the consent from the villagers by the then Chief Minister Mr. Modi. The *Gram sabha* (village council) of Jaspara unanimously condemned and rejected such an unconstitutional letter of TDO. The *Gram sabha* unanimously resolved not to hand over the forest land for non-forest use to the NPCIL.

**Struggle against Proposed Nuclear Power Plant: Some of Recent Village Protests:** Since 2007 villagers have braved various tactics of the NPCIL and the administration and demonstrated their unbreakable will and have been protesting against the proposed Mithi Viridi Nuclear Power Plant. Many rallies, protests, debates and press conferences were organised by the villagers with facts and figures against the Nuclear Power Plant.

On 23 September 2013 despite heavy rains, people from the villages affected by the proposed MithiViridi nuclear power plant took out a rally from village Jaspara. The rally consisted of 69 tractors, tempos and cars and 50 motorcycles and comprising of nearly 2,500 men, women, youths and children. People shouted slogans like "let it go, let it go, let the nuclear power plant go", "allow us to eat our hard earned rotlo", "we will give up our lives, not our land", "let bajra and cotton grow, allow the greenery to flourish", and "not here, not anywhere; not in any country in the world".

The rally traversed the 40 km stretch to Bhavnagar, meeting the people in the villages falling on the route. The rally was welcomed at Talaja Jakat Naka by the people of Bhavnagar, and terminated at AV School cricket ground, where it turned into a public meeting. A representative group comprising the leaders of the affected villages presented the memorandum to the

then PM Mr. Manmohan Singh through the district Collector.

The letter points out, "To offer a liability-less playing field to the international nuclear corporations, whose constant decline has been greatly exacerbated by the setback after the Fukushima catastrophe, actually amounts to selling off Indian people's lives and safety for nuclear profits. We have not forgotten the criminal record of Union Carbide, now Dow Chemicals, in the Bhopal gas tragedy and the shameless episode of Indian politicians letting the culprits go scot-free: both physically and in terms of adequate liability for the horrendous disaster."

Pointing out that the Indian government is "risking citizens' lives even as the crisis in Fukushima has further deepened over last few weeks", the letter says, "While Japan has been forced to switch off all its reactors and countries like Germany, Sweden, Switzerland, Italy, etc. have decided to go nuclear free, it is unfortunate that Indian government is choosing to miss the historic opportunity to go for sustainable, renewable, decentralised and equitable forms of energy and shun nuclear power which contributes less than three per cent of its electricity production".

Declaring "strong protest" against any further dilution of the Nuclear Liability Act and endangering the lives of common people of India, the letter says. Villagers from MithiViridi, Jaspara, Khadarpar, Mandva, Paniyali, Sosiya, Kantala, Chayya, Navagam (NANA), Bhankal, Goriyali, Bhavinapara, Kukkad, Lakhanka, Morchand, Odarka, Garibpura, Thalsar, Khadsaliya, Alang, Manar (CT), Bhadbhadiya, Hathab, Gundi, Badi, Alapar, Sanodar, Padva, Vavdi, Sankhadasar, Rajpara, Trapaj, Kathava, Bapada, Sathara, Bharapara, Koliyak, Mathavda, JunaRatanpar, Kuda, Bhumbhali, Thordi etc. signed the

memorandum and sent it to the PM via the Bhavnagar district collector. Farmers and farm workers who would be directly affected by losing land and livelihood have expressed their dissent on oath by submitting affidavits. The affidavit reads "In this area, following a nuclear deal Indian government, the US government and US-based Westinghouse Company, the NPCIL proposes to set up a nuclear power plant. I strongly protest the land acquisition of my farm land mentioned above", it says, adding, "I solemnly affirm that I refuse to sell my above mentioned land at any price to the Government of Gujarat, Government of India or NPCIL". A similar affidavit has been signed by those working labourers in the farms associated with the villages, saying these farmlands are their only source of livelihood.

**Village Panchayat' meeting turns Mithi Viridi - Jaspara area into Nuclear Free Zone:** On 9 March 2014 the gram panchayats of five villages passed a resolution declaring the entire "Mithi Viridi - Jaspara region as Nuclear Free Zone." The resolution to declare the region Nuclear Free Zone was passed "unanimously", and a copy of the resolution was sent to President of India Mr. Pranab Mukherjee, the then Prime Minister Mr. Manmohan Singh, the then Gujarat Chief Minister Mr. Narendra Modi, and secretary-general, United Nations, Mr. Ban Ki-moon.

The resolution suggests "people's desire to keep the neighbourhood nuclear power free." The resolution is significant, in view of the fact that the environmental public hearing of the proposed nuclear plant ran into controversy, as it was held on the basis of an illegal, incomplete environmental impact assessment study by an unaccredited agency, inviting strong protests from the local community.

The statement concludes, "We are opposed to all aspects and parts of the so-called nuclear fuel cycle and

expressly forbids the production of nuclear energy, the presence of any equipment and materials related to the carrying out of any part of the fuel cycle and opposes any storage of nuclear waste."

**From Nuclear Power to a participatory and vibrant democratic culture:** The resistance has also raised their voice of against the anti-people amendments proposed by Modi

Government to water down the new Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

In a meeting on 14 August 2014, the villagers gathered to take a pledge that they wished to "ensure clean air, potable water, fertile lands, nutritious, uncontaminated food and secure life for the future generations", adding, they will do

"all that is possible to save and protect the land, agriculture, agricultural products and seeds." Thousands of villagers from MithiVirdi continue to consistently oppose the setting up of Nuclear Power Plant with the slogan '**Not Here**' since 2007. Subsequently they have resolved '**Not Here, Not Anywhere; Not in Any Country in the World**'

\***Krishnakant**, Activists of Gujarat <tokrishnakant@gmail.com> □

## Implementation of Supreme Court order dated 22 February 2017 will be tested in coming days Rohit Prajapati\*

The so-called success story of the two-digit growth and tall claims of capital investment has masked the reality of multi-digits worth loss of livelihood, damages due to land acquisition, displacement, irreversible damage to environment and permanent loss of natural resources, which are being treated as free goods in this growth model. The investment figures, without any consideration of cost of displacement, destruction and depletion of natural resources and livelihood losses does not make sense. No wise person would talk about the income without talking the cost of acquiring that income or wealth.

This capitalist development has never tried to arrive at even a realistic estimate of these figures but the magnitude of the loss can be guessed from some of the facts emerging from various important research works.

75 Industrial Clusters of India are critically and severely polluted:

Despite the lack of good quality data, some progress has been made with respect to identifying and classifying of critically and severely polluted areas. The consistent follow up by the pollution affected people, people's organisations and NGOs regarding the increasing pollution levels in the industrial areas of India forced the Central Pollution Control Board (CPCB) and the State Pollution Control Boards (SPCBs) in 1989 to

initiate the process of indexing the critically polluted clusters in the country. At that time 24 industrial areas including Vapi, Ankleshwar, Ludhiana etc. were declared 'critically polluted'.

Thereafter, in several meetings of CPCB and SPCBs serious debates on the pollution status of these areas were undertaken. Even after formulation of 'action plans' for the said industrial areas no substantial or qualitative change was observed in these industrial clusters. For this reason, in 2009 the CPCB and IIT-Delhi, in light of the demands of the people's organisations, decided to adopt a new method of 'indexing the pollution levels' of these industrial clusters, which is now known as the 'Comprehensive Environmental Pollution Index' (CEPI). The CEPI includes air, water, land pollution and health risks to the people living in the area. However, the CEPI still has a long way to go in attaining for example our demand to include the health of the workers, productivity of land and quality of food / agriculture produce in the index since the presence of high levels of chemicals and heavy metals in food produce has severe health implications. The latter has effects not only on people living around the industrial area but anyone consuming agricultural products grown in these areas – hence not restricting the impact to the particular industrial area. As per the

agreed upon measures, industrial areas with a CEPI of 70 and above are considered 'critically polluted' clusters while those with a CEPI between 60-70 are considered 'severely polluted' areas.' In December 2009 the CEPI of 88 polluted industrial clusters were measured; it was then that the CPCB and then the Ministry of Environment and Forest (MoEF) of Government of India were forced to declare 43 of those as 'critically polluted areas' and another 32 industrial areas as 'severely polluted' areas.

**Supreme Court Order:** On 22 February 2017 the bench of the Supreme Court Chief Justice Mr. Jagdish Singh Khehar, Justice Dr. D. Y. Chandrachud, and Justice Mr. Sanjay Kishan Kaul responding to Paryavaran Suraksha Samiti (PSS) and Farmers Action Group's Writ Petitions (Civil) No. 375 of 2012 delivered a significant judgement to combat industrial pollution and untreated sewage waste.

Before we get into the details of this order, we also need to acknowledge the bitter truth of environmental protection in present times. To ensure implementation of environmental laws, one is forced to petition the Supreme Court. Governments, both at the center and in states act to protect environment only if the Supreme Court orders them. This clearly indicates that the governments have deliberately failed in

protection of environment, conservation and even the implementation of environment laws. While the recent Supreme Court order might be hailed as historic, it only goes to show that the failing expectations from the present capitalism. Could be there anything worse than these state of affairs? Industries and governments might view this Supreme Court order as stringent, but for those affected people, the activists, air, water, sea, and rivers, the underground aquifers find it inadequate.

Human societies have faced several ecological crises at various phases of "civilization", but today's reality has raised fundamental questions on the very survival of human beings and life on earth. The ecological crisis is an outcome of the present capitalist society, its developmental model and has reached a point where all life forms are threatened. Destruction of Natural Resources 'considered essential' in today's development model of the capitalist society must be challenged.

Following are the main directions of the Supreme Court.

1) The industry requiring "consent to operate" can be permitted to run, only if its primary effluent treatment plant is functional. The Supreme Court directed the concerned State Pollution Control Boards, to issue notices to all industrial units, which require "consent to operate", by way of a common advertisement, requiring them to make their primary effluent treatment plants fully operational, within three months from today. That means deadline end at 23 May 2017. On the expiry of the notice period of three months, the concerned State Pollution Control Board(s) are mandated to carry out inspections, to verify, whether or not, each industrial unit requiring "consent to operate", has a functional primary effluent treatment plant. Such of the industrial units, which have not been able to make their primary effluent treatment plant fully operational, within the notice period, shall be restrained from any

further industrial activity. Such an industrial concern, which has been disabled from carrying on its industrial activities, as has been indicated in the foregoing paragraph, is granted liberty to make its primary effluent treatment plant functional to the required capacity, and thereupon, seek a fresh "consent to operate" from the concerned Pollution Control Board. Only after the receipt of such fresh "consent to operate", the industrial activities of the disabled industry can be permitted to be resumed.

2) Liberty is granted to private individual(s) and organizations, to address complaints to the concerned Pollution Control Board, if any industry is in default. On the receipt of any such complaint, the concerned Pollution Control Board shall be obliged to verify the same, and take such action against the defaulting industry, as may be permissible in law.

3) The setting up of "common effluent treatment plants" should be taken up as an urgent mission. Common effluent treatment plants should be completed within the time lines already postulated. With reference to common effluent treatment plants, which are yet to be set up, the concerned State Governments (including, the concerned Union Territories) are directed to complete the same within a period of three years, from today.

4) The norms for generating funds, for setting up and/or operating the 'common effluent treatment plant' shall be finalized, on or before 31.03.2017, so as to be implemented with effect from the next financial year. In case, such norms are not in place, before the commencement of the next financial year, the concerned State Governments (or the Union Territories), shall cater to the financial requirements, of running the "common effluent treatment plants", which are presently dis-functional, from their own financial resources.

5) For the purpose of setting up of "common effluent treatment plants", the concerned State

Governments (including, the concerned Union Territories) will prioritize such cities, towns and villages, which discharge industrial pollutants and sewer, directly into rivers and water bodies.

6) Supreme Court also directs that 'sewage treatment plants' shall also be set up and made functional, within the time lines.

7) The directions pertaining to continuation of industrial activity only when there is in place a functional "primary effluent treatment plants", and the setting up of functional "common effluent treatment plants" within the time lines, expressed above, shall be of the Member Secretaries of the concerned Pollution Control Boards. The Secretary of the Department of Environment, of the concerned State Government (and the concerned Union Territory), shall be answerable in case of default.

8) The concerned Secretaries to the Government shall be responsible of monitoring the progress, and issuing necessary directions to the concerned Pollution Control Board, as may be required, for the implementation of the above directions. They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data, and shall furnish the same to the Bench of the jurisdictional National Green Tribunal.

9) To supervise complaints of non-implementation of the instant directions, the concerned Benches of the National Green Tribunal, will maintain running and numbered case files, by dividing the jurisdictional area into units. The above mentioned case files, will be listed periodically.

10) The concerned Pollution Control Board is also hereby directed, to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters.

11) It would be in the interest of

implementation of the objective sought to be achieved, to also require each concerned State (and each, concerned Union Territory) to make provision for "online, real time, continuous monitoring system" to display emission levels, in the public domain, on the portal of the concerned State Pollution Control Board. Such measures shall be put in place by all the concerned State Governments (including, the concerned Union Territories), within six months from today.

#### **Implementation of the Order**

This order will test how State Pollution Control Boards of various states implement it. It will also be crucial for the affected people and organisations to put their efforts to get this order implemented. It is going to be very tough fight for the affected people and organisations. If Gujarat State Pollution Control Board agrees in letter and spirit of this order then it should immediately start its action by cancelling the 'Consolidated Consent and Authorization' (CC & A) and issue closure to 'Narmada Clean Tech (NCT), Ankleshwar as the 'Final Effluent Treatment Plant' (FETP) has consistently been unable to meet the prescribed GPCB norms since its inception. It should also declare 'Chemical

Emergency' for 'ECP Industrial Cluster' of Vadodara District and cancel the 'Consolidated Consent and Authorization' (CC & A) of 'Vadodara Enviro Channel Limited', Cancel the 'Environment Clearance' (EC) of all the defaulting polluting industries of the 'ECP Industrial Cluster' of Vadodara District. Similar action is also warranted against all such treatment plants across India which are not able to meet the prescribed norms.

Our environmental laws only talk about deterrent punishment to those who endanger human environment, safety and health but they lack any specific provision which mandates that Indian State, Governments and industries conduct studies on an Industrial Cluster *vis-a-vis* it impacts on environment and health. And that is why one will also not find clear cut provision to provide compensation to the affected people. Even in 'The National Green Tribunal Act, 2010' in section 15 dealing with relief, compensation and restitution, the burden to provide the studies and research to ask for the compensation is put on the affected people.

The Bhopal Disaster is a prime example that exposes the fragility of Indian Environmental Law,

particularly its lack of any clear cut provision to mandate studies relating impact of Industry / Industrial Clusters and environment and health. This is largely why the affected people of Bhopal are deprived of their rights to fair and just compensation and also to prosecute the culprits.

These glaring violations clearly indicate that all of us should now lobby for application of charges under Sections 302 of the Indian Penal Code (attempt to murder/murder) against governments and industries complicit in endangering earth and environment. The present capitalist, social order is not capable of following its own laws while in pursuit of its growth model. It is time for all us to compel the governments and its institutions so that they allocate required resources for the studies and research which co-relating impact of Industrial Clusters on environment and health and also conduct such studies and research. All the organizations, movements and affected persons in industrial areas need to get together their act to ensure that this order just don't remain on paper.

*\*Rohit Prajapati is National Secretary of PUCL. □*

## **Government Policy & Action on Highly Hazardous Substance ASBESTOS**

### **Jagdish Patel\***

**Hazards of Asbestos:** All forms of Asbestos, including white alias Chrysotile, are highly hazardous. WHO position on asbestos is: All types of asbestos cause lung cancer, mesothelioma, cancer of the larynx and ovary, and asbestosis (fibrosis of the lungs). Exposure to asbestos occurs through inhalation of fibers in air in the working environment, ambient air in the vicinity of point sources such as factories handling asbestos, or indoor air in housing and buildings containing friable (crumbly) asbestos materials. In 2004, asbestos-related lung cancer, mesothelioma and

asbestosis from occupational exposures resulted in 107,000 deaths and 1,523,000 Disability Adjusted Life Years (DALYs). In addition, several thousands of deaths can be attributed to other asbestos-related diseases, as well as to non-occupational exposures to asbestos.

**Report of working group:** A Working Group under the chairmanship of PC Chaturvedi, Secretary, Ministry of Labour & Employment, Government of India, was constituted by Planning Commission to prepare the 12<sup>th</sup> Five Year Plan on Occupational Safety and Health at the workplace.

Report was submitted in August, 2011 to the Government. On the issue of asbestos, the report noted as under:

"It is also high time that the government take initiative in formulating a national plan for prevention and control of silicosis and asbestosis in India so that the objective of the WHO to eliminate silicosis by 2030 is achieved."

"There is an increasing pressure from all the concerned stakeholders for urgent action for protecting the workers and the general population against primary and secondary exposure to Chrysotile form of Asbestos fibers.

Greater concerns on the central government are whether or not to ban the mining and use of chrysotile asbestos in India. Besides this a similar concern is felt through International community bringing pressure on the government for immediate action on the control measures and its elimination."

India continues to refuse scientific evidence:

This was in 2011. Pressure to protect workers and general population has not diluted. Still, the recommendation was obviously overlooked by the then Government and present Government now.

At recently concluded Conference of Parties of Rotterdam Convention to which India is a party, India continued to object inclusion of Chrysotile asbestos in the list in Annex.III of the convention. This it has done consistently since 2007 (except once) when it came for discussion. We wonder if this is same UPA Government ruling us! When we heard of slogan of *Achchhe Din*, and *Congress Mukta Bharat*, we thought, gone are the days when Chrysotile enjoyed Government support. That did not happen.

Ministry of Chemicals and Fertilizers, on 4-07-16 wrote to National Human Rights Commission that "In August, 2014 a meeting was held under the Chairmanship of Minister (Chemicals and Fertilizer) and it was decided in the meeting that since NIOH study on asbestos does not indicate any significant health or environment hazards resulting from the use of Chrysotile asbestos under proper conditions, coupled with the fact that asbestos products are quite cost effective for use by the masses, India may not support the inclusion of Chrysotile in Annex III at the COP meeting in 2015." So, they were not much concerned about the impact of asbestos as much that of its cost effectiveness! They did not consider the economic burden of diseases due to asbestos. They did not look at the critique of the study carried out by NIOH by

international experts on asbestos. If asbestos is significant hazard for Britain, Australia, Japan, European countries and even Nepal and Sri Lanka why it is not hazardous for Indian masses? Where was the Ministry of Health and family welfare? Where was the Ministry of Labor? Where was the Ministry of Environment and Forest? Where was Ministry of Commerce & Industry? Were they party to this decision?

**National Asbestos Profile:** Occupational and Environment Health Network India (OEHNI) recently launched National Asbestos profile. According to this profile, India does not mine asbestos. It depends on import from Russia, Kazakhstan, and Brazil etc. Canada was biggest exporter of asbestos to India but Canada, too banned that export. India is one of world's largest importers of asbestos. In 2011-12 it imported over 378,122 tons, 396,493 tons in 2014-15 and by 2017 it is expected to rise by 605,000 tons with 9% growth. Asbestos and asbestos containing products are produced in over 150 different factories in India. Over three quarters (77%) of the units are located in the western industrialized states of Gujarat and Maharashtra alone.

**Asbestos related diseases on rise:** At the same time asbestos related diseases, too are on rise. In Ahmadabad during 2009-2012, 21 cases of mesothelioma were reported at Gujarat Cancer Research Institute, Ahmadabad while in 2013, only during one year they diagnosed 23 cases of mesothelioma. Mesothelioma is one of the rare cancers. Since 2010, Turner & Newall Trust has paid compensation to 1045 workers who worked in their subsidiaries in India. Rajendra Pevekar from Mumbai never worked in any asbestos factory but his father worked. His father brought home some asbestos fibers on his work clothes unknowingly and exposed the family members. Exposed In his childhood Rajendra is suffering from asbestosis now. His mother too is suffering from asbestosis.

Numbers of his father's colleagues and their families have been victims of asbestos. Rajendra represented asbestos victims in India in COP8 of Rotterdam Convention held at Geneva from 24 April to 5 May, to present their woes and appeal one and all to include chrysotile asbestos in PIC list to restrict trade of one of the most deadly material.

**Our neighbors are more progressive:** The hazards of Asbestos are well known. 55 countries have banned its use, trade, import, mining, manufacturing and other economic activities related asbestos. Land locked tiny country Nepal has already banned it while Sri Lanka has declared to ban import of asbestos roof sheets from 2018. They have planned to cease use of all asbestos products by 2024. Both are an inspiration for India.

**Restrictions would not have any adverse impact:** We strongly believe that restrictions on asbestos trade would not have any adverse impact on the trade. If included in PIC, importers will have better choice. They may then have opportunity to use safer alternate raw materials for their products. World will move towards healthier, safer and just world.

**Position of the Indian Government at Rotterdam Convention:** For the last ten years' chrysotile asbestos has been recommended for listing in the Rotterdam Convention which adds restrictions to its trade. It has been blocked by a few countries who gain directly from the export of asbestos. Though there is credible and adequate scientific and medical evidence about the deadly nature of asbestos, the Government of India is refusing to learn any lessons. At the Rotterdam Convention meetings, India has not favored to include chrysotile asbestos in Prior Informed consent (PIC) list. At recent COP meeting, issue of inclusion of chrysotile came up on May 3. Speech by the India's official delegate Biswanath Sinha in the plenary was probably the longest one. He shocked the audience when he said that chrysotile does not meet the

criterion set up by Chemical Review Committee (CRC) of the Convention! Chrysotile was cleared by the CRC for inclusion in list of PIC way back in 2007 and here is Indian official delegate complaining now that it does not meet with the criterion. Countries like Russian Federation, Zimbabwe or Brazil producing and exporting chrysotile even did not dare to level such serious charges as leveled by the Indian delegate. He went on to add that EU and Australia banned chrysotile based on old studies! He added that "some people have been brought from India to protest" As soon as he finished, RC COP8 President Perrez recalled that RC COP3 had agreed that all the criteria for listing was met, and that the question remaining was whether to list. Canada, Ecuador, Nepal, Republic of the Congo, Colombia, the EU, Uruguay, Malaysia, Nigeria, Norway, Senegal, Serbia, Peru, Australia and Iraq supported listing. Many countries cited national legislation to control or ban chrysotile asbestos and chrysotile asbestos-containing products, and several emphasized there is no safe threshold for exposure. Underscoring that the RC does not ban chemicals, the EU expressed concern that opponents to listing "misunderstand" the Convention. Tonga, speaking on behalf of the

Cook Islands, Marshall Islands and Kiribati, supported listing, citing growing threats posed by chrysotile asbestos due to low awareness of risks and natural disasters exacerbated by climate change. WHO said evidence that chrysotile asbestos is carcinogenic is "conclusive and overwhelming." Rotterdam Chrysotile Alliance (ROCA) highlighted the experience of a worker diagnosed with asbestosis due to workplace exposure. Industrial highlighted workers' rights to safe workplaces. The Russian Federation, Zimbabwe, India, Kyrgyzstan and Belarus called for more scientific data and review and, with Kazakhstan, Syria and International Alliance for Trade Union Organizations "Chrysotile," opposed listing.

**Indian bureaucrat made fun of asbestos victim:** On May 2, Biswanath Sinha suddenly walked up to Rajendra Pevekar, asbestos victims from Mumbai and without introducing himself, intimidated him asking in Hindi, "who brought you here? Why have you come here? It seems you have come here to enjoy beauty of Switzerland. Ok, enjoy and have fun.."Rajendra was shocked and inquired who he was. He then introduced himself as head of Indian delegation but did not reveal his name. Some other delegates from India knew him and

helped us know him after he left us. Next say he again walked up to us and repeated his statements when we strongly objected and offered to show him the medical evidence. Asbestos victim is passing through a tiring time and here is top bureaucrat making fun of him! When objected, he defended himself to say that his views may be different. We learnt that even during COP7 he had intimidated asbestos victim from Mumbai Mr. Sawant who had attended COP7. How insensitive are the Indian bureaucrats! The officers who travel at public expenses have no right to ask Indian citizens such questions and intimidate them.

**Safe alternatives are available:** When safe alternatives are available why Government should continue asbestos exposure to the workers and the community? 55 countries who have banned its use, don't find any difficulties, why would we? Nepal and Sri Lanka, two small countries in our neighborhood have cared for their workers and citizens why our Government do not seem taking this care? Government of India is even not favoring any restrictions on the trade of this deadly material. How long our Government will continue work under industry pressure and do not take independent policy decision?

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## New and Old Onslaughts on Rivers Shripad Dharmadhikary

**Let me start this piece with three recent developments.**

**Riverfront Development and Beautification:** In early May 2017, a leading economic newspaper of the country carried a half page ad announcing auction of plots of lands overlooking the Sabarmati river in the heart of Ahmedabad city. The Sabarmati River Front in the city has been in the news in the last few years as a model of "river beautification".

The reality is that Sabarmati is a dead river, and the only thing flowing in it was effluents and sewage. It was "rejuvenated" by

water of the Narmada diverted into it from the Narmada canal – water obtained at a great cost of the displacement of lakhs of people and destruction of the environment. People living on Sabarmati banks in the city were evicted – and resettled only after a long struggle – to obtain clear patches of land along the river bank. This land was concretised to create a water channel of dubious beauty. Now, parts of the river front land are being put up for auction<sup>1</sup> "to create iconic world-class mixed use, housing and corporate head quarter buildings, in a truly unique

river facing setting".

In other words, land and water that were obtained at massive human costs are now being offered for sale to large corporates and premier housing developers. The Sabarmati riverfront development represents in every way the usurpation of community resources like rivers and common spaces for the private use of the elite. It is now becoming the model for development of other riverfronts, like those in Lucknow, Varanasi and other places.

**Inland Waterways:** On 9<sup>th</sup> March 2016 Parliament enacted The



National Waterways Act, 2016<sup>2</sup>, which received the assent of the President on 25<sup>th</sup> March 2017, and came into force from 12 April 2017 as per the notification of the Government of India<sup>3</sup>. This act has declared 111 rivers or river stretches, creeks, estuaries as National (inland) Waterways. This includes 5 waterways which had been so declared earlier, but where not much development has taken place.

While navigation in rivers, lakes and other water bodies has been around since centuries, this has been more in the form of smaller vessels, connecting places not too far from each other. The national waterways project now intends to create such large scale, commercial shipping and navigation systems in these 111 waterways. Converting rivers into waterways to make most rivers navigable throughout the year for heavy and large vessels will require massive dredging, river training works, straightening of rivers, construction of barrages, locks and gates and terminals and other facilities. This will not only affect the ecology and aquatic flora and fauna of the river, but will also have severe impacts on livelihoods of local people like fisheries, boating and riverbed cultivation. Once again, a new process of "developing" rivers which will displace the economies and cultures of local communities to favour big business, big players.

**Mahanadi Dispute:** Sometime in 2016, the Government of Odisha raised a dispute with the Government of Chhattisgarh on the sharing of the waters of the Mahanadi, a river common to the two states. Odisha claimed that Chhattisgarh, the upper riparian, was constructing a series of dams and barrages to divert large amounts of water, and this would affect the flow into its boundaries. Chhattisgarh claimed that it was new state and had a right to develop its resources for its own use, and that there was plenty of water in the Mahanadi and so Odisha would not be affected. The dispute started becoming ugly and threatens to escalate. In the meanwhile, a group of farmers' organisations, people's

movements and civil society organisations from both states have come together to hold joint programs, highlighting that it's not an Odisha vs Chhattisgarh issue at all. The real issue is that both the states are diverting and planning to divert massive quantities of water from use in agriculture to use in industry.

Again, a picture emerging of water being diverted to large corporates and big business interests.

The developments in Sabarmati, in the inland waterways, in Mahanadi, all represents newer forms of an onslaught on rivers that has been underway for decades – in which their flows are dammed and diverted, in which the water (and the watercourse) is captured largely for the benefits of the rich and powerful, in the process of which the natural ecology, morphology, hydrology, even their physical watercourse is destroyed, and lives and livelihoods of local communities are devastated.

**A Questionable Paradigm of Water Management:** At the core of this is the dominant paradigm of water management, dominant because it is controlled by and benefits the politically and economically powerful. The central tenet of this paradigm is that any water that is not used is a "waste". Its most common articulation – stated in so many word in many an official document – says that any water of the river that flows down to the sea is a waste.

There are several other characteristics of this paradigm. Any water that is not used is indeed waste as per this model, but even this use must be for humans. If the water of the river or lake is being used by non-humans – like it is most of the time – then it is not considered as a valid "use". And when we create infrastructure to make use of water for humans, we don't care too much if this deprives other life forms, animals, plants of water. However, even in human use, there is a hierarchy. The needs of the powerful, the rich, are a priority. Needs of others – the poor, Dalits, tribals, women – merit a place only much lower down, on the periphery of the water planning and management. Not surprisingly, not only are their needs not being met,

but existing structures that helped them survive are being destroyed by the developments led by the dominant paradigm. Last but not the least, the dominant paradigm sees water a good, a commodity that can be bought and sold, that is mainly useful for economic and commercial purposes, to the exclusion of the multi-faceted roles that water plays as a sustainer of life, as a part and parcel of ecology, as an integral part of people's culture, society and identity.

The implementation of the dominant paradigm has led to dead and dry rivers, polluted waters, destroyed ecology, and devastated communities.

#### **Challenging the Dominant Way:**

The dominant way of looking at water and rivers, of managing them, has been continuously challenged by affected communities, social and environmental activists and by those working for sustainable and equitable development. Over the last many decades, this has evolved into an alternative paradigm of looking at water, a paradigm that talks about meeting the needs of all humans, not just a dominant section, at the same time also ensuring water for the needs of non-humans, and doing this in a manner that preserves, conserves and restores natural water bodies, and respects the multiple roles played by water. Transforming the way water is managed from the current paradigm to the alternative paradigm is a huge challenge, a challenge that a number of people are struggling to meet. And there are some indicators of change. Without being too optimistic, and acknowledging how powerful vested interests are, we need to look at these changes more as strategic leverages that struggles, movements and campaigns can use.

Here, I want to discuss one of the most important developments in this, that of environmental flows.

#### **E-flows – Overturning the Dominant Paradigm:**

Environmental flows or e-flows, in simple words, is nothing but the requirement that a river must continue to flow. As a concept, it is nothing new. For decades, dam affected communities,

environmentalists, concerned citizens have been saying that we cannot divert all the waters from a river (or any water body), and that the river must continue to flow, to maintain its ecology, and to provide for the livelihoods, social and cultural needs of riparian communities. In the last 10-15 years, this concept has been transformed into a more structured and formal, multi-disciplinary field known as environmental flows. The important thing about this approach is that it is at once a scientific and political process, where knowledge and people come together to determine how the river can continue to flow and also satisfy our needs.

A widely accepted definition of e-flows – from the Brisbane Declaration is that e-flows describe "the quantity, timing, and quality of water flows required to sustain freshwater and estuarine ecosystems and the human livelihoods and well-being that depend on these ecosystems".

In recent years, the government as well as the establishment has accepted the need to maintain environmental flows in our rivers. The National Water Policy of 2012 states:

"Ecological needs of the river should be determined, through

scientific study, recognizing that the natural river flows are characterized by low or no flows, small floods (freshets), large floods, etc., and should accommodate developmental needs. A portion of river flows should be kept aside to meet ecological needs ensuring that the low and high flow releases are proportional to the natural flow regime..."

While the legal regime has still not properly incorporated e-flows, it is finding increasing acceptability and space. For example, the Ministry of Environment, Forests and Climate Change is making e-flow releases mandatory when giving environmental clearance to new dam projects, even though the actual quantum and pattern of these e-flows is still being determined on an *ad hoc*, unscientific and non-participatory manner.

The importance of e-flows comes from the point that it completely overturns the dominant paradigm of water management. The dominant model says that any water that flows away into the sea is a waste. The e-flow approach requires that significant quantities of water must flow down and into the sea, to keep the rivers flowing.

**Strategic Approach Needed:** The increasing acceptance of e-flows (and of several other key principles of the alternative model) offers important leverage points. But huge challenges continue to be there. Traditional ways of capturing rivers and water for the elite, without thinking about the consequences for the ecology or for the masses, continue. This is seen in the massive plans for building hydropower dams in Himalayas, or in the ambitious plans of Inter Linking of Rivers. At the same time, newer methods like waterways development and others mentioned above are also being pushed in a big way.

Thus, we have to keep both these processes in mind and act strategically to push water management in the country in a more just, equitable and sustainable direction.

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## Soon, We May Not Have a Cauvery River to Fight Over

Nityanand Jayaraman\*

Two days ago, a journalist asked me if the next World War will be over water. That question was triggered by the recent violence in Karnataka and Tamil Nadu supposedly over Cauvery's waters. There is no doubt that water conflicts are set to increase and intensify. But it would be wrong to suggest that the hooligans that engaged in loot and arson on either side of the border were actually soldiers in any World War. I think they had no agenda beyond their love of violence and the sound of breaking glass.

That is not to say that there is no conflict over Cauvery's waters. The conflict is real, and has been since the princely Mysore state began seeking a role in determining how Cauvery's waters were to be shared. If anything, the conflict is only likely to worsen. This instance of violence

may have brought out only the hooligans in our midst; the conflicts to come are likely to bring out the hooligan in each one of us.

The possibilities of a de-escalation of conflicts over Cauvery's water are remote given that two principal stakeholders – the River Cauvery and future generations – are not represented in all the negotiations in the tribunal and the Supreme Court. What is being referred to as a water-sharing formula is little more than a loot-sharing formula for divvying up the booty.

**Some history:** There is more than a century's history to the problem. From medieval times up until the mid-19th century, Tamil Nadu had undisputed access to Cauvery's waters. Early engineers from the Chola era onwards had carved out irrigation tanks, and diverted

Cauvery waters through anicuts and canals to irrigate farmlands. Irrigated agriculture in the Cauvery delta was already well-developed centuries before the East India Company swung by Madras. The upper riparian stretches of the Cauvery, notably the Mysore principality, were late starters in irrigated agriculture. When it did begin in the 19th century, attempts by the Mysore state to divert Cauvery water even with minor structures were viewed with suspicion and indignation by the lower riparian farmers in the then Madras Presidency. They feared a decrease in their own share of the river's waters. Citing historical use, delta farmers claimed prescriptive rights to the river's water.

The first two agreements, of 1892 and 1924, were aimed at ensuring that the upper riparian's right to

develop its agriculture is not hindered by delta farmers, and that the latter's historical use is not infringed upon by the water users in Mysore.

**Not about farmers:** The bus-burning and stone-pelting in Karnataka and Tamil Nadu happens, they say, only during distress years when the two states vie to retain an adequate share of the meagre spoils from the river. Solidarity is quick to coalesce for the Tamils or Kannadigas depending on whose buses are being burnt that season. Sadly, though, no one weeps for the Cauvery itself. Regardless of whether it is a distress year or a normal year for the people of the two states, every year is a distress year for the river. From Mercara to the Bay of Bengal, Cauvery's journey is fraught with danger and abuse. If stewardship were a pre-condition to enjoying the waters of the river, neither Tamil Nadu nor Karnataka would qualify for even a drop of the river's water. But stewardship is not on anyone's agenda. *It is surprising that after all that hot-blooded South Indians have done to their river, there is still a river left to fight over.*

A casual reading of the Cauvery tribunal's 2007 award reveals how the river is viewed as a mechanistic producer of water, not as a dynamic life-giving system that is responsive to local and global triggers of use and abuse. Demand for water within the basin has grown multi-fold. Simultaneously, degradation of catchments and sand mining have compromised the river's ability to sustainably produce water. The proverbial goose that lays the golden eggs is sick and calling for help. Everyone seems intent on squeezing out the last egg. What about trying to keep the goose alive?

**What ails the goose?** The Cauvery originates in the Brahmagiri ranges of the Western Ghats in Kodagu. High-range tributaries like Harangi, Suvarnavathi, Hemavathi, Lakshmanathirtha and Kabini join the Cauvery where the ghats flatten out to become the Mysore plateau. In the plateau, or *maidan*, the rivers Shimsha and Arkavathi join waters with the east flowing Cauvery. Arkavathi is fed by Vrishabhavathi, which drains half of Bengaluru.

In Tamil Nadu, Moyar, which joins Bhavani, Amaravathi and Orathar, which in turn adds to Noyyal, empty into the Cauvery. Kulithalai in Erode is about where the delta begins and the Akhanda Cauvery (or *broad Cauvery*) starts its slow plod to the

sea through seven distributaries with beds of sand – Nandalar, Nattar, Vanjiyar, Noolar, Arasalar, Thirumalairajanar and Puravadaiyanar.

The 19<sup>th</sup> & 20<sup>th</sup> centuries witnessed massive interventions in the river's hydrology. All major tributaries – Hemavathi, Kabini, Arkavathi, Amravathy, Bhavani – were dammed. New and large reservoirs like Krishnarajasagar, Bhavanisagar and Stanley Reservoir were created. Minor reservoirs over Orathar-Noyyal and Amaravathi came up. New areas were opened up for water-intensive cash crops in Mandya, Hassan, Erode, Salem and Coimbatore aided by canal- and borewell-based irrigation. And the reservoirs attracted water-intensive industries like flies to honey.

Physiographically, the river flows in three parts: the Western Ghats, the Mysore Plateau and the Delta.

**The Ghats:** The erstwhile Kingdom of Mysore had two natural landscapes – the *malnad*, or hill country, and the *maidan*, or the plateau. It is in the hills that South Indian coffee production took root in the 19th century. From being a peasant crop that was grown in every backyard, coffee became a hot commodity and a mixed plantation crop with the worldwide export of the beans grown in the shaded, stream fed forests of Kodagu gathering steam. Today, Kodagu coffee is grown by 42,000 families over 104,000 hectares. Early planters did alter the landscape but preferred the hardy, shade-giving native evergreens such as rosewood, wild fig and jackfruit. Unlike the tea estates that devastated the countryside, Kodagu coffee planters retained enough of the original habitat to nourish biodiversity and maintain the hydrology.

But that habitat has begun to change particularly rapidly in the latter half of the 20th century and then the 21st century. Responding to global market triggers, the area under coffee has expanded at the cost of forests within private landholdings, and agro-forestry lands under cardamom. An assessment by the Coffee Agro-forestry Network in Kodagu of forest-cover change between 1977 and 1997 indicated that it had declined by 28%, from 2,566 km<sup>2</sup> to 1,841 km<sup>2</sup>. Medium elevation evergreen forest, which decreased by 35%, was the most depleted forest type according to the study.

Climate change too was triggering land-use change. Rainfall over the coffee-growing tracts of Kodagu has been erratic over the last three decades, reports environmental journalist GopikrishnaWarrier. CAFNet's study of 60 years of rainfall data from 116 coffee farms revealed that the rainy season had shrunk by 14 days over the last 35 years. Shade-grown coffee requires predictable blossom showers in the early months of the year. With rains becoming increasingly erratic, farmers are finding shade management tiresome; they are switching to irrigation, intensive open cultivation and substituting the native evergreen shade trees for the more exotic, fast-growing and remunerative Silver Oak.

CAFNet concludes that these changes "may affect ecosystem services like water supply, carbon storage and biodiversity."

High range forests are also being cut down for infrastructure development; this also will have a bearing on Cauvery's headwaters. In July 2014, the National Green Tribunal dismissed a petition by the Coorg Wildlife Society challenging a 55-km high-tension electricity transmission corridor that cut a swathe through the womb of the Cauvery in the Brahmagiri ranges. At least 20,000 evergreens were to be sacrificed just in the Brahmagiri and Pushpagiri ranges. The case was dismissed not on merits but on a technical ground that the petitioners did not show sufficient reason for condonation of delay in filing the petition within the period of statutory limitation.

**The Mysore plateau and the Maidans:**

In 1934, construction of the Krishnarajasagar dam was completed; subsequently, reservoirs came up over Hemavathi, Yagachi, Harangi and Vattehole rivers. This led to the development of intensive irrigated agriculture in the Mandya and Hassan districts of Karnataka. The Cauvery basin reservoirs irrigate more than 100,000 hectares in Mandya and 47,000 hectares in Hassan district. With paddy, banana and sugarcane as key cash crops, the agriculture across the Cauvery basin is not just water-intensive but also fertilizer and pesticide intensive. The assured supply of reservoir water irrespective of seasons also attracted water-intensive industries. The Nanjangud Industrial Area located on the banks of the Kabini houses 83 large, medium and small

industries in a 532 acre plot 25 km from Mysore. Predictably, the Kabini leaves Nanjangud loaded with contaminants from the industrial area and domestic sewage.

The Mysore side of the river too has seen a spurt of water-intensive industries. A study by the Karnataka Engineering Research Station at Krishnarajasagara found that polluted wastewater from three industries – a paper mill, a distillery and a fertiliser manufacturer – had rendered stretches of Cauvery near the once-famed Ranganathitoo Bird Sanctuary "unsuitable for drinking, bathing and fish culture."

The once sacred Vrishabhavathi River that runs through south Bengaluru is now a carrier of sewage and industrial effluents from the Peenya Industrial Estate. The city has one of the highest rates of water wastage in the country. According to a 2013 study by the Bengaluru-based Institute of Social and Economic Change, the city wastes 48% of the 1,400 MLD water pumped to the city. Bengaluru's rise from a sleepy little garrison town to an IT hub has destroyed everything that made the city a paradise. The city's water needs were once met by the large network of lakes, whose spillover would feed the Vrishabhavathi. From 261 in 1961, the number of lakes in this garden city has fallen to just 85 in 2016. Now, the city sends sewage to the Cauvery through the Vrishabhavathi, and pumps up water from the Cauvery 500 feet below.

A study by the Ashoka Trust for Environment and Ecology found high levels of toxic heavy metals, including nickel, copper, chromium and lead in soil and groundwater, and milk and vegetables from the nearby farms. The Vrishabhavathi Sewage Treatment plant that was designed to handle 180 MLD of raw sewage only receives 130 MLD. Of this, only 26 MLD arrives through underground sewers. The remainder is sewage and industrial effluents that flows in the river's course.

Paraphrasing the 1960s singer Tom Lehrer, what they flush out at breakfast in Bengaluru, we drink for dinner in Tamil Nadu. The Karnataka minor irrigation minister is reported to have revealed in the Assembly that more than 1,400 million litres of sewage is discharged daily into Tamil Nadu. That is nearly 20 TMC from one city in one year – three times the allocation for Pondicherry, and twice the allocation for 'environmental

protection'.

**Some plateau and the delta:** Karnataka had only 316 km of the 800 km river to abuse. They have not done too badly, considering that most of it is in inaccessible, difficult-to-pollute hilly terrain. Tamil Nadu is blessed with 416 km of Cauvery, all in gently sloping ground and plains.

The Stanley reservoir, or Mettur dam, is the barometer of tension between Karnataka and Tamil Nadu. Within two years of the reservoir's construction, the first industry had come up based on water availability. Mettur Chemical and Industrial Corporation was set up in 1936. Within 15 years, it was already identified as a major polluter of the Cauvery and as the cause of mass fish mortality. Discharge of effluents into Cauvery from this company continued for several years after 2007, when the company's successor Chemplast Sanmar announced zero liquid discharge plans.

On one bank of the Stanley reservoir is a mountain of red mud – a toxic residue from years of alumina production by the Madras Aluminium Company, Ltd. Every passing rain washes a little of the poison into the reservoir.

As if that were not enough, tens of small- and medium-scale chemical industries in the SIDCO industrial estate continue to discharge their effluents through natural drains and engineered canals into the Cauvery. Beneath the reservoir, on the banks of the original river course, sits a 1,240-MW water-guzzling coal-fired thermal power plant operated by TANGEDCO. The Mettur Thermal Power Station has permission to draw 184 MLD (2 TMC annually) of river water. Coal ash from the plant is dumped up on a hill, from where it finds its way back to the river. Roughly 45 km from here is where the Bhavani joins the Cauvery in Erode district. By the time it reaches the Cauvery, the Bhavani carries the effluents from dyeing industries, leather tanneries and pulp and paper mills – all heavy water-users and heavier polluters. The industrial town of Salem discharges about 35 MLD of untreated sewage into the Cauvery through the Thirumanimuthar. This sub-tributary was converted from a river to a concrete lined drain with money borrowed from the World Bank.

The Lower Bhavani river stretch receives about 38,000 cubic meters

of effluents and wastewater from the industrial cluster around Mettupalayam town. Additionally, untreated sewage from Mettupalayam, Sathyamangalam, Gobichettipalayam and Bhavani are also discharged into the Bhavani. Pesticide-laden waters from the coffee and tea plantations of the Nilgiris contribute their bit to the Bhavani.

Further east, the Noyyal, with its notorious effluent-filled Orathupalayam dam, joins the Cauvery. This river, once a lifeline for farmers, is now biologically dead, killed by the exports of the dyeing and bleaching industries from western countries to the hosiery town of Tirupur on its banks. In 1980, there were just 26 bleaching and dyeing units in Tirupur. In 2001, there were 700.

Water withdrawals from the Noyyal sub-basin were 4.4 MLD in 1980; one study projected it to increase to more than 115 MLD in 2005. Growth, development and the pursuit of the good life depleted local water sources and polluted what remained. Now, Tirupur draws water from Bhavani's confluence with Cauvery, about 55 km away. A public-private partnership – the New Tirupur Area Development Corporation, Ltd. – was set up to supply 185 MLD (2 TMC) water of which 125 MLD was reserved for the textile industry. About 120 MLD of effluent is released in the basin. All along the Cauvery's route, it picks up not just industrial effluents but also municipal solid waste and untreated or partially treated urban sewage.

The post-liberalisation construction boom has birthed a new mafia in Tamil Nadu: the sand mafia. Cubic metre for cubic metre, sand has proven to be even more valuable than water. From Kulithalai in Erode, where the Cauvery expands to a breadth of 1.5 km, the river bed is largely sand. The sand is a spongelike storehouse of freshwater that feeds riverside wells and keeps the farmers happy. About 60% of the states sand requirement is met by sand mined from the Cauvery basin. Legal or illegal, the quantum of sand that is being removed has harmed the ability of the river to remain a river. And sand-mining operators are a ruthless lot with friends in the district administration, assembly and the police.

**Root cause is demand:** It is surprising that after all that hot-

blooded South Indians have done to their river, there is still a river left to fight over. The scale of abuse is evident. Yet, it has escaped the attention of the members of the tribunal and the Supreme Court. The complexity of river systems, the hydrological dynamics that determine their ebb and flow, and other anthropogenic confounders such as land-use change and climate change have had no influence on the tribunal order.

The 2007 award that was 16 years in the making is meaningless drivel. From its declaration that a "Normal year" will be a year in which the Cauvery yields 740 TMC to divvying up this yield with an arbitrary 10 TMC to spare for "environmental protection", the Tribunal's award exposes its hurry to deploy reductionist arithmetic hydrology rather than confront the confounding elephants in the room – ever-increasing demand, climate change and land-use change. The inimitable Ramasamy Iyer says it best in his article already cited above:

Finally, interstate or inter-country river-water disputes often arise because the combined water

demand of all the co-riparian states or countries exceeds the water that is there in the river in the lean season. The "development" that we have embarked on involves a heavy draft on natural resources as well as the infliction of heavy damage on those resources and on nature itself. In the context of water, this leads to inter-use, inter-sector, inter-area and interstate conflicts. There is ever a demand for more water and still more water; we are asking for water that does not exist. Unless we abandon this competitive, unsustainable demand for water, and learn to use prudently, effectively and harmoniously the water that is available, there will be no end to conflicts. The notions of "development" and "growth" that lead to that kind of demand need to be re-examined.

If tensions rise only in times of scarcity, it is the notion of scarcity and the scarcity itself that need to be addressed. Scarcity is a function of demand and supply. It can be reduced by increasing supply and reducing demand. In the case of the Cauvery, the same policies that

increase demand (and trigger growth) – construction boom, infrastructure development, intensification of agriculture – also harm the river system and its ability to produce and carry water. For the Cauvery, and most of India's rivers, available supplies can be enhanced by preventing pollution and safeguarding the river's catchments, banks and riverbeds. Replacing water-intensive agriculture and industrial practices can free up more water than we currently need. Rather than find new uses for it, this water should be reserved for the river. The 10 TMC of water allocated for "environmental protection" by the tribunal is meaningless considering that just one city – Bengaluru – dumps 20 TMC sewage into the Cauvery.

Today's planners try to spare water for ecological flows, not realising that ecological flows are what keep the river a river.

*\*Nityanand Jayaraman is a Chennai-based writer and social activist.*

*(Courtesy: The Wire, issue dated 18.9.2016) □*

## Why is the government pushing these rivers destroying hydropower projects? Himanshu Thakkar & Parineeta Dandekar

There are a lot of misconceptions about hydropower projects. They largely come from the statements of project proponents and government that hydropower is clean, green, renewable, cheap source of power. All this gives an impression that hydropower is environment and river friendly. This is a totally wrong impression.

A typical hydropower project involves a dam on the river, a water conductor system to take the desilted water from the dam to the machines of hydropower project, turbines and generators that uses the kinetic energy of the water to generate electricity and a tail end canal to take the water back to the river. These components have a number of impacts on the river and surrounding habitat during construction. The project could involve damming, deforestation, submergence, displacement, mining of material, tunneling, blasting, diversion of river, creating millions of cubic meters of muck, change in flow pattern of the river and everything that flows with the river. Since such projects mostly

come up in hilly regions which are inherently vulnerable to disasters in a number of ways, the hydropower project hugely increases the disaster vulnerabilities, as we could see in Uttarakhand during the June 2013 flood disaster.

There are also large number of adverse impacts of the projects during its operation. The river downstream also becomes a hazardous zone, with sudden flow of large quantities of water during some periods and then no flows or very low flows during other periods. The river flow gets disrupted, its biodiversity destroyed, the habitat totally changed. The river is no longer able to provide most of the functions and services that it provided before the project was built. The fisher people who depend on the river lose their livelihoods and also source of protein. These impacts on the fisher folks and other people have never been assessed, compensated for, no question of including them in any rehabilitation. Thus, even the river downstream and upstream from the project gets adversely affected in

multiple ways.

To illustrate, about 10 000 fisherfolks in Narmada estuary area have lost their livelihoods after the construction of Sardar Sarovar Dam on the Narmada River in Gujarat, but they have not even been compensated for the livelihoods they lost. Now the Gujarat government wants to build Bhadbhut barrage on the Narmada River close to the estuary, in the name of addressing the salinity ingress, but this will have further impact on the Narmada river and fisherfolks. The fisherfolks are naturally opposing the Bhadbhut project. In that context, it was strange that the Prime Minister of India, Shri Narendra Modi, at the concluding session of Narmada Seva Yatra on May 15, 2017 said<sup>1</sup>: "*Man Narmada se jitna loot sakte the lootate rahe! Apne swarthvash apni aavashyakta ke anusaar Man Narmada ki to parvah nahi ki, humne apni parvah jaroori ki. Man me wo adhikar bhav tha ki Man Narmada par to mera adhikaar hai, mein jaise chahun vaise uska upbhog kar sakta hun*". One wonders whom was he referring

to here.

All this also applies to so-called run of the river hydropower projects and also small hydropower projects. These projects also have huge impacts, the scale could be different depending on capacity, location, size of dam, length of tunnel, and so on.

We are supposed to have environment governance of hydropower projects involving environmental impact assessment, environment management plan, public consultations, independent appraisal, environmental clearance, monitoring and system of compliance. Unfortunately, none of these really functions in manner to achieve its objectives.

As they say, you cannot make an omelet without breaking an egg. But destroying a river is not like breaking an egg. Do we need to destroy more rivers in quest for hydropower?

**Unaddressed environmental impacts of Hydro Projects:** To address the serious environmental impacts of hydropower projects, including numerous impacts on rivers, we need credible Environment and Social Impact Assessment, followed by Environment and Social Management Plan. The next step in Environment governance of Hydropower projects is a public consultation, including public hearing at the location of the hydropower project. The Expert Appraisal Committee (EAC) for River Valley Projects in the Union Ministry of Environment, Forests and Climate Change (MoEF & CC) is then supposed to assess the adequacy of the EIA-EMP and public consultation. Based on the recommendation of the EAC, the MoEF & CC issues letter of Environment Clearance (EC) to the project, this is typically a conditional approval with upto 40-50 conditions. The EIA-EMP and the conditions of the EC are to be implemented during construction and operation phase of the project. To ensure compliance, the project developer is supposed to send 6-monthly compliance reports. There is also the regional office of the MoEF & CC which is supposed to visit the project to ascertain compliance.

When large number of hydropower projects are taken up in a river basin, the issue of cumulative impacts in the context of carrying capacity at river basin level also comes up. The ministry claims they have started doing Cumulative Impact Assessments (CIA), and Carrying

Capacity Studies (CCS).

All this sounds reassuring, but what happens on ground? No less than the Government of India's recent environment ministers like Shri Jairam Ramesh and Prakash Javdekar have publicly accepted that in reality, most of these steps are seriously compromised. We have yet to see what we can call an 'honest' EIA-EMP of a hydropower project or CIA-CCS of any river basin. Public Hearing process is fixed, as Ramesh has publicly accepted. But even if all those present at the public hearing were to say that the project is unacceptable or impact assessment is fraudulent, still the project is likely to get green signal. In fact, the rejection rate of the EAC for River Valley Projects over the last eight years is zero. The EAC members typically have serious conflict of interest and are rarely independent persons with credible environmental track record. On the issue of compliance, Javdekar publicly said that the project developer is happy to get the clearance letter, irrespective of what are the conditions of clearance, since they know, there is no one to check if the conditions are adhered to. Even when project does not submit compliance report for years, there are no consequences. MoEF officials say they do not have time to even read the compliance reports when submitted! And when civil society groups submit proof of violations, Jairam Ramesh said he cannot take steps since he has no way of ascertaining the reality!

One result of all this is that our rivers get destroyed by hydropower projects, though 90% of hydropower projects fail to deliver on their promise of power generation.

**Diminishing Returns from Large Hydropower Projects** Let us try to understand the power generation performance of India's large hydropower projects which we have been analysing for several years. The total installed capacity of about 150 large hydropower projects (above 25 MW capacity) of India at the end of April 2017 is 44594 Mega Watts (MW).

To compare the power generation performance at national level over the years, we calculated the power generation per MW installed capacity. As the graph below shows, the per MW power generation reached a peak of 3.97 Million Units (1 unit equals one Kilowatt Hour) in 1994-95, and in 2016-17, it was 30%

below that level. In simple language, power generation through each MW of installed capacity has been showing declining trend, and in just concluded 2016-17 every MW generated about 30% less power than what each MW did in 1994-95. During 1993 to 2016, the rainfall was above normal in majority years, so the declining trend is not due to lower rainfall.

Each hydropower project is taken up after techno economic appraisal, counting all factors, including availability of water. Each project is cleared on the basis of a promise that it would generate certain quantum of power at 90% dependability. When we compared actual generation of India's large hydro projects with their promised generation, we found that 89% of India's projects generate below the promised performance and half of under-performing projects generate below even half of promised generation!

There could be a third way of assessing power generation performance of hydropower projects, by calculating what proportion of such power comes during peaking hours. One of the USPs (Unique Selling Propositions) of hydropower projects is that they can provide peaking power, since the turbines of these power stations can be put on or put off at very short notice, which is not possible for thermal or nuclear power projects and it is not economical to put off solar or wind power projects when power generation from such projects is on. However, we have only anecdotal evidence about this and it shows that some of hydropower projects are not providing peaking power when they could have. India's electricity regulator, CERC, and data from the load dispatch centers have pointed out several such instances including in case of 1000 MW Tehri and 1500 MW Nathpa Jakhri hydropower projects.

As India's power minister has repeatedly announced, India is power surplus country and is net power exporter. The Plant Load Factors of Thermal Power projects that once used to be over 80% are now down to close to 50%, not because there is no coal, but because there is no demand. There are instances where even solar and wind power projects have been asked to back down due to surplus power. There have been no fresh Power Purchase Agreements signed

for several years. Private Sector seems no longer interested in Hydropower projects, because they know they are no longer viable. The tariffs of recent solar power projects have come down below Rs 3 per unit, when tariff of every hydropower projects now under construction would be Rs 5 and above, making them completely unviable even without counting the hidden costs of social and environmental impacts. Experience tells us that Hydropower is NOT climate friendly. The price of power at electricity exchanges has come down to less than Rs 3 per unit

most of the hours, making hydropower completely unviable. Thus, the Economics of electricity exchange markets and even the directly calculated costs (the environmental and social costs are never properly counted) tell us that large hydropower projects are no longer viable.

Why then is our government still bent on pushing these river destroying, socially disruptive, economically unviable, poorly performing, disaster enhancing and climate unfriendly hydropower projects?

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**References:**

<sup>1</sup><http://pib.nic.in/newsite/PrintRelease.aspx?relid=161803>

<sup>2</sup>An edited version of this was published as three part article in authors' RIVER SPEAKS column in DNA newspaper, see: <http://epaper2.dnaindia.com/index.php?pageidate=2017-2-12&edcode=820009&subcode=820009&mod=1&pgnum=2>, <http://www.dnaindia.com/india/column-unaddressed-environmental-impacts-of-hydro-projects-2334798> □

## Report: 8<sup>th</sup> Conference of Parties of BRS Convention

Basel, Rotterdam and Stockholm Conventions are international treaties to monitor and control use and trade of hazardous chemicals to protect people from its ill effects. Basel Convention is for Control of Transboundary Movements of Hazardous Wastes and their disposal. It entered into force in 1992. It has 186 parties. Rotterdam Convention is on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. It came into force in February 2004 and it has 157 parties. Stockholm convention is on persistent organic pollutants and it came in force in May, 2004. It has 181 parties.

According to UN Environment at least 1,40,000 chemicals are in circulation out of which only a fraction of chemicals have been thoroughly investigated for their environment impact. According to Food and Agriculture Organization 2,00,000 people die each year as a result of pesticides and 99% of these deaths occur in developing countries. According to WHO each year 1.7 million children under 5 die as a result of unhealthy environment, a quarter of deaths in the age group, with pollution the major contributor.

Every two years the members meet to discuss proposals and take decisions, which is known as Conference of Parties or COP. 8th COP met at Geneva from 24 April to

5 May. Theme of the meeting this time was "Future detoxified: Sound management of chemicals and waste." This was largest ever meeting attended by 1500 participants from 170 countries including Government representatives, members of civil society, intergovernmental and private sector. 80 ministers attended high level talks in last days of the meeting. All 3 conventions made good progress on their stated targets of reducing dependence on toxic substances and promoting ecologically sound alternatives to pest control, paving way towards a safer world.

The Basel Convention agreed to establish new public-private partnership in household waste to assist countries deal with this issue and gave mandate to begin tackling marine litter. Rotterdam Convention added three new chemicals to Annex III. These are two pesticides – carbofuran and trichlorfon and one industrial chemical named short chain chlorinated, traces of which have been found in air, water ways and sediments. With addition of these highly toxic substances total number of chemicals listed under Annex III goes to 51. COP also added tributyltin under industrial chemicals category in addition to pesticide category. No agreement however was reached on chrysotile asbestos, carbosulfan and

pesticide formulations paraquat dichloride and fenthion.

The Stockholm convention succeeded in listing all of the persistent organic pollutants which had been recommended namely decaBDE and short chain chlorinated paraffins in Annex A and hexachlorobutadine in Annex C. Listing these substances will now be reduced and eliminated.

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*Carbofuran in an insecticide with trade name Furadan used to control soil insects in fruit and vegetable production with negative impact on environment including on birds, small mammals and bees. Short chain chlorinated paraffins is used as softener in paints, plastic fillers and coatings and as flame inhibitor in rubber, plastics, textiles. Tributyltin is used in anti-fouling paints for ship hulls and as biocide in wood preservatives. Decarbomodiphenyl (DecaBDE) is used as an additive flame retardant including plastics, textiles, adhesives, sealants, coatings and inks. Plastics containing DecaBDE are used in electronic and electrical equipments, cables, wires, pipes and carpets. It has significant adverse impact on human health and environment including adverse effect to reproductive health and output in a number of species as well as developmental and neurotoxic effects and endocrine disruption.* □

## 32 years of Struggle and the valley stands at the same junction of facing submergence, yet again...

Ankita Aggarwal

The history of the Sardar Sarovar Dam is marked by vast corruption scandals, rampant human rights violations and deplorable environmental devastation. The role of the state and its institutions in the Narmada Valley is the best example in the country to prove that our law is utilitarian in its approach and paternalistic in its outlook. One cannot expect perfect justice, in an imperfect world. There is no doubt that in national interest, people can be required to resettle, but the question is deeper than what is visible to the naked eye. It becomes inevitable to question the dominant narrative that defines the discourse of development today.

In the houses on the bank of the subtly swaying Narmada, the families of farmers huddle together as they wait for forces of development to make their way to these quiet, understated shores. Instead, the water flows in the utterly opposite direction. The floodgates- both literal and metaphorical- opened, and their lives were and are being submerged in the dark waters of despair. Promises of rehabilitation prove to be in vain, as everything they know- from their cattle, and their homes, to sometimes even their families- are swept away with the overpowering currents of the Narmada, no longer as gentle a force as it had been before being blatantly tampered with.

As of January 2017, the dam height is 138.68m. Nevertheless, most of the promised benefits are not provided. As the construction of canals lags, much of the planned irrigation benefits are not realised. It is reported that multinational companies such as Coca-Cola, Ford Motors and Tata Motors, located in Gujarat, have reaped much of benefits from the dam at the cost of drinking water provision (*The Indian Express* 2014).

The failures that reach back to the origin of the Sardar Sarovar Projects, cannot be overcome by a patchwork of reports and commissions and the draconian nature of those benefitting from it is at display again, since Supreme Court's order, dated 8th February 2017. The 13th point in the order reads:

"All the occupants including all the 'project affected families' shall vacate the submergence area under reference, on or before 31.07.2017, and in case there are individuals in the submergence area, after the aforesaid deposit has been made into the account of the Grievance Redressal Authority, after 31.07.2017, it shall be open to the State Government to remove all such individuals forcibly."

Crisis looms large over the life and livelihood of not less than 20000 families and anywhere up to 40000 who are to be affected by submergence, if the gates of Sardar Sarovar Dam are closed and the water is impounded up to 139mts that will submerge thousands of houses, farms and all the structures and services, social centres and cultural monuments along with a few million trees. The Supreme Court's order comes with an assumption that the work at rehabilitation sites is complete, which is a complete falsity. Approximately 176 villages face the threat of submergence, yet again only cries will echo in the valley, if this is allowed.

Travelling back in the past, people's struggle which has now been going on for the last 32 years managed to get land based rehabilitation for almost 14500 (unfortunately not all) families, a victory unprecedented in its numbers. The strength of a people's movement was elucidated by the people in the valley.

And today, it is beyond comprehension, that the rule of law

which is meant to protect us from arbitrariness and avoid turning our lives solitary, poor, nasty, brutish and short (the explanation Hobbes uses to validate the establishment of states), is today doing the unleashing the exact same nastiness unto the lives of the inhabitants of the Narmada Valley. How can the apex court issue an order to use force against peaceful and harmless villagers? Further the authorities carrying out the implementation of these laws are doing their part in creating a havoc. From the very beginning, even after conditional clearance, the project authorities pushed the dam ahead with suspicious haste, denying right to information and participation to the oustees and to the general public. The state and central, both the governments sought to hasten the process by submitting totally false data regarding the rehabilitation of the oustees and compliance with the environmental conditions. Though the majority judgement of the Supreme Court glossed over MoEF's clearance, the minority judgement of Justice Bharucha pointed out the basic lacuna in the clearances. And even today, they are reading into the order with their own interpretations. The prerequisite to complete the Rehabilitation and Resettlement process and making all facilities available at these sites has been conveniently brushed aside. No drinking water facilities, drainage, roads, houses, civic amenities, schools, dispensaries and so on are put in place, but the government is all set to "remove all such individuals forcibly".

Thus the general Sardar Sarovar history of compliance is a history of omissions, unmet deadlines, errors, extensions and ex post facto revisions. "Temples of modern India", indeed is an extraordinary piece of rhetoric. But its quiet



astounding as to notice how many of us have managed to look beneath these vibrant arrays of enchanting words. Why should one? After all it came from Chacha Nehru. Another word that has marvellously charmed us Indians has its origins in our colonizers. Yes "development". Let's all be cosy in our niches sipping our teas, cheering for our favourite IPL teams and scrolling down facebook feeds. The nation is developing, people are all happy, *acha din aarahe hain!* It is out of utmost contempt I retort that we have failed in our agency to react and to even respond.

There is a struggle that has been going on for over thirty years. By people who have been threatened of their life and livelihood in the name of "development". Besides life and livelihood the proposed developmental project is to adversely threaten the ecological balance of the region. But wait a

minute, what does ecological balance or imbalance has to do with us when our leaders themselves disprove of climate change and global warming. It is okay if a few people die here and there for the nation. So what if 250 villages are going to be submerged as long as it leads to "development".

Our mainstream media has successfully managed to invisibilise the plight of the Narmada Valley and its people. The Supreme Court has openly proclaimed that no dams have ever caused environmental destruction and records on environmental data are all forged, throws light at the inefficiency and ignorance of the people in power. When state machineries have failed and bureaucrats waiting to snatch a portion of their compensation who are these people looking up to. Let's all remain ignorant. Let's all remain dormant. Let's stand for these temples which feed into the

pockets of the rich and privileged. Let the hold on to our beliefs- they aren't going to come for us, the state is going to protect us, development is all good, and my interests are secure. Let us close our eyes, let's close our ears, and let's close our mouths. Let's be good citizens.

Like every other schemes, Sardar Sarovar and other mega projects in the Narmada valley have been conceived without the knowledge and consent of the affected people, and this has shown its repercussions all the way since the commencement of the project. But in the current situation, the time has come to show solidarity and support to the people in the valley again to take the movement beyond the previous victories it has to its credit. We cannot allow the state to take away the Right to life of the people. Let's not be "good citizens".

**Ankita Aggarwal, NBA, Badwani**  
□

**A court naming Ganga and Yamuna as legal entities could invite a river of problems:**

## **The Uttarakhand High Court's March 20 ruling could create more conflict than it solves**

**Omar Ahmad**

On March 20, the Uttarakhand High Court issued a remarkable series of directions following on from a case on which they had ruled on December 5, 2016. In the original case, local resident Mohammed Salim had filed a petition asking the High Court to direct the government of the state of Uttarakhand to remove illegal construction along the banks of the Yamuna, as well as to order the Central government to properly manage land and water resources.

The judgement in Mohd Salim versus State of Uttarakhand and others, delivered by justices Rajiv Sharma and Alok Singh, was basically concerned with the issues of federalism, and whether a state – through its judiciary – could order the Central government to take steps protect the river.

The justices decided that it was well within the rights of a state to pass such an order, because on certain subjects within the federal structure of the Indian Constitution, the states are supreme in their field – water being one of the most important such areas. Accordingly, the High Court directed that not only should the people who had encroached on the land be evicted, but that the Central government clarify the division of authority between Uttarakhand and Uttar Pradesh (from which Uttarakhand was carved out in 2000).

The order also mandated that: the Central Government is also directed to constitute a Ganga Management Board, under Section 80 of the Act, and make it functional within a period of three months. The Central Government shall also

induct State of Uttarakhand as member of the Upper Yamuna Board within three months.

Lastly, it said, "mining in the riverbed of Ganga and its highest flood plain area is banned forthwith".

While the strong instructions in the order made it clear that the justices were very concerned with the destruction and neglect of the rivers, the follow on directions went far beyond that, by arguing that the Ganga and Yamuna rivers should be considered legal entities in their own right. The reason for this, the justices explained, was that, "The extraordinary situation has arisen since Rivers Ganga and Yamuna are loosing [sic] their very existence. This situation requires extraordinary measures to be taken to preserve and conserve Rivers

Ganga and Yamuna."

The extraordinary measure that the justices had in mind was to declare accordingly, while exercising the parens patrie jurisdiction, the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna.

The justices buttressed their argument by referring to Articles 48A and 51A (g) of the Indian Constitution. The first refers to the duty of the state to protect and improve the environment and take care of wildlife, while the second is part of the fundamental duties of an Indian citizen to do the same in their capacity. Article 48A has often been cited by Indian courts in passing judgements in favour of environmental protection.

**Sacred rights for holy rivers:** In this case, though, the argument of the justices rested on the sacred nature of the two rivers, which are holy to Hindus. In Indian jurisprudence, a deity may be a legal entity and is represented by the management staff of the temple, or caretakers of the deity. This is because such religious entities also have secular aspects – money given to religious trusts, for example – that means that their rights and responsibilities also exist. In the case of the rivers, the justices have granted parens patrie (the power of the state to act as parents when the parents are not able to fulfil those functions) powers to state representatives, with the "Director NAMAMI Gange [the National Mission to Clean the Ganga], the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand are hereby declared persons in loco parentis as the human face to protect, conserve

and preserve Rivers Ganga and Yamuna and their tributaries".

Although the justices cite largely Indian law, the wording of their statement is remarkably similar to legislation passed in New Zealand – coincidentally given the royal assent on March 20 – in relation to the Whanganui river, sacred to the Maori indigenous people. The New Zealand law also recognised the river as a legal entity with all the "rights, power, duties and liabilities of a legal person", and was billed as a world first.

**Difficult questions:** Despite the striking similarities, there are key differences between the two declarations of personhood for a river. The New Zealand legislation is the outcome of one of the longest legal disputes in the nation's history and is primarily a power distribution agreement about the management of a protected area whose parameters and status are very clear.

This is certainly not the case with the Yamuna or the Ganga – which are extensively used in irrigation and other forms of use. Unlike the Te Awa Tupua, the protected area of the Whanganui river, the Ganga is "one of the most engineered rivers in the world" – with large dams, irrigation projects, and millions of tube wells.

As a lawyer at the Indian Supreme Court asked, "If a farmer pumps water onto his land from the river, is he violating the 'person' of the river? What happens in the case of a flood, will the authorities in loco parentis compensate the people harmed?"

Speaking on the condition of anonymity, he explained the issue that the court had ignored in making a comparison with deities regarded as legal persons. "In the case of temples and their trusts, there are rights and responsibilities, but in this case there are only rights. A religious trust can both sue, and be sued. Who is going to sue a river, if it runs dry, if it is polluted, if it floods?"

**River diversion plans:** More significantly, with the new legal status given to rivers, India's massive river-linking scheme would become impossible. The controversial project being pushed by Narendra Modi's government involves the large-scale diversion of water from the Ganga and Brahmaputra basins in eastern India to water scarce regions of western and central India through the construction of reservoirs, dams and canals. This leaves open the important question that if the government interferes in the river by making these interventions, will the advocate general of Uttarakhand act?

**Potential for new conflict:** An additional complication with the Ganga is that it is a transboundary river. Not only does it wind through a number of Indian states, it also has tributaries coming in from Nepal, and is one of Bangladesh's major rivers – where it is called the Padma. How could the officers of Uttarakhand represent the other Indian states, and other countries? There is also the issue of precedent. One of the most contentious water issues in India revolves around the Cauvery river flowing between Karnataka and Tamil Nadu. It is also considered sacred, as are many other water bodies in India – giving them personhood is likely to exacerbate, rather than calm, already frayed relations.

Given the number of questions that the directions raise, they should be seen in the light of the Indian judiciaries' continued commitment to the Directive Principles found in the Constitution to preserve the environment – Articles 48A and 51A (g) – and the judiciary's frustration at how badly these articles have been neglected.

This article first appeared on The Third Pole.

*Courtesy Scroll.in, 3rd April, 2017*

**Note: The Government of India through its Ministry of Home Affairs has been labelling social activists as being or belonging to or sympathetic to "Maoists" a pejorative to being anti-national or terrorists; we are publishing a letter written to the President of India protesting the specific instance of dubbing the Dongria Kondh adivasis who fought against the Vedanta plant in Odisha as being linked to "Maoists" by the Ministry of Home Affairs.**

Letter: dated 19 April 2017

To,  
Shri Pranab Mukherjee  
The President of India, Rashtrapati Bhavan, New Delhi

**Subject: Concern regarding MHA report linking Niyamgiri Suraksha Samiti of Dongria Kondh adivasis with 'Maoists'**

Honorable Shri Pranab Mukherjee, We are writing to express our concern and anguish at the recently released Annual Report 2016-17 of the Ministry of Home Affairs (MHA), which has linked the Niyamgiri Suraksha Samiti (NSS) with 'Maoist' organizations. The report states that Maoists 'guide' the activities of the NSS. The Niyamgiri Suraksha Samiti is a collective of the Dongria Kondh adivasi people and other local communities who have been organizing themselves for more than a decade against bauxite mining in Niyamgiri hills (Odisha), which is their only home. The continued targeting of the Dongria Kondh community (with a population of less than ten thousand people) in reports like these, and in continued state actions on the ground, raises

serious doubts: is this being purposely done to break their continued resolve to oppose the mining of the Niyamgiri hills?

The resistance of the Dongria Kondh to the mining proposal is based on several grounds: Niyamgiri is their traditional and ancestral home, it is a sacred landscape, it is the source of their livelihood and culture, they have special rights guaranteed in the Constitution, and they have full rights to it under the Panchayat (Extension to Scheduled Areas) Act and the Forest Rights Act, both laws passed by the Indian Parliament. In fact under the Forest Rights Act, the community has the right and is empowered to protect their habitat, and natural ecosystems in it, which is precisely what they are doing in resisting the mining. All this was recognized by

the NC Saxena Committee set up by the Government of India in 2010, which strongly recommended against mining in the hills<sup>1</sup>. Subsequently the Supreme Court too recognized these aspects.

However, since the Supreme Court ordered that the Dongria Kondh need to be consulted about mining in the region in April 2013, and the subsequent unanimous rejection by the Dongria Kondh gram sabhas of the mining proposal, we have observed with great perturbation the repeated attempts by the state government to reintroduce the proposal and to start mining in the region. Recently, the Odisha Mining Corporation filed a petition in the Supreme Court to reopen the mining. The Supreme Court

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## PEOPLE'S UNION FOR CIVIL LIBERTIES MEMBERSHIP FORM

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refused to admit the petition. Apart from these attempts, there has been constant intimidation and violence on the community by security forces. In the last 2-3 years, several Dongria Kondh youth and elders have been arrested, harassed, and killed, and one has committed suicide after repeated harassment and alleged torture by security forces. In none of these cases, have the forces been able to produce evidence linking them to so-called Maoists.

The Ministry of Home Affairs appears to have ignored the overwhelming response of the Dongria Kondh, when Maoist organisations told them to oppose or boycott the gram sabha meetings organised by the state at the behest of the Supreme Court order of April 2013. Hundreds of Dongria Kondh had flocked from village to village to take part in the meetings, openly defying this call. The Government should also pay heed to the wisdom of the Supreme Court expressed in the case of 'Nandini Sundar vs The State of Chhattisgarh' (Writ Petition (Civil) No. 250 OF 2007), also referred to as the *Salwa Judum* Judgement. In this judgment, the SC reiterated that the current social order which treats any person speaking for human rights and questioning the current paradigm of the State, as a 'Maoist' or a 'Maoist' sympathizer, has become a serious problem affecting our nation. It noted that any peaceful dissent or dissatisfaction which is a positive feature of democracy, is often not recognized by the authorities and is met with severe repression.

The MHA appears to be questioning the credibility of the Supreme Court's orders and observations in the above matters; and additionally of the Indian

Parliament by ignoring the Dongria Kondh's rights under PESA and FRA.

Actions such as what the state is doing in the Niyamgiri hills, and language such as that used in the MHA report, only serve to undermine democracy. Apart from the suffering and injustice that the state's repressive actions cause, they also push people who are peacefully exercising their freedom of speech to turn to violence, which helps no one.

We therefore urge you to use your responsibility of upholding the Constitution, and in particular the safeguards for adivasis contained in it, noting also that the Dongria Kondh are a Particularly Vulnerable Tribal Group with special safeguards. We urge you to direct the MHA to retract the statements made about the NSS in its report, to stop the intimidation of the adivasis and attempts to restart the mining, and to allow the Dongria Kondh and other communities of the Niyamgiri hills to live a dignified life of self-determination for their present and future.

We reiterate our support for the struggle of the Dongria Kondh, and of the Niyamgiri Suraksha Samiti, in safeguarding their habitat, livelihoods, identity, and dignity.

Meenal Tatpati / Ashish Kothari, Kalpavriksh, on behalf of the undersigned organisations and individuals

**References:**

- 1 [http://www.moef.nic.in/downloads/public-information/Saxena\\_Vedanta.pdf](http://www.moef.nic.in/downloads/public-information/Saxena_Vedanta.pdf)
- 2 <http://www.thehindu.com/todayspaper/tpnational/tpotherstates/tribalpeopledefyma oistsdiktatattendgramsabhas/article5031351.ece>

**Copy to:** (1) PMO; (2) Ministry of Tribal Affairs; (3) Ministry of Home Affairs; (4) Governor of Odisha; (5) CM of Odisha; (6) Commissioner of STs ☐

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The PUCL would like to bring to the notice of all readers that the name of Rakhi Sehgal was left out by mistake against the two articles, 'The Curious Case of the conviction of the Maruti 13' and the 'Maruti Suzuki struggle Timeline' published in the May month issue on workers struggles and rights. The error is regretted. – **Editor**