

**NARMADA BACHAO ANDOLAN CASE: A JUDICIAL CONUNDRUM IN
BALANCING THE DE FACTO CONFLICT B/W RIGHT TO DEVELOPMENT AND
RIGHT TO ENVIRONMENT
“NARMADA BACHAO ANDOLAN V. UOI, 2000 10 SCC 664”**

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Abstract: *This paper focuses on a perennially contentious topic “The Narmada Bachao Andolan”. It contains the whole issue from how it begins, how it moved in court of law and in what circumstances it got disposed of. This paper analyzed the case in purview of Right to Environment v. Right to Development. Along with that, this paper critically analyzed the majority judgement of Supreme Court in respect to the right of environment, development and livelihood conferred by COI to ‘we the people’.*

Key Words: *Narmada Bachao Andolan, Right to Environment, Right to Development, Livelihood.*

1. Introduction

“The most difficult thing is to recognize that sometimes we too are blinded by our own incentives. Because we don’t see how our conflicts of interest work on us.”

-Dan Ariely

The age of pronouncements concerned to pro-environment and sustainability started from the case *Rural Litigation & Entitlement Kendra v. Union of India*¹. The Hon’ble Supreme Court while examining the balance between the Right to Environment and Right to Development stated that the order to permanently close down the lime stone quarries will definitely cause hardship to them but undeniably this is the cost that has to be paid for protecting and preserving the Rights of the citizens conferred to them by the Grund Norm of all legislation i.e., Constitution of India. Those rights include Right to live in healthy environment with least disturbance in ecological system which is a part of Right to life given under Article 21.

On the other side, the Judicial System has interpreted the Right to Development also as a part of Right to life. The human right to development not only founded on fundamental rights but also on Directive Principle of State Policy. Theoretically speaking, these two rights are interrelated but are loggerheads to each other. And for that there is a mid-way practically known as the concept of sustainable development.

One of the debates related to the deciding factor of significance and gravity of either development or environment was the case of Sardar Sarovar Dam Project popularly known as Narmada Bachao Andolan. The controversy related to this project was the result of huge

¹ 1989 S.C.C. Supp. (1) 537.

dilemma of environment vs. development². This started in the year 1985 with a mass movement against the construction of a huge dam on the river Narmada.

The cause of this fight was concerned to those 250,000 people who were about to displace because of the Dam construction. All question was over the resettlement and rehabilitation of those displaced people. The primary methods of campaigns use in this movement includes legal lawsuits, hunger strikes, rallies and enlisting the support of notable personalities from film and art industries. The most renowned personalities who are leaders of this mass movement are Medha Patekar and Baba Amte. They gave their entire life to this issue. They are much recognized and have won numerous of honors such as Right to Livelihood Award in 1991³.

2. Research Design

2.1 Research Methodology

This particular paper is basically done by Doctrinal Research and Analytical Study by compiling multiple sources in order to answer the research question. The usage of this method is motivated by the ambiguity of the topics. Keeping this in view, the researcher has utilized the conventional methods of using libraries including online portal and websites consisting of primary sources. The relevant facts and materials in this paper is collected from the Bare Acts, statutes, various other texts, books, case laws, Articles, news, E-journals and class room teaching has been referred for the purpose.

2.2 Research question

1. What are the reason that the hon'ble SC failed to appreciate the need to apply the Precautionary principle in this Case?
2. Why the court sanctioned the immediate order of construction despite of the fact that the resettlement theme is not at all adequate?

2.3 Hypothesis

This was the majority judgement which stranded and allowed to immediately start the construction of Dam. For different reasons, this majority judgement is an exceptional document. Not only will it stand out as one of the great anachronistic judgements of the 21st century in its approach to question the governance, the environment and development and the human rights, but it also sets the new standard of legal acumen, in which facts and logics are at a premium.

The Supreme Court plays neglective at very instances while considering the facts and circumstances and ignoring the balance between the growth and environment. Also, there are numerous of evidence which the court neglected and things where it was prejudiced.

3. Andolan and its immediate effect

It all started with the dispute that were going on among the state of Gujrat, Madhya Pradesh and Maharashtra regarding the sharing of Narmada water. Various investigations were done and on the order of GOI, the National Water Dispute Tribunal came to government with valuable findings. Tribunal decision approved for the construction of 30 major, 135 medium and 3000 small dams. The decision was broadly derived from the assumption that after completion of this project nearly 40 million people will get river water for irrigation and more electricity. Many of them are not even seen the electricity. This project is for development and

² Uday Shankar & Saurabh Bindal, “*Right to Environment and Right to Development*”, Christ University Law Journal, 1, 1(2012) pg. 60-61, ISSN 2278-4322.

³ Daine Seirra Jacob; ‘*Narmada Bachao Andolan*’, “International Journal of Advance Research, Ideas and Innovations in technology”; pg. 1-5, Vol. 3, Issue 5, ISSN: 2454-132X.

growth. Through this project the government serving towards its obligations of fulfilling the Fundamental Rights of the people like Right to water and Right to Development⁴.

In 1985, Medha Patekar and others visited to the construction area and observed what was happening there on the name of construction. The Adivasi people asked to relocate from their land to some other land with better facilities but that never happened so. Their fertile land was taken up by the govt. and in return they allotted with barren and dilapidated land which rise with the problem regarding their fodder⁵. And thus, as a result, the protest started named as Narmada Bachao Andolan. The effect that was witnessed after the initiation of Andolan was that case being dragged to the apex court by the people of India.

4. Narmada Bachao Andolan v. UOI⁶

4.1 Writ Petition

The Narmada Bachao Andolan (NBA), a non-profit Organization who were in leading position in depicting the agitation against the Sardar Sarovar Dam Construction project filed a writ petition in the Supreme Court concerning the various issues including rehabilitation and relief and asked for restraining the construction.

A grievance was put down before the court contending that the attitude on the part of State is not wholehearted as it tried to evade its responsibilities regarding the rehabilitation of the displace and affected people by providing them the fair compensation.

Another argument was presented that argued that since the offer to relocate affected parties at a 90-meter height of the dam had not been fulfilled, construction should be halted until one year after the resettlement of the affected families.

4.2 Arguments of the Parties⁷

4.2.1 Appellant

1. The Environment Clearance was given arbitrarily and without any application of mind as at that time no any statutory requirement was there but there were guidelines issued by the MoEF regarding the Environmental Impact Assessment. So, it was not mere administrative formality.
2. The Dam Project is not in the best interest of nation rather it is violative of Article 21 in sense of Right to Livelihood, Right to Environment read with ILO Convention No. 107.
3. The work of relief and rehabilitation has been hindered and thus, further submergence should be stopped and height of the dam get reduced.
4. The project shall bring environmental degradation in the submergence area and will negatively affect the flora and fauna, habitats and traditions etc.

4.2.2 Respondent

1. The environment clearance decision was the administrative function and court should not review it. The role of the court is to recheck the area of Fundamental Rights.
2. The lowering the height of the dam is left up with less and seasonal power generation and that would be counted as loss.
3. This project is fulfilling the requirements of Article 21 in the sense of Right to development, right to water etc. It is in the best interest of people. After the completion of the project about 40 million people will get irrigation water and abundance of electricity.
4. The GOI is very much concerned to the environmental aspects as it is visible from the letters and documents available.

4.3 Issues

⁴ "Daine Seirra Jacob; '*Narmada Bachao Andolan*', International Journal of Advance Research, Ideas and Innovations in technology; pg. 1-5, Vol. 3, Issue 5, ISSN: 2454-132X.

⁵ 1985: Narmada Bachao Andolan; frontline.thehindu.com (15 August, 2022).

⁶ 2000 10 SCC 664".

⁷ Narmada Bachao Andolan v. Union of India 2000 10 SCC 664.

1. Whether the clearance was given without any proper survey and adverse environmental impact.
2. Whether the guidelines of MoEF were not followed with.
3. Whether NCA was biased while awarding despite of it was an independent body.

4.4 Judgement

The 3-judges bench by judgement and order dated 18.10.2000 in this case disposed of the writ petition by issuing various directions. SC approved to continue with the construction of Sardar Sarovar Dam. The court said that “height of dam be raised to 90m which is higher than the 88m which the anti-dam activist but it is much lower than the proposed height of 130m”.

“The court inter-alia opined that:

- i) displacement of the tribal and other persons would not per se result in violation of their fundamental or other rights;
- (ii) on their rehabilitation at new locations they would be better off than what they were;
- (iii) at the rehabilitation sites they will have more and better amenities than those they enjoyed in their hamlets; and
- (iv) the gradual assimilation in the mainstream of the society would lead to betterment and progress.”⁸

5. Critical Analysis

Here are some of the major points where the court seems to be nonchalant. It might be a good decision but at many instances the court was like inadvertent especially concerned to the environmental aspect.

5.1 Absurd Interpretation of Court on character of Petitioner Org.

The very first concern is the question of policy. Narmada case judgement is a majority judgement and this majority judgement starts with hitting on the character of the petitioner organization on the basis that it is an anti-dam organization.

The Court said “As far as the petitioner is concerned, it is an anti-dam organization and is opposed to the construction of high dam”⁹. It means that the intention of the petitioner is not in the interest and well-being of the public rather some abstract politics on anti-dam. Thus, the petition can be described as “publicity interest litigation” or “private inquisitiveness litigation” and not actually the “Public Interest Litigation”. This clearly shows that the court undoubtedly accepts the view of respondent regarding Narmada Bachao Andolan. In short, the court influenced by the respondent assumption of NBA’s imagined politics and dismissed the crucial points on policy decision.

5.2 Environment Clearance: mere an administrative formality or a legal requirement?

As per the majority judgement, in 1980, when the Central Water Commission referred the project to DoE, “At that point of time, environment clearance was only an administrative requirement.”¹⁰ It became a legal need only u/s 3 of EP Act, 1994¹¹. On the other side, the minority Judgement pointed out that MoEF issue a guideline for EIA of River Valley Project in 1985. That clearly means that it was not just any administrative formality or requirement¹².

5.3 Burden of Proof and ‘Precautionary Principle’

⁸ Narmada Bachao Andolan v. Union of India 2000 10 SCC 664.

⁹ pg. 32 (Narmada Bachao Andolan v. Union of India 2000 10 SCC 664).

¹⁰ pg. 53 ibid.

¹¹ pg. 97 ibid.

¹² pg. 22 ibid.

NBA had stated (relying on the case “AP Pollution Control Board v. Prof. M V Nayadu”¹³) that the burden to prove that there will not be any adverse environment damage is on the person who is willing to change the *Status Quo* of environment- i.e., NCA¹⁴.

This transferring of Burden of Proof has been derived from Precautionary Principle. “The Precautionary Principle applies to projects which are going to implement from which the damage likely to be caused is unknown or cannot be known. It argues that in such situations, it cannot be assumed that the benefits accruing from the project would undo the damage. In such situation, it is advisable to be cautious and not implement the project.” The reflection of this principle in law is to change in the Burden of Proof. However, the court said, the Precautionary Principle applies only when the adverse result is not known and so it will not apply in Dam Project Case. As, in this case, all the possible implications are known. Pointing on to the principle, the court said, “the dam is neither a nuclear establish not a polluting industry”¹⁵.

5.4 Right to Development vis-à-vis Right to Environment

The entitlement to inhabit a clean and healthy environment is a fundamental provision under Article 21. Simultaneously, the Right to Development outlined in Article 21 imposes upon the state the duty to ensure that the advantages of development are guaranteed to the populace. Hon’ble SC while dealing with Central Vista project stated that “Environment does not mean compromising the development”¹⁶. Similarly, development doesn’t mean to compromise with the environment. Both of these things are adversely run with each other. But there is a mid-way out of it that is sustainable development.

The Struggle against Narmada Project started in 1980 and soon after a Gujrat based NGO (Arch-Vahini) raised the issue of sufficient rehabilitation for the oustees and demanded land in exchange. Another NGO Kalpvriksh, gave a report mentioning the adverse impacts of the project on environment. Many rallies occurred, the aggressive protests were done, and in return the state claimed it as the model of development stating that millions of people will benefit with supply of sufficient water and much of electricity. The people who are yet not seen the electricity, they will use it in abundance. In Writ Petition the petitioner filed, they estimated that several lakhs’ people are going to be affected by this project, many house and fertile land got submerged, people will lose their land to compensatory afforestation, affect the fisheries community and many more will lose their livelihood which is ultimate violation of their Right to Livelihood. Apart from this, the flora and fauna get submerged, cause seismic effect, siltation and water logging etc.

Irrespective of all these environment conditions mentioned, the majority judgement allowed the construction of dams with issuing several directions related to rehabilitation and fair compensation. The court oversees the situations and contentions of the public en large on the name of development. The court compromised with the People’s Right to Environment and Right to livelihood in favor of upholding the Right to Development. Right to livelihood is an integral facet of Right to Life¹⁷. And if there is violation of right to livelihood happened, it is required to be remedied¹⁸. The court also failed to appreciate the essentiality of invoking the precautionary principle rather it effectively mentioned that this Dam Project is an upgradation of Ecology.

6. Conclusion

¹³ 1992 2 SCC 718

¹⁴ pg. 93 *ibid.*

¹⁵ pg. 59 *ibid.*

¹⁶ Rajeev Suri v. Union of India (2021).

¹⁷ Narendra Kumar v. State of Haryana AIR 1995 SC 519.

¹⁸ State of Himachal Pradesh v. Raja Mahendra Pal AIR 1999 SC 1786.

It is a reality that reality and law rarely meet. The campaign of Narmada Bachao Andolan was started for environmental and social justice but ended up with the compromising of environment damage and livelihood of people. Quoted by the campaign leader Medha Patekar that “it is obvious that the Government of Madhya Pradesh is all out to kill our right to land and right to agitate, but we still are not ready to give up”. This controversy highlights that the whole debate is centralized to a clash between environment and development. The contentions made by both the parties to the case were strong and valid as per their demand. It is the court who oversees the contention of petitioners regarding their right to environment, right to livelihood, right to shelter, right to fair compensation, rehabilitation and resettlement and compromises all this in return of Right to Development. The court persist to see this dispute as one between states and not as one between govt. and people and prejudices throughout the case treating NBA as anti-dam organization rather an organization of affected parties who are fighting for their constitutional rights.