

MOOT PROBLEM

1. Indianistan is a country located in Asiana continent. The country is second largest in the world in terms of population. Indianistan has rich reserves of natural resources and is an agrarian economy wherein population is largely depended upon agriculture and animal husbandry. A lot of agricultural produce is depended upon monsoon for irrigation due to lack of tube wells, irrigation channels and other systematised methods of irrigation. Being a developing country the industries in Indianistan are largely manufacturing units that require heavy and regular supplies of water. Similarly, to support its heavy population, Indianistan also requires billions of gallons of water daily for potable and other domestic purposes.
2. Water and electricity has been a cause of concern for Government of Indianistan and almost all the state governments of Indianistan. A large amount of water is needed for daily sustenance of Indianistan population. Even after so many years of independence of the country water still remains unavailable to large section of population especially the rural population. Governments at regional and national levels have spent a lot of time and money in ensuring water availability and stabilising the requirements of water for all. However, due to various reasons such objective has been unfulfilled till now. There have been various incidents of violence for use of public wells, tanks, ponds and rivers due to water scarcity and often people have lost their lives due to such violence. The problem becomes even more acute during draughts and monsoon failure. Farmers and agricultural workers have often revolted due to non-supply of water as a result of which there have been severe crop failures.
3. A similar has been the case with electricity as well. Rural Indianistan has been un-electrified for a long time and still there are villages where electricity has not reached till now. In sub-urban and urban areas Indianistan suffers from regular power cuts for prolonged hours. Industrial production suffers due to short supply of electricity resulting in slowing of development process. Not only this, statistical researches have revealed that shortage of electricity has also a direct impact upon education of school and college going students. Moreover, agricultural production also suffers yearly as modern means of agricultural management require electricity which is unavailable often in the rural parts of Indianistan.
4. Constitution of Indianistan guarantees protection to all the citizens in form of Fundamental rights. It guarantees Right to life under Article 21. Hon'ble Supreme Court of Indianistan has often held in its pronouncements that Right to free and clean drinking water is one of the fundamental rights that have to be read in Article 21 within the meaning of right to life. Court has also held that Right to life U/A 21 is not restricted merely to deprivation of life but it means a life with dignity where every individual is entitled to live with decent standards of life in all aspects and State is duty bound to provide these standards for all. Within due course, Court has ruled that Right to life includes right to food, right to shelter, right to education and right to social dignity as well.

5. Constitution has made special provisions for the protection of Tribal population of Indianistan which include provisions for their peaceful co-existence, saving their culture and traditions, recognising and conserving the right over property and forest and also an elaborative policy for their rehabilitation and resettlement during the time of their displacement from their natural places of existence. In order to bring the tribal population into national mainstream, Constitution of Indianistan has made several provisions that include the policy of reservation under Article 15(4) and 16(4), Article 46, economic safeguards in form of Article 244, political safeguards under Article 330, 337, 243 and various other provisions of like nature. A constitutional body named National Commission for Scheduled Castes and Scheduled Tribes has been established as per the belief in the idea of socialism and to attain the end goal related to upliftment of tribal, vast amount of resources, money and manpower are spent on socio-welfare schemes.
6. The Narwadeshwa River traverses three of Indianista's north-western states: Paschim Pradesh, Madhya Bharat, and Uprashtra. Suffering from the acute problems of shortage of water and electricity, Central Government in consultation with the State Government of abovestated states decided to sanction a mega dam project that will solve the deficiency in supply of water and electricity upto 60% in one go. In 1988, the Indianistan government sought the World Bank's assistance to build a complex of dams along the river as part of the Narwadeshwa Valley Development Project ("Narwadeshwa Project"). The Narwadeshwa Project included the creation of thirty large dams, 135 medium dams, and 3,000 small dams. The Indian government promised that the dams would help provide potable water for almost forty million people, irrigation for over six million hectares of land, and hydroelectric power for the entire region. Government also contended that the dams were essential for India's economic development by producing vast amount of hydroelectric power making the country surplus in electricity production.
7. The Indianistan Sarovar Project ("ISP") in the state of Paschim Pradesh includes the most controversial large dam. The government claimed that the Indianistan Sarovar dam alone would irrigate almost 1.8 million hectares of land in Paschim Pradesh and an additional 73,000 hectares in the dry neighbouring state of Rachastan, in addition to providing potable water to over 8,000 Paschim Pradeshi villages and 135 urban centres. In 1985 the World Bank agreed to finance the Indianistan Sarovar dam to the tune of \$450 million, approximately 10% of the total cost of the project. As per World Bank this step could solve various problems related to shortage in supply of water and electricity and the said region would flourish economically. Thus not only the Indianistan Government, but also an International Organisation, the World Bank, was keen to complete the project, and consequently it granted the required funds. For the remaining of the funds Government decided to issue 'Governmental bonds' and raise money through them.
8. After the nod from the World Bank, Government's first task was to prepare a functional roadmap for beginning with the project. In its initial assessment of the entire project, Government recognised three key areas that were to taken up for meeting legal compliances and to clear the area for setting the dam. These areas

were- Rehabilitataion and Resettlement Policy, Compensation Policy for resettled populations and Environment Impact Study of the entire project as per environmental laws. Considering the vastness of the project and the area that was to be allocated for constructing the dam and channelizing the canal, which would affect the flora and fauna of the region; a thorough environmental study of the project was required.

9. The Government however, adopted a hurried approach in constructing the dam and was impatient to allot time for any Standardised Environmental Impact study that was mandated under various Environmental Legislations. On the contrary, it approved a regular Environmental Impact study that could be completed in a shorter duration. Additionally, Government was increasingly acting in a non-consultative fashion without taking into confidence important stakeholders. A limited group of Environmentalist were called to study the project and submit the report. The population sought to be displaced was never consulted and they were ill-informed about the entire manner in which the project was being undertaken. Similarly, no tribal population was brought to tables for discussion. The resettlement and rehabilitation policy was unclear on various terms. After surfacing of these issues, many local units and media houses made an attempt to highlight the issue. When social workers and environmentalist came to know about the issue they demanded a transparent approach in the entire process.
10. Meanwhile, the opposition for the project kept taking firm roots in the country. There was widespread coverage of the illegalities that the Government was performing in approving the project. Every norm of Environmental Impact Assessment was being waved off and relaxed for the project. Resettlement policy was severely criticised on the ground of inadequate compensation and no proportionality of settlement in the process. The population to be resettled were being given accommodation in a very faraway place which not in any fashion resembled with their native place of settlement. The acquisition of land by Government made no provision for classifying the land into any independent category. Many leading social workers joined the protest and labelled the approach to be violating the fundamental and human rights of citizens and various environmental legislations that were in force.
11. Due to the ongoing revolt against the dam project, World Bank decided to impose some qualifying criteria for releasing of funds. World Bank's Operational Policies and Directives provided for general resettlement policy, provided that "*upon resettlement, displaced persons should regain at least their previous standard of living.*" Two years later the Bank adopted a resettlement policy specifically addressing "tribal" populations and requiring that customary usage of tribal land be respected and that tribal community members only be displaced when the borrowing country can effectively safeguard their integrity and wellbeing.
12. After this check, Government made some arrangements for the tribal and displaced population in light of the World Bank Guidelines. The stakeholders were however still not satisfied with the efficacy of such arrangements. Construction of dam meant that the tribal would lose their immemorial rights over the forest. Moreover,

displacement of tribal would impact their culture and gradually their rich traditions and culture would perish. On the other hand, Environmentalist continued to protest against the project on the ground that there was no standard of EIA that was performed and in absence of any EIA, the project could turn out to be a disaster for the region whose long term impacts may include Frequent flooding, complete disappearance of flora and fauna from the region, and chances of bursting of dam due to silt deposition in dam's base. Due to Government of Indianistan's pressure, World Bank approved the remaining funds even though the Indian Ministry of Environment and Forests has not consented to the project due to incomplete environmental impact studies, which were never performed after the approval.

13. Since the early 1980s, the Narwadeshwa Project has faced mounting opposition from a variety of sources. Various self-help groups were also formed to compel government to work more on its rehabilitation efforts and to ensure that the government adheres to its promises in future. The revolt attained a nationwide status and came to be known as Narmedeshwa Bachao Aandolan (NBA). NBA initially sought to verify the claims regarding the benefits that would flow from the construction of the dams. In the process, it focused on securing access to documents from the government and the World Bank to ensure greater transparency. When details were made available, it was found that Government has made serious errors in handling the project. There were gross issues relating to non-conducting of the EIA, going ahead with a regular EIA in ignorance of a standardised EIA, ignoring reports of Environmentalists and highly inadequate policy of Resettlement and rehabilitation wherein there was no proportional resettlement as required, no adequate compensation was being given and tribal were forced to resettle in places that were non-conducive to their existence. NBA concluded that it was a violation of Fundamental rights of the affected persons, violation of the human rights as well as the mandate of EIA that is mandatorily required to be conducted before approving a project like this.
14. Based upon these reports, NBA through its representatives filed a petition before the Supreme Court of Indianistan under Article 32 of Constitution of Indianistan. In the said petition, NBA pleaded before the Court to set aside this project on ground of aforesaid violations. They pleaded this is an acute case of violation of fundamental right of right to life. They contended that due to lack of transparency in the handling of the project along with Government's efforts directed towards bypassing the Environmental legislations, the procedure adopted by Government becomes arbitrary and therefore contravenes Rule of law. It also violates the obligation imposed by the Constitution upon the Government with respect to tribal population. Moreover, keeping in mind the possibilities of devastation and destruction to environment that may be caused by failure of this project, NBA requested to restraint the Government from proceeding with this project. It also claimed that human rights jurisprudence does not permit such arbitrary actions that recklessly violate human rights of millions.
15. On, the other hand Government of Indianistan and State Government of other States submitted that it is up to the executive to decide the standard of EIA in every project.

Moreover, relaxing of compliances and other environmental norms for any project is a power that Executive enjoys and therefore by making relaxations in the instant case, Government has committed no illegality. Government also contended that such actions are the policy decisions of Government and cannot be judicially reviewed. Government clarified that by providing a resettlement and compensation policy it is not violating any fundamental right as it has made adequate arrangements for the resettled population. Moreover, Government has ensured that tribals get the most benefit out of this project. It pleaded that Indianistan was always in short supply of water and electricity and through this project, this shortage could be easily met and eventually it will satisfy the needs of citizens and would strengthen the economic development. Government also reiterated its obligation of Socialism and its nature as Welfare state quoting that this project is solely for the social benefit of the entire population of the country and therefore in the larger public interest and for the betterment of present and future generations, this project must be allowed to stand. Finally, Government claimed that the allegations levelled by petitioners are only speculative and imaginative that is based upon mere apprehensions of possibilities. For an action u/a 32 a clear case of violation of Fundamental rights must be established and as the project is currently at preparatory stage no actual infringement of fundamental right has taken place and a mere apprehension of violation leads to no cause of action u/a 32. Court after hearing the parties, framed following issues to settle the relief-

- I. Whether a petition under article 32 is maintainable in this situation?
- II. Whether the Governmental approach in handling the project can be termed as 'arbitrary' and if yes, then whether Constitution requires all arbitrary actions in all circumstances must be set aside?
- III. Whether Government has breached its constitutional obligations towards tribals in this case?
- IV. Whether the human rights jurisprudence is applicable in this case and whether this court is competent to enforce the human rights of the group represented by the petitioner?
- V. Whether there has been violation of mandatory provisions relating to EIA or any other Environmental legislation that could afford a ground to set aside this project?

NOTE

- Laws of Indianistan are pari-materia with laws of India.
- Participants are free to rely upon any environment legislation or any theory or doctrine of environmental law through which they can establish or defend any of the aforesaid issue.
- One additional issue may be framed subject to completion within the page limit.
- Issues are framed in manner so that participants can come forward with new legal theories and line of arguments. Any innovative argument or contention that is found relevant to any of the issue would be appreciated and rewarded with beneficial marking.