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A LONG WAIT FOR JUSTICE

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WHILE KERALA'S PLACHIMADA CASE AWAITS ADJUDICATION, THE ISSUES IT RAISES MUST CONCERN THE GOVERNMENT'S POLICY PLANNERS, WRITES SUJITH KOONAN

Plachimada's struggle and protest for justice continue even after a decade. Plachimada's protest against Coca Cola started more than a decade ago; it was against polluting the environment, depleting groundwater, and polluting agricultural land by dumping dangerous solid waste. The issues are still unsettled. Over the years, this particular protest has become a symbol of the public's resentment and struggle against globalisation, of the people's claim for vital natural resources such as groundwater, and industries' indifference to environmental pollution caused by them. Plachimada is not an isolated protest against Coca Cola. Similar protests are going on against Coca Cola in Mehdiganj (Uttar Pradesh) and Kala Dhera (Rajasthan). People are also protesting against other soft drinking manufacturing companies, for example Pepsi in Palakkad (Kerala).

Plachimada's long wait for justice highlights the acute insensitivity of the state and its machineries towards the sufferings of a people, and their collective claims. It also exposes the dangerous tendency of state machinery to brazenly neglect the interests and concerns of the poor, the vulnerable, and the marginalised. In spite of the movement's availing of political and legal strategies for a fair end, the government's quiescence coupled with legal technicalities continue to impair deliverance of justice to the people of Plachimada.

Plachimada's legal battle started in 2003. It all began on the power of the Panchayat to control groundwater extraction by Coca Cola. Unfortunately, even in the presence of evidence, the issue of pollution did not become a part of the legal battle (Reports by designated scientific bodies such as the Kerala Pollution Control Board did highlight the pollution caused by Coca Cola).

When the Plachimada case came before the Kerala High Court, a Single Bench approved the power of the Panchayat to control Coca Cola's groundwater extraction in public interest. The Bench relied on the Public Trust Doctrine. The doctrine makes the government a trustee of key natural resources (here, groundwater), while demanding that such resources be maintained, conserved,

and used for public interest. Significantly, the Single Bench extended the application of an existing environmental law principle to groundwater - the most important source of freshwater in India. However in 2005, a Division Bench reversed this decision of the Single Bench, upholding an uncontrolled right of land owners to extract groundwater from their land. The matter has been pending before the Supreme Court since then.

While the litigation was pending in the court, a number of significant changes happened. First, a number of states enacted separate groundwater laws. These laws authorise the state government to control groundwater extraction by private parties. This clearly indicates a disfavouring of the traditional conception of groundwater being a part of land rights. It also indicates recognition of environmental and human rights implications of indiscriminate extraction of groundwater by individuals and companies.

Second, a wide consensus seems to have evolved, at least in the Central government, on updating water law to incorporate the human right to water and to make the public trust doctrine a fundamental principle of water law. The human right to water is indeed a part of the fundamental right to life as the Constitution of India guarantees. Further, some of the recent legislative suggestions of the Central government in the water sector include these developments, thereby creating a new basis for a water law that implements the human right to water. For example, both the Groundwater Model Bill, 2011 and the Water Framework Law, 2011 drafted under the auspices of the Planning Commission recognise the aspects of public trust and human rights regarding water.

The extent to which these developments will reflect in the Supreme Court decision in the Plachimada case is yet to be seen. If the Supreme Court does consider these developments, it would be a great victory of the Plachimada people's movement. It would also be a great contribution by the Plachimada people movement to other ongoing protests against Coca Cola in Mehdiganj and Kala Dhera. The Supreme Court's

endorsement of these progressive concepts would hasten the adoption by the groundwater legal regime of a respectful attitude towards sustainability and human rights.

While the Supreme Court decision could if favourable be a political victory for the Plachimada people and the movement, it would not be a remedy to their suffering. The compensation claims of the movement and the responses of the Government and Coca Cola towards it are highly critical. The state government recognised the compensation issue by passing the Plachimada Coca-Cola Victims' Relief and Compensation Claims Special Tribunal Bill, 2011 (Plachimada Tribunal Bill) on 24 February 2011. The Bill's purpose was to establish a special tribunal to settle the compensation claims of the people. Prior to this, a high power committee of the Government of Kerala (2009) confirmed the role of the Company in causing damage to the environment, agricultural economy, and individuals.

The Bill has been reserved for the assent of the President of India and is resting in a government file awaiting approval on its procedural perfection and conformity with constitutional provisions. The Centre sought clarifications from the state government on the latter's constitutional mandate to enact such a law. While procedural technicalities are worth confirming, the question looms larger: how many more months and years must the people of Plachimada dedicate to waiting in anticipation?

In this context, the passing of the Bill as an official endorsement of the need to provide fair and just compensation to the Plachimada people is an important concern. Therefore, the questions about the mechanism, relevant law, and responsible party (central or state government) must not take years to be sorted out. Delaying justice amounts to denying justice. Indeed, procedural technicalities obstructing the delivery of substantive justice, does not speak well about the capability of our legal system.

A major challenge for the Plachimada movement, initially, was getting government recognition of claims. Claims of public movements tend to be considered 'allegations' as opposed to 'facts'. The widely prevalent belief is that to establish 'facts', the involvement of 'scientific methods' and 'trained scientists/experts' are imperative. This makes a lot of difference in its acceptability by public institutions and decision-making bodies like the judiciary. This is a major hurdle for people's movements. Endorsement of claims by 'experts' also has an impact on public percep-

tion. Early developments in the Plachimada saga clearly demonstrate this. In April 2003, the Perumatty Panchayat responded to the public protest by refusing to renew Coca Cola's license. Coca Cola challenged this in the Kerala High Court. The Court referred the matter to the Department of Local Self Government which directed the Perumatty Panchayat to appoint an expert body to study the matter and take a decision. The Panchayat's decision was discredited on the ground that it lacked supporting scientific/expert opinion.

In effect, the need for expert opin-

ion overshadowed the plight of the people of Plachimada. The established practice of insisting on expert scientific opinion to validate the claims of public movements prevailed. A number of reports by various expert bodies (e.g.: Kerala Pollution Control Board, Central Ground Water Board) further corroborates this practice.

Therefore, scientifically establishing the link between groundwater depletion and pollution is crucial to dispense fair and just compensation to the people of Plachimada. The relevant question is, whether a standard of probability is acceptable or an absolute conclusiveness is essential. It is not clear, whether uncer-

tainty in scientific conclusions about the link between Plachimada's plight and Coca Cola will go in favour of the company or the people.

Plachimada's long wait for justice shows the insensitivity of our legal and political system towards people's struggles and sufferings. This callousness is highlighted when the people involved are poor and vulnerable. The Plachimada issue warrants immediate and appropriate actions by various government agencies.

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