

**Minority Rights and Majority Interests: An Analysis of  
Development-Induced Displacement in the Narmada Valley, India**

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
Master of Arts

By

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January 19<sup>th</sup>, 2012  
University of Ottawa

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## **Abstract**

This thesis analyzes how the interests of minority and majority groups in state-led development practices can be bridged, with the Indian tribals affected by the Sardar Sarovar Dam Project (SSP) serving as a context for my analysis. The SSP threatens the livelihoods of approximately 100,000 people with displacement, who are primarily comprised of Indian tribal minorities. The construction of the SSP makes tribals more vulnerable to the risks associated with development-induced displacement, such as landlessness, joblessness, homelessness, marginalization, and food insecurity. When analyzing the SSP, a lack of adequate compensation, resettlement, and legal protection for the tribals becomes apparent. This has led to discussions of human rights violations among the national and international community, raising concerns regarding the protection of minority groups affected by state-led development. Attention is placed on what it means to be a citizen of a country in terms of legal representation and state protection, and how the under-representation of societal groups can lead to the creation of second-class citizens. The objective is to go beyond current discussions of human rights neglect in the context of the SSP by analyzing the position of minority rights in state-led development practices.

## **Acknowledgments**

I want to thank my family and friends for their words of encouragement and emotional support throughout this journey. I also sincerely thank my supervisor, Professor Christine Strachle, for her continuous support in my research. Her positive approach, ways of reasoning and encouragement have greatly impacted my academic and personal growth, which I very much appreciate. I also want to thank my thesis committee, David Petrsek and Professor Luc Turgeon, for their valuable comments as well as Professor Melissa Marschke for acting as a chair for my thesis defence.

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## **Timeline for the Sardar Sarovar Dam Project**

- 1961- The foundation stone for the Sardar Sarovar Dam Project (SSP) was laid by Prime Minister Jawaharlal Nehru
- 1969- The Narmada Water Disputes Tribunal (NWDT) was founded to discuss matters of benefit sharing between the states of Madhya Pradesh, Gujarat, and Maharashtra
- 1979- The NWDT reaches a decision regarding benefit sharing between the three states
- 1985- World Bank provides loan of \$450 million towards building the SSP
- 1986- The non-government organization Narmada Bachao Andolan (NBA) is founded
- 1987- Ministry of Environment provides clearance for the SSP
- 1988- Steady construction on the SSP begins.
- 1989- Protest involving 5,000 people in the Narmada Valley
- 1990- December: When government starts flooding the Narmada Valley, 6,000 people walk 100 kilometres and form a seven member sacrificial squad.
- 1991- January: Members of the sacrificial squad start a 22 day hunger strike, demanding a review of the dam.
- 1991- The World Bank commissions and Independent Review of the SSP, which became later known as the Morse Report.
- 1993- The World Bank withdrew its funding from the SSP
- 1993- August: A new Committee is established by the Indian Union water resource Ministry, called the Five Member Group. The Five Member Group agrees with the verdict of the Morse Report.
- 1994- May: The NBA files a petition with the Indian Supreme Court
- 1994- The powerhouse of the SSP is flooded by the monsoons
- 1995- The Supreme Court orders the height of the dam to be stopped at 80 meters
- 1999- By the order of the Supreme Court, work on the dam continues to 85 meters
- 1999- 800 protestors against the SSP are being arrested
- 2000- October 18<sup>th</sup>: The Supreme Court grants permission for construction on the SSP to continue at the proposed height.
- 2002- Height of SSP increased to 95 meters
- 2003-2005- Height of SSP raised to 110 meters

2006- The Narmada Control Authority (NCA) allows the height of the dam to be raised to 122.62 meters

2010- April 1<sup>st</sup>: The Environmental Sub Group of the NCA permits to raise the height of SSP to 138.68 meters under the condition that the Central Water Commission can assure that there will not be any additional submergence.

## **Minority Rights and Majority Interests: An Analysis of Development-Induced Displacement in the Narmada Valley, India**

In principle, a state and citizenship regime should be responsive to the demands and needs of a community through the equal representation of all community members (Summers, 1984). Yet, there are continuous conflicts between minority and majority interests on local and international levels. Will Kymlicka (1995) notes that a nation-state will inevitably promote the interests of certain cultural groups over others (p. 108). This can jeopardize the protection of the minority due to the interests of the majority.

A minority usually comprises a smaller portion of the population and is characterized by “ethnic, religious, or linguistic traits” that differ from the majority (United Nations, 1992, p. 9). Additionally, a minority may be socially excluded from certain aspects of society, such as political affairs and decision-making processes within a nation-state (Jackson Preece, 2005, p. 3). For the purpose of this thesis a nation-state will be defined as a sovereign entity within geographical, political, and cultural boundaries (Scholte, 2005, p. 186-189).

One example where the protection of minorities is jeopardized is in cases where state-led development projects, such as dams, result in the displacement of people from their homelands<sup>1</sup>. It has been estimated that within the last 60 years development projects in India have displaced approximately 60 million people from their homeland. The Sardar Sarovar Dam Project (SSP) along the Narmada River is an example of a development project where the livelihoods of approximately 100,000 people are threatened by the inevitably rising river waters of the Narmada. These people are comprised to 95 to 98 % of tribal groups, with the

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<sup>1</sup> Examples of such projects are the Three Gorges Dam in China, the Chixoy Dam in Guatemala, and the Yacyretá Hydroelectric Dam at the border of Argentina and Paraguay (Bisht, 2009; Isaacman, 2005; Scudder, 1993; Oliver-Smith, 2001; Cullet, 2001; McCully, 2001).

term tribal used to refer to India's indigenous population (Dwivedi, 2006; Morse & Berger, 1992, p. 81). The people who are ousted from their environment experience increased vulnerabilities, such as landlessness, joblessness, homelessness, social and economic marginalization, and food insecurity (Cernea, 2000, p. 14).

In the case of the SSP, the State is not providing adequate compensation, resettlement, and legal protection to the tribal minority groups who are threatened with displacement due to state-led development. This has led to discussions of human rights violations amongst the national and international community. As a result, local and international activists and scholars advocate that more attention needs to be placed on people's rights in development practices (Kothari, 1996, p. 1481; Mehta & Gupte, 2003, p. 24-25; Sachs, 2004, p. 42). According to Will Kymlicka (1995), the belief that adequate protection of minorities is provided through the Universal Declaration of Human Rights (UDHR) is based on a misconceived assumption that fails to recognize the divergence between the advantages and disadvantages of various societal groups (p. 3). Kymlicka (1995) notes, universal human rights alone do not suffice to protect the interests of minorities, and must be supplemented with minority rights (p. 5).

Within the context of this thesis, I analyze the following question: Can a focus on minority rights contribute to responsible development practices in state-led development that aim to bridge the interests of majority and minority groups? To answer this question I explore the following sub-questions, with the Sardar Sarovar Dam Project in India serving as a context for my analysis: what actions, if any, are taken by the Indian Government to advance the protection of the Indian tribal population since the construction of the Sardar Sarovar Dam Project? What lessons can be drawn from the Sardar Sarovar Dam Project for development practices? The conceptual framework used for analysis is citizenship. I examine



what it means to be a citizen of a country in terms of societal membership, legal representation, and state protection. Emphasis is placed on the Indian tribal minority group affected by the SSP, and the position of minority rights in the larger framework of citizenship rights in the context of India.

The SSP provides a suitable context for my analysis due to the following: the longevity of the project; the availability of information; the controversy of how development practices are carried out and justified by the Indian Government; and the conflicts of interest between the Indian Government and the Indian tribal minority that pit development practices against calls for the protection of minority rights. Further, the SSP has “acquired a symbolic status in development debates” in regards to issues of responsibility, accountability, and the protection of people’s rights in development practices on an international level, which has not been acquired to the same extent by other development projects (Cullet, 2007, p. 1; Parasuraman, Upadhyaya, & Balasubramanian, 2010).

In the first chapter of my thesis I provide a contextual analysis of dam development in India after the country reached Independence in 1947. Post-Independence, dam development in India served two main functions: economic development and nation building. I explore the functional and symbolic importance of dam development and how the displacement of India’s tribals was justified on the grounds of nation building and economic growth. This establishes a context from which the impact of the SSP on the Indian tribal minority in the Narmada Valley can be further explored.

Within the context of the second chapter, I analyze the effect of the SSP on the livelihoods of the Indian tribal minority group in the Narmada Valley. Since the displacement of these tribals is taking place within India’s jurisdiction, I emphasize that the tribal minorities are foremost citizens of India. The citizenship rights of the Indian

Constitution serve as a tool to analyze to what extent development practices in the SSP help to realize or hinder the citizenship rights of the tribal minority group in the Narmada Valley. Additionally, emphasis will be placed on India's national and international commitments towards its minorities, such as the National Resettlement and Rehabilitation Policy of 2007 and the Universal Declaration of Human Rights. This is followed by an analysis of the theory of social exclusion, which illustrates the position of tribals in the SSP as citizens of India.

The third chapter provides an overview of the various ways development and citizenship can be conceptualized. First, I analyze how development is conceptualized from a normative and descriptive stance. My analysis of development is supported by Amartya Sen's (2000) definition of development as freedom, which is based on a normative conceptualization of development. Sen's definition of development is followed by Martha Nussbaum's (2011) Capability Approach, who provides a list of ten central capabilities that form the foundation of a minimally just society. This provides a foundation to examine what is required to promote the equality of tribal minority groups as citizens of India. In the second part of chapter three, I discuss various conceptualizations of citizenship, such as communitarian and liberal citizenship. Furthermore, I analyze T.H. Marshall's (1965) definition of citizenship, particularly his notion of social rights, to discuss citizenship as a tool for social inclusion. This supports my analysis of the challenges associated with the equal representation of individuals and the inclusiveness of citizenship, leading into a discussion of minority rights as an extension of citizenship rights. The main purpose of this chapter is to provide the conceptual foundation for chapter four, by examining the constitutive connection between development and citizenship.

Lastly, in the fourth chapter I utilize the contextual analysis of India's SSP project, in chapter one and two, and the conceptual analysis of development and citizenship in chapter

three, to explore the protection of minorities in state-led development practices. Within the context of the fourth chapter, I utilize two examples: the activism by the Indian non-government organization Narmada Bachao Andolan and amendments made to the *Land Acquisition Act* of 1894. Emphasis is then placed on determining what legal entitlements are required to expand the protection of the livelihoods of India's tribal minorities who are impacted by state-led development projects. This provides an opportunity to advance discussions of citizenship as a tool to enhance minority protection and the bridging of minority and majority interests in state-led development practices.

### **Methodology**

In this thesis I use a qualitative approach, which is based on a contextual theoretical analysis of citizenship, minority rights, and development in the context of the displaced tribal minority group of the Sardar Sarovar Dam Project in India. Joseph H. Carens (2000) uses a contextual framework to exploration of how much can be gained by “confronting the abstract with the concrete,” such as applying a theory to a particular case (p. 2). This means that a contextual theoretical approach makes use of real-world examples, which can be used to explore various theoretical points of view. According to Carens (2004), a contextual theoretical approach includes the following characteristics: examples are used to illustrate a theoretical perspective; actual cases are explored from a normative perspective; the applicability of theories to actual cases is tested; and challenging cases can be explored (p. 118).

With citizenship as a framework for my analysis, I apply a normative theoretical discussion of citizenship to the case of the tribal minority who are affected by the Sardar Sarovar Dam. The tribals who have their rights neglected due to state-led development,

therefore, provide a context from which I explore the meaning of citizenship and the protection of minority groups. My discussion of citizenship is based on the works of T.H. Marshall (1965) and David Miller (2000). Having established an understanding of the meaning and function of citizenship, I discuss the expansion of citizenship rights towards minorities, emphasizing the works of Will Kymlicka (1995). In his book *Multicultural Citizenship* (1995), Kymlicka uses a contextual theoretical approach for discussing citizenship and the rights of minorities, which supports the approach taken in this thesis.

Since the displacement of the tribal minority in the Narmada Valley is due to state-led development, I provide a normative definition of development based on the notion of development as freedom by Amartya Sen (2000) to support my analysis. Sen's notion of development as freedom is supported by Martha Nussbaum's Capability Approach (2011), which is a vital component of my exploration of minority rights. Further, the Capability Approach establishes a constitutive connection between a normative meaning of development and citizenship, which I relate to the case of the Sardar Sarovar Dam. By using a contextual theoretical approach I am able to move between context and theory. This will help me to connect my normative discussion of citizenship and minority protection to the case of the displaced Indian tribals.

Although I approach the issue from a theoretical perspective, I utilize various legal documents, such as the Indian Constitution, the *Land Acquisition Act* past and present, and the National Resettlement and Rehabilitation Policy of 2007 to support my analysis. My analysis is based on documents, scholarly articles and books, including: electronic documents<sup>2</sup> by the Indian Government, development agencies, and non-government organizations, such as documents and reports by the UN (treaties, conventions, declarations

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<sup>2</sup> Hard copies of documents will be used if available.

etc.), the World Commission on Dams, and legislation/policies by the Indian Government; as well as academic journals and books.

Documents are chosen based on a number of different criteria, such as reliability and authenticity of the source and their relation to theoretical debates, pertaining to the following: majority and minority interest, which will include discussions on citizenship, sovereignty, and legal protection; and development, which will include discussions on development for whom, the drivers of development (economic, social, legal aspects), and responsibility in development practices. Although current discussions of development-induced displacement already highlight the neglect of tribals in development and state policy, the aim is to analyze the underlying reasons for this continuous neglect.

## **Chapter 1: Dam Development: India's Path of Developing and Independent Nation**

### **1.1 India's Development Vision: Economic Independence and Unity**

The western notion of democracy refers to “rule by the people” and provides citizens of a country with a voice in their domestic political affairs (Scholte, 2005, p. 349). Ideally, a democracy is established by providing individuals with a sense of equal membership, and involves the just and fair treatment of its members, who have a voice in the decision-making processes that affect their livelihoods. For post-colonial countries, such as India, the ideal of equality being attached to democracy has often been interpreted as a link between “nationalism and the promise of development” (Bose & Jalal, 1998, p. 1). Nationalism is based on a collective group identity, which establishes a sense of unity and a bond between members of a nation that can be transmitted via citizenship rights (Miller, 2000, p. 2). For the purpose of this thesis a nation-state will be defined as a sovereign entity within geographical, political, and cultural boundaries (Scholte, 2005, p. 186-189).

Development generally refers to “the progressive improvement in the social, economic well-being of people so that they live longer, healthier and fuller lives within any given political entity” (Morvaridi, 2008, p. 9). The term development carries a preconceived notion of having the ability to improve people's livelihoods. As such it is labelled, interpreted, and believed to be globally desirable and beneficial by the actors involved (Moncrieffe, 2007 p. 2-3). However, if development may contribute to the growth of a nation, economically and socially, it also has the potential to marginalize and violate the rights of a nation's citizens, which I illustrate in the course of this thesis.

Dam development provides one example of the achievements and short-comings of development practices. While dams have come to symbolize progress, modernization, and “national empowerment and achievement,” these projects simultaneously illustrate the

challenges and pitfalls embedded in development practices, such as the displacement of people from their homelands at the expense of infrastructure development (Klingensmith, 2007, p. 2; Leslie, 2005, p. 43). In India, approximately 60 million people have been displaced from their homeland in the last 60 years as a result of development practices (Hoshour & Kalafut, 2011, p. 1; Fernandes, 2008, p. 90-91). The development-displacees includes India's tribal minority who, according to the latest available census data, comprise 8.6 percent of India's population of 1.21 billion (Government of India, 2011; Mathur, 2009, p. 164). This is a substantially high percentage; in comparison, Canada's aboriginal population constitutes 3.8 percent of the Canadian population (Statistics Canada, 2006). As a result, the Indian tribal minority does not only represent a large percentage of India's population, but they are also the most vulnerable population exposed to state-led development practices. Therefore, matters of how to lessen the negative consequences that state-led development practices can carry for tribals, such as the loss of land and the loss of community ties due to displacement, require particular attention.

The Sardar Sarovar Dam Project (SSP) along the Narmada River is one of the state-led development projects in India, which affects the livelihoods of approximately 100,000 to 300,000 people in the Narmada Valley, comprised of 95 to 98 percent of tribals (Dwivedi, 2006; Morse & Berger, 1992, p. 81; Bosshard, 2008, n.p.; Kothari, 1996, p. 1479). These individuals face threats of displacement due to the rising river waters of the Narmada caused by dam construction. The purpose of constructing the SSP was to support India's economic growth and to build a nation after Independence was gained in 1947. However, the Indian Government has been subsequently criticized by both the national and international community for not providing adequate compensation, resettlement, and legal protection for its displaced tribal population.

Bashir and Kymlicka (2008) state that the challenge of any democracy is to be representative of all its members (citizens), such as by providing equal legal representation towards majority and minority citizens (p. 11). Inevitably, a democracy will place more attention on some societal groups than others, which primarily results in the under-representation of the interests of minority groups (Kymlicka, 1995, p. 108). The displaced tribals of the Narmada Valley provide one example of an under-represented minority group. The resulting tension between majority and minority interests will be the focal point of my analysis, with the SSP providing a contextual framework to examine India's attempts towards nation building and economic growth, and the challenges embedded in development practices.

In this chapter I address the following questions: (a) what was India's approach towards national development when the country gained Independence in 1947; (b) what was the practical and symbolic importance of dam development in India post-Independence; and (c) how did the country's citizens profit from the Indian Government's development endeavour? This chapter will provide a contextual analysis of the SSP, thus providing a framework along which the tensions between majority and minority interests in state-led development practices become apparent.

### **Dams: Symbols of a Modern India**

After more than 300 years of British colonial rule, India gained Independence in 1947, providing the country with the opportunity to become an independent, self-sufficient and modern nation (Maitra, 2009, p. 196; Walsh, 2006, p. 207; D'Souza, 2002, p. 1). Dwivedi (2006) identifies four goals of India following Independence: national integration, social equality, political democracy, and economic development. It was believed that India needed



*“punarjanma* (rebirth), *punaruddhar* (renaissance) or *navnirman* (radical reconstruction),” with India’s past described as a “heavy burden” by India’s first Prime Minister, Jawaharlal Nehru (Parekh, 1995, p. 22 and 26).

For Nehru, India’s freedom after British colonial rule was closely tied to the country’s economic independence. Nehru believed that the only way for India to become truly independent was through “capital-intense industrialization,” also referred to as the Nehruvian model of development (Dwivedi, 2006, p. 36). Dams provide one example of large scale-infrastructure development projects in India. As a result, large-scale infrastructure projects came to be seen as important contributions for enhancing the living standards of Indian society as a whole, with Nehru emphasizing the aim of improving the livelihoods of the poor and disadvantaged sectors of society (Dube, 1988, p. 154; Dwivedi, 2006, p. 68).

The aim of dam construction was to provide electricity, flood control, irrigation and drinking water, with the government viewing dams as a solution to India’s history of famines and droughts (D’Souza, 2002, p. 1). Symbolically, Nehru referred to dams as the “temples of modern India,” symbolizing the country’s independence, progressiveness, and self-sufficiency, a matter discussed in detail in subsequent sections (Maitra, 2009, p. 196; Walsh, 2006, p. 207; D’Souza, 2002, p. 1). While the Indian Government marketed dam development as beneficial to society as a whole, Nehru believed that in order for the State to have control over India’s future development a degree of totalitarianism and authoritarianism was needed.

However, Nehru’s state-led authoritarian development model did not go unquestioned. Gandhi, who was an influential political and spiritual leader pre- and post-Independence, feared that industrial development would marginalize traditional societal structures. Instead, he advocated for small-scale development, based on the needs of the people and the use of

simple technologies (Dwivedi, 2006, p. 37). Applying a Gandhian ideology, Chatterjee (1984) notes that any form of large-scale industrialization should be based on a give and take relationship, with the goal to find a middle path between the needs of the State and the needs of the people who are affected by state-led development practices (in Dwivedi, 2006, p. 37).

Nehru himself started to question his large-scale development schemes, with one of his main concerns being whether large-scale infrastructure projects would adequately address poverty reduction (Parekh, 1995, p. 47). In a speech given in 1958 at the Central Board of Irrigation and Power (CBIP), he made the following statement on mega-dam projects:

[T]his is all the relic of gigantism to which we have fallen prey. We have to realise that we can also meet our problems much more rapidly and efficiently by taking up a large number of small schemes especially when the time involved in a small scheme is much less and the results obtained are rapid. (CBIP, 1989, p. 53 cited in Dwivedi, 2006, p. 68)

Nehru thus acknowledged that Gandhi's bottom-up approach, which refers to development starting from a local to a national level and the inclusion of local communities in the development process, could be a valuable addition to his development model (Parekh, 1995, p. 47). However, while Nehru increasingly voiced his doubts on the effectiveness of large-scale development projects, his concerns were overpowered by a strong technocratic ideology that existed in India at the time (Dwivedi, 2006, p. 91). Despite Nehru's concerns, large-scale infrastructure development continued to be seen as the most efficient way to attain widespread national benefits. This view was supported by developers, technocrats, industries, and regions that would benefit from the dam (Dwivedi, 2006, p. 91).

As a result, dam projects, while advertised to benefit society as a whole, were top-down state-led development projects that were implemented and controlled at the national

level (D'Souza, 2002, p. 3; Klingensmith, 2007, p. 24). This led to the creation of a socio-economic and political environment which advertised an independent India by means of industrialization, marked by a high human-cost, such as the displacement of India's tribal population. The SSP can serve as a case study to illustrate this tension (Bardhan, 1998, p. 186).

### **The Sardar Sarovar Dam Project: Temple of a Modern India**

To some [the Sardar Sarovar Dam] represents economic development which will bring enormous benefits to millions; others regard it as an imposition upon the land which will impoverish- culturally and economically- hundreds of thousands of people and irrevocably alter, if not destroy, the natural environment which the Narmada River supports. (Morse & Berger, 1992, p. 6)

While the Ganges is India's most famous river, the Narmada is India's most sacred river (Leslie, 2005, p. 42). Despite the rivers religious and cultural importance, the Narmada has become one of the rivers targeted for national development. The Narmada flows 1,312 kilometres due west into the Arabian Sea, passing through the states of Madhya Pradesh, Gujarat, and Maharashtra (Walsh, 2006 p. 4; Fisher, 1995, p. 13). The river has a drainage basin of approximately 98,796 square kilometres, with the surrounding area inhabited by an estimated 22 million people, most of who are tribals (Fisher, 1995, p. 13). The fertile soils along the river provide favourable agricultural conditions and lush forest growth, which inhabitants of the Narmada Valley rely upon for subsistence (Fisher, 1995, p. 13).

From an economic stance, the Narmada was seen as a renewable resource. The aim of damming the Narmada was to support India's growing economy through large-scale irrigation systems, designed to support the water, food, and electricity supply of India's

drought prone regions (Fisher, 1995, p. 73). Upon completion, the Narmada development scheme would include “30 major, 135 medium, and about 3,000 minor dam projects” and constitute the “largest river development scheme in the world” (Fisher, 1995, p. 13).

One of the thirty major dam projects along the Narmada is the Sardar Sarovar Dam Project<sup>3</sup> (SSP), which is one of the “largest water resource projects ever undertaken” and includes “a dam, a riverbed powerhouse and transmission lines, a main canal, a canal powerhouse, and an irrigation network” (Fisher, 1995, p. 13). The dam’s reservoir is planned to extend over 200 kilometres upstream, with the intent to further extend the main canal 450 kilometres to the border of Rajasthan (Fisher, 1995, p. 13). The distribution system of the dam is planned to have a combined length of 75,000 kilometres, requiring approximately 80,000 hectares of land (Fisher, 1995, p. 13). The four main states to benefit from the SSP are Gujarat, Madhya Pradesh, Maharashtra, and Rajasthan (Shah, Sharma, & Sagade, 2010, p. 17). It is also estimated that the SSP will result in the submergence of approximately 37,000 to 41,000 hectares of land in the states of Gujarat, Maharashtra, and Madhya Pradesh (Dwivedi, 2006, p. 127; Fisher, 1995, p. 13).

After the foundation stone for the SSP was laid on April 5<sup>th</sup>, 1961, disputes with regard to benefit-sharing between the states of Madhya Pradesh, Gujarat, Maharashtra, and Rajasthan led to a delay in the progress of the project. In 1969, the Narmada Water Disputes Tribunal (NWDT) was founded to discuss benefit-sharing between the four states. The following results were released by the NWDT in 1979: The total quantum of water equals 28 Million Acre Feet (MAF), with 0.25 MAF allocated to Maharashtra, 0.50 MAF to Rajasthan, and the remaining 27.25 MAF to be divided between Gujarat and Madhya Pradesh according to the Tribunal’s discretion (Patel, 1995, p. 76).

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<sup>3</sup> See Appendix A for a map of the dams along the Narmada River and the Sardar Sarovar Dam Project.

While the initial height of the SSP was set at 39.5 meter (130 feet), it was believed that a “high level canal” was needed to bring water to the dry district of Kutch and the region of Saurashtra (D’Souza, 2002, p. 5). As a result, the government raised the height of the dam to 97.5 meter (320 feet) (D’Souza, 2002, p. 5). By 2006, in order to increase the profitability of the river, the height of the SSP was extended to 121.9 meter (400 feet), with further talks of raising the height to 138.68 meter (455 feet) (Parasuraman et al., 2010, p. 47). It is estimated that the final height of the SSP will submerge 40,000 hectares of land, with the dam having a current height of 122.92 meter (403.28 feet) (Shah et al., 2010, p. 17).

Apart from the economic profitability, large-scale dam construction, such as the SSP, was directed towards establishing India’s national identity after British Colonial rule. Critics of the SSP were labelled as anti-nationals, unsupportive of the future well-being of the country (D’Souza, 2002, p. 3-4). While dam development would result in the displacement of tribals in the Narmada Valley, as I will discuss below, dams were considered to result in economic growth, and, most importantly, help India to construct a national identity post-Independence.

## **1.2 1947 and Beyond: India Post-Independence**

Post-Independence, the aim of Prime Minister Nehru was to make India a democratic, socialist, and secular nation (Walsh, 2006, p. 208). Attention was placed on building a strong national identity of a united India, with Nehru stating:

The concept of a nation reflects a sense of political identity that is not split up into belonging to distinct communities, and can in principle admit anyone, irrespective of communal background, by virtue of a shared sense of political identity. (Nehru cited in Sen, 1998, p. 25)

For Nehru, the establishment of a national identity was closely tied to the common good, which refers to the development and economic growth of India to be enjoyed by Indian society as a whole (Shani, 2010, p. 146 and 156). Thus, Nehru acknowledged the importance of equality and social justice in his development endeavour, aiming to realize “economic growth and social justice” without sacrificing the freedom and rights of India’s citizens (Dube, 1988, p. 163; Walsh, 2006, p. 207).<sup>4</sup>

The challenge of establishing national unity via dam development becomes apparent in the context of the SSP where a discrepancy exists with the Indian Government labelling tribals as “necessary casualties” for national development, as well as advertising the project as a “development opportunity” for tribals (Patwardhan, 2000, p. 4). This later idea can be illustrated by the following statement made by the Chief Justice of the Indian Supreme Court in 2002, Justice Kirpal, who stated:

[I]t is not fair that tribals and the people in underdeveloped villages should continue in the same condition without ever enjoying the fruits of science and technology for better health and a higher quality of life style. (cited in Cullet, 2007, p. 14)

Here, the displaced tribals were considered beneficiaries of development, with the Indian Government seeing resettlement as an opportunity for tribals to improve their living standards. Similarly, Nehru expressed his concern for the welfare of tribals:

We must approach the tribal people with affection and friendliness... We must let them feel that we have come to give and not to take something away from them... If, on the other hand, they feel you have come to impose yourselves upon them..., to take away

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<sup>4</sup> In the context of India, the formation of a unified national identity through infrastructure development was being challenged by accommodating India’s heterogeneous social structure, comprised of the caste system, 28 regional states, seven union territories, 22 officially recognized languages, four main religious groups shared traditions, norms, and values, and a multitude of ethnicities, with a detailed analysis beyond the scope of this thesis (Dwivedi, 2006, p. 36; Harel-Shalev, 2010, p. 52; Walsh, 2006, p. xiv).

their land and to encourage businessmen to exploit them, then the fault is ours ....The Government of India is determined to help the tribal people to grow according to their own genius and tradition. (cited in Kothari, 1996, p. 1484)

However, in a speech given to tribals who were about to be displaced, he also appealed to their sacrifice for the benefit of India, rather than to their own opportunities of development, with Nehru saying: “if you are to suffer, you should suffer in the interest of the country” (cited in Penz, 2002, p. 5).

Nehru’s speech contains two conflicting messages: first, tribals need to be displaced from their homelands in a manner that does not seem corrupt, and second, tribals are allowed to develop according to their own pace, with the former countering the latter. Thus, when it came to national development, the construction of a national identity was primarily based on the needs of the Indian majority. The displaced tribals were labelled as ‘necessary casualties’ for national development, who, if they wanted, could benefit from the government’s development endeavour (Parekh, 1995, p. 45; Dube, 1988, p. 163; Walsh, 2006, p. 213).

Furthermore, while the intent was to build a democratic India, nation building was taking place in a society that had “valued authority based on status and power concentrated in the hands of a minority elite” (Dwivedi, 2006, p. 36). Post-Independence, India placed elites, mainly upper-caste members, into a privileged and empowered position while others, such as tribals, remained marginalized (Chowdhury, 2011, p. 38; Harel-Shalev, 2010, p. 17). This resulted in preserving parts of the hierarchical structure of British Colonialism, and thus parts of a colonial identity. For example, “the police, army, judiciary, legal system” and civil service, which existed pre-Independence, were taken over by the Indian Government, with some parts remaining unaltered up till the present day (Bardhan, 1998, p. 186).

One example is the *Land Acquisition Act* (LAA) of 1894, which initially provided Britain with control over India's territory and, in turn, its resources (Patel, 1995, p. 180). Post-Independence, the LAA, which was first amended in 1984<sup>5</sup>, was taken over by the Indian Government, upholding the right of *Eminent Domain*, which allowed the government to take land for *public purposes* (Das, 2006, p. 137). One of the shortcomings of the LAA of 1894 is its lack of clearly defining public purpose providing the government with leeway in its interpretation, and supporting the government in its national development endeavour (Dhagamwar et al., 1995, p. 281; McDowell & Morrell, 2010, p. 107).<sup>6</sup>

Therefore, even though India was striving for its own identity, rather than ridding itself of the existing bureaucratic influences of British colonialism, the Indian Government maintained the "apparatus of the colonial state" as part of its identity (Bardhan, 1998, p. 186). As a result, nation building and economic development were based on a top-down development approach, which meant that the State was promoting a national identity that led to the exclusion of some of its citizens, mainly the tribal minority. I will substantiate this claim in the following chapter.

The above analysis of dam development in India has provided a contextual framework in which the tension between majority and minority interests can be analyzed. While the construction of the SSP was associated with economic development and nation building, the dam, simultaneously, has resulted in the exclusion of the Indian tribal minority, which was

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<sup>5</sup> Das (2006) notes that the amended version is mainly directed towards "quicken the process of acquisition" and to provide better compensation to the affected individuals (p. 140).

<sup>6</sup> Notably, this lack of clearly defining public purpose is also present in China, with the Chinese Constitution and the Chinese Land Administration Act allowing the government to take land for public and private development purposes, such as the Three Gorges Dam, which is displacing approximately 1.3 million people (McDowell & Morrell, 2010, p. 40, 91, and 103). It has been estimated that over 70 million people have been displaced in China between 1950 and 2005, with 26.5 million farmers requiring resettlement between 2001 and 2010 (McDowell & Morrell, 2010, p. 171).



justified by the notion of development for the common good. In the following chapter, I will examine the impact of the SSP on the Indian tribal minority of the Narmada Valley, and to what extent the Indian Government provides protective measures for its displaced tribals. This will provide a foundation to further address whether a focus on minority rights can contribute to responsible development practices in state-led development, which in principle should be directed towards bridging the interests of majority and minority groups.

## **Chapter 2: The Indian Tribal Minority: The Development-Displacees of the Narmada Valley**

### **2.1 Damming India's Tribal Minority**

As discussed in the first chapter, the Indian Government had high expectations to establish India as a self-sufficient nation, and to construct a national identity that would reflect India's national unity post-Independence through dam development. To reflect this national unity, the benefits of dam construction were presented as being directed towards the Indian population as a whole. At the same time, the Indian Government and the developers did not examine to what extent the SSP would be capable of providing the promised benefits, such as drinking water and irrigation. What was known was that the damming of the Narmada River would inevitably displace tribals from their homeland, which was viewed as a by-product of national development.

In this chapter I will address the following questions: (a) how does the SSP impact the livelihoods of the tribals in the Narmada Valley; and (b) since the gaining of Independence and the construction of the SSP, what actions, if any, have been taken by the Indian Government to advance the protection of the Indian tribal minority? This will include identifying who the Indian tribals of the Narmada Valley are, which will help to understand the impact of state-led development practices on their livelihoods. The citizenship rights laid out in the Indian Constitution will help to analyze the impact of the SSP on the livelihoods of tribals and their status as citizens of India. This will provide a foundation for later discussions on minority rights and majority interest, with citizenship serving as a conceptual framework for analysis.

## Who are the Indian Tribals?

Article 342 of the Indian Constitution states that Scheduled Tribes “are the tribes or tribal communities or part of or groups within these tribes and tribal communities which have been declared as such by the President through a public notification” (Government of India, 2007, p. 211). Another term for Scheduled Tribes is the Hindi term *adivasi*, which translates into “original dwellers”, and is also used to refer to India’s indigenous people (Walsh, 2006, p. 146; Morse & Berger, 1992, p. 62). In regards to people who have been displaced by development projects, the Indian term *oustee* has also been used, which refers to individuals who have been ousted from their habitat by the government, generally due to development practices (Mehta & Gupte, 2003, p. 8).<sup>7</sup> Within the context of this thesis, I will use the term *tribal* since discrepancies exist in defining terms such as *adivasi*, *oustee*, and indigenous people. The use of these various terms often leads to implications on who is included and excluded within these categories.

The characteristics of Scheduled Tribes, as listed by the Ministry of Tribal Affairs, include economic backwardness, ‘primitive’ traits, geographical isolation, and a distinct culture (n.d.). These attributes are partially due to the rural livelihoods of tribals, which are based on agricultural practices, forest produce, social reciprocity, as well as kinship and communal ties (Walsh, 2006, p. 146). Livelihood not only refers to food and shelter, but also to “ownership and circulation of information, the management of skills and relationships, and the affirmation of personal significance... and group identity” (Wallman cited in Long, 2001, p. 54). Subsequently, these characteristics can result in stereotypes and the social

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<sup>7</sup> The following definition of ‘oustee’ is provided by the Narmada Water Disputes Tribunal: “An ‘oustee’ shall mean any person who since at least one year prior to the date of publication of the notification under Section 4 of the Act, has been ordinarily residing or cultivating land or carrying on any trade, occupation, or calling or working for gain in the area likely to be submerged permanently or temporarily” (Section 1(2) of the Narmada Water Disputes Tribunal cited in Morse & Berger, 1992, p. 20).

marginalization of tribals, turning them into second-class citizens, a term used to refer to vulnerable societal groups who do not receive the same extent of protection as their fellow citizens (Mathur, 2009, p. 181; Karmakar, 2002; Celik, 2005). Matthew Gibney (2008) defines second-class citizens as individuals who are nationals of a country, and thus possess citizenship, but yet “lack full standing in society” (p. 27). While these individuals share the same rights as their fellow citizens, they are not treated equally, and, therefore, hold an inferior status in society (Gibney, 2008, p. 27). This will be further analyzed in subsequent sections in relation to the rights provided to citizens of India and the impact of state-led development practices on the status of tribals as citizens of India.

### **Tribals and the Sardar Sarovar Dam**

It has been estimated that the SSP will submerge the land of approximately 100,000 to 300,000 people who inhabit 245 villages in the Narmada reservoir zone (Dwivedi, 2006; Morse & Berger, 1992, p. 81; Bosshard, 2008, n.p.; Kothari, 1996, p. 1479). Other figures of development-displacees fluctuate between 1,750,000 (World Bank) and 2,000,000 (Narmada Bachao Andolan), with an estimated 41,000 families threatened with displacement (Anton & Shelton, 2011, p. 13; Kothari, 1996, p. 1479). The individuals who are affected by the dam include tribals and caste villages<sup>8</sup>, landless and non-agrarian labourers, and downstream river inhabitants, with tribals comprising approximately 95 to 98 percent of the people in the submergence zone (Morse & Berger, 1992, p. 81; Fisher, 1995, p. 13). These villages, in addition to the other river valley inhabitants, are inevitably forced to resettle due to the rising river waters of the Narmada (Fisher, 1995, p. 13; Maitra, 2009, p. 196).

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<sup>8</sup> The term caste village in this instance refers to villages which are inhabited by different caste groups.

Approximately 57.6 percent of the individuals who have been displaced by the SSP are comprised of tribals. The Commissioner for Scheduled Castes and Tribes estimates<sup>9</sup> the number of displacees in the Narmada Valley at 60 percent (Roy, 1999, p. 18). Since tribals constitute 8.6 percent of India's population, the percentage of tribals displaced by the SSP represents a relatively high portion of India's overall population. Therefore, the impact of development practices on tribals requires attention, with a focus on the particular needs of the displacees apart from the general needs of the Indian population. Michael Cernea (2000) identifies eight risks associated with resettlement that result from development-induced displacement, which include landlessness, joblessness, homelessness, marginalization, food insecurity, increases in morbidity/mortality, loss of access to common property, and social disarticulation (p. 14). Thus, the threat of being displaced increases the tribals' vulnerability to the risks associated with resettlement.

The term vulnerability refers to an individual's susceptibility to risks, and is associated with issues such as poverty, resource depletion, and marginalization (Hilhorst & Bankoff, 2004, p. 1). Risk, as defined by Cernea (2000), refers to "the *possibility* that a certain course of action will trigger future injurious effects," such as the loss of land potentially resulting in homelessness and loss of traditional modes of subsistence (p. 19). Countering risk is the notion of security; therefore, the higher the risk, the lower the security and vice versa (Cernea, 2000, p. 19). For the purpose of this thesis, the term vulnerability will be used to refer to the susceptibility of minorities to the potential risks that are generated and activated by state-led development practices. The following section will use the constitutional rights provided to citizens of India as a tool to exemplify the impact that the SSP has on the

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<sup>9</sup> Precise statistics regarding the number of development-induced displaced people in India are not available.

livelihoods of tribals, as well as to evaluate the impact of state-led development practices on their second-class citizen status.

### **The Indian Constitution as a Tool for Analyzing the Impact of Development Practices on the Livelihoods of Tribals in the Narmada Valley**

The Indian Constitution aims to secure the following rights to all its citizens: justice (social, economic, and political); liberty (thought, expression, belief, faith, and worship); and equality (status and opportunity) while “assuring the dignity of the individual and the [unity and integrity of the Nation]” (Government of India, 2007, p. 1). Any person shall receive equal legal treatment before the law and within the borders of India, and should not be discriminated against based on “religion, race, caste, sex, [and] place of birth,” see Article 14 and Article 15(1) of the Indian Constitution (Government of India, 2007, p. 6-7).

When analyzing the SSP, a discrepancy becomes apparent between the rights laid out in the Indian Constitution and the lack of protection provided to tribals who are displaced by state-led development practices. In the context of the SSP, the following constitutional rights of the Indian tribals have been neglected: the right to freedom of movement and choice of residence; the right to liberty and equality; and the right to information and freedom of religious expression.

The right of citizens “to reside and settle in any part of the territory of India,” which is enumerated at Article 19(1.e) of the Indian Constitution, has been neglected in the villages of the state of Maharashtra where police not only bribed tribals, but also beat and arrested them to force them to accept rehabilitation (Patwardhan, 2000, p. 7; Government of India, 2007, p. 9). At one point, the village of Manibeli in Maharashtra had more police present than

villagers, with the first road into the village “built in order to evict the people” (Patwardhan, 2000, p. 7).

Further, it may be argued that the tribals’ right to liberty, which refers to an individual having a certain degree of freedom and autonomy to decide over personal affairs and freedom of expression, such as religious practices, is neglected in the Narmada Valley (Tomas, 2005, p. 19; Government of India, 2007, n.p.; Gochhayat, 2011, p. 12). As stated by Palit and Mody (1992):

The tribal’s entire way of life centers around his/ her community... Any displacement and scattered rehabilitation will destroy this collective welfare system that binds them together and will render every aspect of their economic, social and cultural past as unviable and therefore redundant. (cited in Patwardhan, 2000, p. 18)

To what extent the right to life and liberty is protected is further brought into question by Article 21 of the Indian Constitution, which states that “no person shall be deprived of his life or personal liberty except according to procedure established by law” (Government of India, 2007, p. 9). For instance, the *Land Acquisition Act* (LAA) of 1894 allowed the government to take land for public purposes, with the LAA then undermining the personal liberty and freedom of tribals.

The right to equality, enumerated at Article 14, states that all citizens are considered equal before the law and that all citizens shall receive equal legal protection (Government of India, 2007, p. 6). Although citizens might be considered equal in the framework of the Indian Constitution, the *Land Acquisition Act* is countering this equality. Therefore, while the State is the one who provides citizens with legal protection, the State simultaneously holds the authority to take tribal land. As a result, the State can counter its own legal protective mechanisms.

Lastly, the construction of the SSP not only involves the displacement of tribals, but also the flooding of ancestral lands, infrastructures, and monuments, such as temples and historic sites. Under Article 49, the Indian Government is obligated “to protect every monument or place or object of artistic or historic interest,” with the level of importance of these structures determined by parliament (Government of India, 2007, p. 24). When the Morse Committee<sup>10</sup>, an Independent Review Committee set up by the World Bank in 1991, carried out a review of the SSP in 1992, they were told by tribals: “[Our] Gods cannot be moved from this place, so it is difficult also for us [to move]” (Morse & Berger cited in Patwardhan, 2000, p. 20). Therefore, apart from the basic needs that the tribal minority gains from the land to be submerged, such as subsistence farming, they have a spiritual connection to the land on which they reside. This is an aspect of their livelihoods which cannot be compensated for, or replaced, once the land is submerged.

Notably, the review of the SSP by the Morse Committee resulted in the release of the following statement in 1993 (Dwivedi, 2002):

We think the Sardar Sarovar Projects as they stand are flawed, that resettlement and rehabilitation of all those displaced by the Project is not possible under prevailing circumstances... Moreover, we believe that the Bank shares responsibility with the borrower for the situation that has developed. (Morse & Berger, 1992, xii)

This led to the withdrawal of the World Bank, which initially provided a credit of U.S. \$450 million to fund the SSP. Since then, the Indian Government has mainly been relying on domestic funding sources, with construction of the SS continuing despite the finding of the review.

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<sup>10</sup> The Committee was directed by Bradford Morse and Thomas Berger and resulted in the Morse Report, which labelled the project unfit, leading to the withdrawal of World Bank funding (Narula, 2008).



The SSP is not the only example of tribal displacement in India. For instance, the Tehri Dam Project, which started in 1978, has led to the submergence of “nearly 100 villages, including Tehri, a historical capital,” and may result in the relocation of up to 85,600 families (Envis, n.d., p. 1). Consequently, the ability of tribals to express their religious and cultural practices is inhibited through the drowning of ancestral lands, which includes shrines and temples (Patwardhan, 2000, p. 6). While I primarily focus on the tribals affected by the SSP, the Tehri Dam Project demonstrates that analyzing the impact of state-led development practices and the tension between minority rights and majority interest is relevant beyond the Narmada Valley. According to the above analysis, while the Indian Constitution sets out to protect its citizens, state-led development practices are countering the provisions made in the Constitution.

Although there are constitutional short-comings in the protection of development displacees, the government has provided various resettlement and compensation guidelines, such as the *National Rehabilitation and Resettlement Policy* (NRRP) of 2007 as well amendments to the *Land Acquisition Act* of 1894. The following section will examine the protective mechanisms put in place by the Indian Government to lessen the impact of displacement, such as resettlement policies and compensation mechanisms. Additionally, the effectiveness of these mechanisms will be analyzed in relation to the tribals displaced by the SSP.

## **2.2 Protecting the Displacees**

### **Resettlement and Compensation**

When the Narmada Water Disputes Tribunal (NWDT) was founded in 1969, in addition to discussing matters of benefit sharing between the states of Madhya Pradesh, Gujarat, and Maharashtra, guidelines were drafted to address the resettlement and rehabilitation of development-displacees (Blinkhorn & Smith, 1995, p. 97). Some of the provisions made by the NWDT included, among others, the following: displacees would have the opportunity to either resettle in the state of Gujarat or in their own state as a community; and Gujarat was “required to provide, free of cost, a house plot and a minimum of two hectares of irrigable land to every landed family, if more than 25 percent of their holding was acquired” (Blinkhorn & Smith, 1995, p. 97). Further, no resettlement was to take place without the provision of compensation and the payment of resettlement costs by the state of Gujarat (Blinkhorn & Smith, 1995, p. 97).

While the NWDT advocated for a proper resettlement and rehabilitation plan in 1980, a *National Resettlement and Rehabilitation Policy* was not introduced until 2007 (Dwivedi, 2006, p. 218). Due to the delay of drafting a national policy on resettlement and rehabilitation, the states of Gujarat, Madhya Pradesh, and Maharashtra implemented different resettlement policies, which resulted in policy incoherence. For example, the 1987-1988 resettlement policy of Gujarat based its definition of *oustee* on a definition used by the states of Madhya Pradesh and Maharashtra. As a result, the definition of *oustee* was not adequately tailored to address the needs of the displacees in Gujarat (Morse & Berger, 1992, p. 83; Cullet, 2007, p. 20).

While the Indian Government has assured land-based, job-based, and/or monetary-based compensation for displacees, compensation is seldom adequate if provided (Bisht,

2009, p. 312-313). As land-based compensation provides tribals with an opportunity to subside of the land, the land provided is often of lesser agricultural quality, requiring different and often unfamiliar cultivation techniques (Mahapatra, 1999, p. 209; Bisht, 2009, p. 310). Moreover, the land provided does not compensate for the loss of the spiritual connection that is often attached to the ancestral land of tribals. When resettlement is job-based, one family member is generally provided with employment until the project is completed (Mahapatra, 1999, p. 203). After the project is finalized, unemployment rates tend to rise, and people are left to fend for themselves. The lack of employment opportunities not only results in economic losses but also gives rise to social and psychological problems, such as alcoholism, gambling and depression, which is perpetuated by the loss of social ties and rootedness to ancestral land (Mahapatra, 1999, p. 203-204). When monetary compensation is provided, the value of the asset to be replaced is generally based on the market value, which is relatively low, and, therefore, insufficient for the acquisition of better-quality land (McDowell & Morrell, 2010, p. 114). A tribal about to be displaced by the SSP has said:

Our firewood comes from the forests, our fodder comes from there, our herbs and medicines come from there... our fish come from the river down here- which rehabilitation scheme of [the government] will even look at all these as our earnings, as items to be compensated? (cited in McCully, 2001, p. 79)

As relocation into resettlement villages or the outskirts of cities is partially taking place, in the majority of cases the development-displacees “have... lower incomes; less land than before; less work opportunities; inferior housing; less access to the resources ...; and worse nutrition and physical and mental health” (McCully, 2001, p. 77). If tribals are resettled into existing communities, especially caste communities, stereotypes such as backwardness

hinder the community acceptance of tribals (Patwardhan, 2000, p. 15-16; Ongpin, 2009, p. 37).<sup>11</sup>

Although instances have been reported where resettlement has provided improvements in the living conditions of displacees, such as “access to health care, education, electricity, sanitation, [and] drinking water,” this has mainly occurred when people accepted large amounts of bribery, which has been reported in the context of the SSP (Patwardhan, 2000, p. 23). Overall, resettlement and the compensation provided does not mitigate the negative impacts that dam development has on the affected tribal population. In an attempt to improve resettlement caused by state-led development practices, the Indian Government drafted its first *National Rehabilitation and Resettlement Policy* (NRRP) in 2007.<sup>12</sup>

### **The National Rehabilitation and Resettlement Policy**

The NRRP (2007)<sup>13</sup> notes that the State has the authority to acquire public land for development purposes, which is supported by the principle of *Eminent Domain* (p. 33). Simultaneously, the NRRP (2007) acknowledges that displacement deprives individuals of their “land, livelihood and shelter; restricting their access to traditional resource base, and uprooting them from their socio-cultural environment” (p. 33). The following objectives, among others, are stated under Chapter 2.1 of the NRRP (2007): if possible, minimize displacement, provide adequate rehabilitation to affected families, improve the standard of living of project-affected people, and protect the rights of vulnerable groups, such as

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<sup>11</sup> Resettlement can also carry risks for existing communities, such as increased competition for resources in the resettled areas and increased strains on infrastructures, such as grazing land and water resources (Ongpin, 2009, p. 37).

<sup>12</sup> A *National Policy on Resettlement and Rehabilitation for Project Affected Families* was implemented in 2004, but included various short-comings which needed to be addressed (NRRP, 2007, p. 33).

<sup>13</sup> See Appendix B for a detailed list of some of the provisions made in the NRRP of 2007.

Scheduled Tribes, with the latter of particular importance in the framework of this thesis (p. 35).

Minor improvements in the resettlement process have been noted since the implementation of the NRRP in 2007. For instance, an increasing number of people who are being resettled are participating in decision-making processes on village-resettlement design, such as what infrastructure is needed to improve the living conditions of tribals (McDowell & Morrell, 2010, p. 114). While being part of the decision-making process is a crucial factor in empowering individuals by making them active participants, it is not providing displacees with the necessary resources to re-establish their livelihoods, such as fertile land. For example, the NRRP (2007) includes land-for-land compensation, the policy states that land will be provided unless in circumstances beyond the government's control, with fertile agricultural land seldom available (Gochhayat, 2011, p. 6-8). When lost assets are compensated for, such as land, the government primarily uses the market value, which tends to undervalue assets. Additionally, any liabilities, such as mortgage and debt that the individual has at the time of resettlement, are transferred to the rehabilitation site, even if the land is of lesser value (McDowell & Morrell, 2010, p. 114).

The NRRP (2007) makes reference to the *Land Acquisition Act* of 1894, stating that while the government needs to provide compensation to project-affected people, the government is allowed to take land for public purposes (Government of India, 1894; Harel-Shalev, 2010, p. 96). Thus, the NRRP (2007) strongly upholds the notion of sovereignty, allowing the government to take land for national-development (Gochhayat, 2011, p. 5). The implementation of the provisions made in the NRRP (2007) has fallen short in providing the promised benefits that resettlement should bring to displaced tribals. This results in the development and resettlement practices by the Indian Government marginalizing tribals, both

socially and economically, by not providing them with the opportunity to re-establish their livelihoods.<sup>14</sup>

While development practices, as well as resettlement and compensation mechanisms, have not yet provided the promised benefits to the displaced tribals, the Indian Government does recognize the need for minority protection. In order to address the needs of India's minorities, the Indian Constitution includes various provisions directed towards its minority population. Furthermore, India has made various commitments on an international level towards protecting the rights of minorities and its citizens.

### **2.3 Recognizing the Need for National and International Minority Protection**

#### **National Commitments towards Minority Protection**

The Indian Ministry of Tribal Affairs acknowledges that tribals represent the disadvantaged sector of society who depends on the natural environment for their livelihoods and overall well-being (n.d., p. 1). The Indian Constitution includes two categories of rights that are directed towards addressing the needs of India's minorities. First, the universal right to equality, which includes equality before the law, prohibition of discrimination, and equal opportunity, as enumerated at Articles 14, 15, and 16 (Government of India, 2007, p. 6-8). The second category of rights directed towards protecting minorities is enumerated at Article 29 of the Indian Constitution and includes the right to culture (Government of India, 2007, p. 14-15). Here, emphasis is placed on India's social diversity and the need to prevent discriminatory actions in educational settings based on religion, race, caste, and/or language. Additionally, Article 30 states that religious minorities are allowed to "establish and

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<sup>14</sup> See Appendix C for a letter written by a tribal affected by the SSP, to the Independent Review Panel.

administer educational institutions,” as well as to be free from discriminatory financing of these institutions by the State (Government of India, 2007, p. 14-15). For the tribals of the Narmada Valley, equality before the law, prevention of discriminatory actions, as well as provision of equal opportunities are essential parts for lessening the negative impacts of state-led development activities.

One mechanism provided by the Indian Constitution, which is directed towards providing equal opportunities to minorities, is a compensatory-preferential treatment program. This program allocates a certain number of seats in legislation, jobs, and educational institutions to tribals, which makes them visible and enables/allows opportunities for their voices to be heard (Galanter, 1986, p. 79). Although success in the program has been reached in terms of a vastly expanding middle class, the label of preferential treatment simultaneously creates hostility and resentment. This can then result in the alienation of individuals based on their group identity, such as the tribals, which fuels the social division (Galanter, 1986, p. 79). In addition, the program does not address the needs of the tribal minority displaced by state-led development activities; instead, emphasis is placed on protecting minorities against discrimination based on religious affiliation or caste membership in educational or employment settings.

Article 338 A(1) of the Indian Constitution recognizes that emphasis needs to be placed on monitoring and evaluating whether the minority protective measures provided in the Constitution are being followed. This led the Indian Government to establish the National Commission for the Scheduled Tribes, which focuses on whether constitutional rights safeguard the livelihoods of tribals (Government of India, 2007, p. 207). Further, in 2006, a *National Tribal Policy* was drafted, which draws on provisions made in the Indian Constitution, highlighting the need to protect and to enable the personal development of

tribals (Ministry of Tribal Affairs, 2006, p. 4). The policy addresses the following concerns: alienation of tribals from their land; displacement, resettlement, and rehabilitation of tribals; infrastructure development; conservation and development of particular vulnerable tribal groups; gender equality; and empowerment, among others (Ministry of Tribal Affairs, 2011, p. 2). The strategy for addressing the above concerns includes the empowerment of tribals on a local level, “developing a quantifiable Tribal Development Index”, as well as setting up voluntary institutions, such as NGOs (Ministry of Tribal Affairs, 2006, n.p.; India Current Affairs, 2010, n.p.).

Although activities like these are vital, they have not yet led to the adequate protection of the displaced tribals’ livelihoods and their rights as citizens of India. Therefore, while the displaced tribals are included under the minority label, there is a lack of protective mechanisms to guard those who are affected by state-led development practices. This raises vital questions on India’s accountability towards its tribal citizens who are displaced due to state-led development practices. In the following section I will discuss India’s international commitments towards protecting its minorities and the implementation of these commitments on a national level.

### **Minority Protection: A Discrepancy Between International Commitments and National Actions**

India has made official commitments to protect its citizens at large by including rights for minorities in its Constitution and in ascribing to the protection of its minorities on an international level. For example, India has accepted, although with alterations, the *United Nations International Covenant on Economic, Social and Cultural Rights* (ICESCR) as well as the *International Covenant on Civil and Political Rights* (ICCPR). These international agreements “are binding for ratifying countries,” and “establish routine procedures for



monitoring compliance” (Cole, 2004, p. 1). The ICCPR includes “the right to equality before the law and equal protection” (Article 26), which in the context of the SSP has been lacking due to the absence of efficient protective mechanisms for the displaced tribals (Council of Europe, n.d., p. 1). Article 1 of the ICESCR states that “all peoples have the right of self-determination; including the right to ... freely pursue their economic, social and cultural development” (Council of Europe, n.d., p. 1).

India has also signed the UN *Declaration on the Rights of Indigenous Peoples* (2007), which includes, among others: “the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms”; to be “free and equal to all other people and individuals”; “the right to be free from any kind of discrimination”; and the right to self-determination and to maintain their distinct cultures (United Nations, 2007, p. 4-5). Further, Article 10 states that indigenous people should not be “forcibly removed from their lands or territories,” as well as resettled without prior consent (2007, p. 6). Although India has signed the Declaration (2007), India refers to its indigenous population as Scheduled Tribes or tribals, and thus signing the Declaration does not imply that India classifies tribals as indigenous people. Further, there is no universally agreed upon definition for the term indigenous person<sup>15</sup>, which poses a continuous concern in regards to whom the policy applies (Nyamu-Musembi, 2005, p. 38).

In the context of the SSP, the national and international community, such as activists and scholars, have stated that some of the fundamental human rights of development-displacees in the SSP have been neglected (Kothari, 1996, p. 1481; Mehta & Gupte, 2003, p.

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<sup>15</sup> The ‘working definition’ most frequently used defines indigenous people as “those which, having a historical continuity with pre-invasion and pre-colonial societies... [who] consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of the, they form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems” (Cobo cited in Davis, 2008).

24-25; Sachs, 2004, p. 42). The right to freedom of movement and choice of residence; the right to information and the freedom of religion; the right to an adequate standard of living, which includes food, clothing, and housing; and the right to be informed and freedom of expression are all rights that have not been fully granted to the tribals in the Narmada Valley (Kothari, 1996, 1481; Mehta & Gupte, 2003, p. 24-25; Sachs, 2004, p. 42).

To protect the livelihoods of internally-displaced people (IDPs), international *Guiding Principles on Internal Displacement* have been drafted (UNOCHA, 2004, p. 1). These *Guiding Principles* are considered to be “consistent with international human rights law” (Courtland Robinson, 2003, p. 2). While the tribal minority group affected by the SSP falls under the definition of IDPs<sup>16</sup>, the Indian Government made a statement to the UN Commission on Human Rights in 2000, saying “that unprotected internally displaced persons can only be found ‘in those countries where there is no effective State or where the State has collapsed’” (cited in Cohen, 2004, p. 6). The Indian Government emphasizes that these *Guiding Principles* are not legally binding, highlighting the notion of state sovereignty and no outside involvement without India’s consent (Cohen, 2004, p. 4).

This means that while the Indian Government is aware of human rights discussions in relation to internal-displacement, it does not view itself as neglecting the human rights of its displaced tribal citizens. While the Permanent Mission of India to the UN states that India places particular attention on the rights of its minority population, which is further promoted by the National Commission for Scheduled Tribes and the National Commission for

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<sup>16</sup> The UN Guiding Principles on Internal Displacement uses the following definition to define internally-displaced peoples (IDPs): “Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border” (UNOCHA, 2004). The construction of dams, such as SSP, can be considered a “human-made disaster” and those displaced fall therefore within the IDP definition of the Guiding Principles (Deng and Cohen, 1998).

Minorities, when it comes to state-led development practices, the displaced tribals are not provided with the resources to re-establish their livelihoods (Roy, 1999, p. 18; Permanent Mission of India, n.d., n.p.).

Notably, the UN has not openly stated that development projects that lead to the displacement of people, like the SSP, result in human rights neglect. Instead, the UN focuses on responsible and accountable development practices by the actors involved. This is due to the following reasons: first, ‘internal displacement’ is taking place within a country’s borders, and thus state sovereignty, which refers to a state holding “exclusive jurisdiction” over its territory, resources, and citizens, is hindering outside involvement (Donnelly, 1995, p. 116). Second, since the matter involves displacement caused by development, the UN believes that if the involved actors employ responsible and accountable development practices, development has the capacity to prevail over its own wrong-doings.

As a result, there are at least three different interpretations of how development-induced displacement and the protection of the displaced minorities can be approached. First, responsible and accountable development practices can mitigate the negative consequences that development can carry; second, cultural minorities can “be protected indirectly, by guaranteeing basic civil and political rights”; third, human rights alone do not suffice to ensure the protection of minority groups and thus minority rights are required (Kothari, 1996, p. 1481; Mehta & Gupte, 2003, p. 24-25; Sachs, 2004, p. 42; Kymlicka, 1995, p. 2-3). Current academic literature primarily approaches development-induced displacement either from a human rights approach or from a development approach, with little emphasis on the citizenship rights of the displacees. In this thesis, I approach development-induced displacement as an internal issue, with a focus on the rights of tribals as citizens of India and

the need for supplementary protection for under-represented societal groups who are excluded from fully enjoying the rights associated with citizenship.

René Lenoir (1974) used the term *social exclusion* to refer to “those who have no access to the fruits of economic growth,” or as the ones that economic growth has forgotten (Donzelot & Roman cited in Silver, 1994, p. 533; Ryan, 2007, p. 21). The concept of social exclusion has been associated with industrialization, social tension, class struggles, capitalism, as well as lack of access to full citizenship (Bhalla & Laperye, 2004, p. 2). The term can therefore be applied to describe the position of the Indian tribal minority affected by the SSP in Indian society. In the context of this thesis social exclusion refers to “the breakdown of the social fabric” and the tension between majority interest and minority rights, as is taking place in the context of the SSP (Bhalla & Laperye, 2004, p. 1-5; GSDRC, 2011). I will clarify what social exclusion entails in more detail in the subsequent section.

### **Development-Induced Displacement and Social Exclusion**

According to the Ministry of Tribal Affairs, one hindrance to tribal development is tribals lacking the resources to benefit from the rights provided to them (Ministry of Tribal Affairs, 2011, p. 1). Although tribals may lack the necessary resources to access certain rights, state-led development practices are further disabling the tribals’ ability to access these rights. This is due to legislation, such as the *Land Acquisition Act*, and resettlement and compensation mechanisms, that interfere with the ability of tribals to re-establish their livelihoods, thus leading to their social exclusion. As stated by Ryan (2007):

The excluded, dependent and incapacitated subjects to be included, enabled and empowered are located within various ‘communities’: of belonging, of identity, of interest, and those which are the product of targeted administrative programmes. (p. 5)

An individual who is socially excluded is characterized as a member of a society who would like to participate, but is unable to do so due to reasons beyond his or her control, such as state-led development practices (le Grand in Burchardt et al., 1999). Ali Madanipour et al. characterize social exclusion as a multi-dimensional process, which can occur on political, economic, social, and cultural grounds, involving matters of restricted access to citizenship rights and personal security (cited in Byrne, 2005, p. 2).

Three exclusionary processes identified by Kabeer (2000) include mobilization of institutional bias, social closure, and unruly practices. The concept of mobilization of institutional bias refers to the existence of dominating “values, beliefs, rituals and institutional procedures,” which systematically benefit certain individuals over others, and usually serve the interests of the majority (Bachrach & Baratz cited in Kabeer, 2000, p. 91). Notably, this kind of bias is not necessarily consciously put in place by the majority, but can be embedded within the socio-political system. Social closure involves restraining access to resources in order to monopolize their potential benefit, and usually involves deliberate action by the excluder, such as a country’s government (Kabeer, 2000, p. 92). An example of social closure in the context of India is the drafting of the *Land Acquisition Act* of 1894, which allows the government to take land for public purpose, and thus neglecting the importance of fertile land for tribal livelihoods.

Social exclusion can therefore involve “the systematic denial of entitlements to resources and services, and the denial of the right to participate on equal terms in social relationships” (GSDRC, 2011, n.p.). Of particular importance for the analysis of the SSP is the industrialization and modernization of India via dam development as well as the exclusion of the displaced tribals from fully enjoying the rights laid out in the Indian Constitution.

Here, a distinction between active and passive exclusion can be made, such as whether the tribals in the Narmada Valley are actively marginalized by the government or whether the marginalization of tribals is a by-product of development (Sen, 2000, p. 14). For example, a differentiation between direct and indirect displacement exists. Direct displacement occurs overtly and involves the displacement of individuals to make way for development, either through legal eviction, threats or actual harm, in addition to the voluntary movement of individuals (Penz, Drydyk, & Bose, 2011, p. 46). Indirect displacement refers to individuals being forced to move due to the impact of development practices on the natural environment, such as landslides, flooding of rivers, as well as “worsening [of] livelihood prospects” (Penz et al., 2011, p. 50).

Dam development in India involves both direct and indirect displacement. The government actively forces the tribal minority from their homeland while the land itself becomes drowned due to the inevitably rising river waters, necessitating the relocation of tribals. A primary characteristic of development is the need for land, which in the case of the SSP is inhabited by tribals. Therefore, while the Indian Government may have not intentionally targeted tribals, the government seems to be actively neglecting their needs through the maintenance of government policies and resettlement guidelines that support the government’s development endeavours.

Today, the case of the Indian tribals in the Narmada Valley is not about a lack of acknowledging their need for protection, but rather a matter of adequately addressing those needs and acting on the knowledge that is present about the consequences associated with displacement. At present, the current resettlement and compensation practices are not providing the mechanisms required to protect the livelihoods of the displaced tribal minority group, which in turn is perpetuating their marginalization and their status as second-class

citizens. While the Indian Government provides constitutional mechanisms that are designed to protect minorities, provisions made in the *Land Acquisition Act* and the *National Rehabilitation and Resettlement Policy* is counter-productive to what the Indian Constitution sets out to achieve.

Furthermore, even though the Indian tribals are citizens of India, having citizenship status does not guarantee the equal representation of all citizens. Since the Indian Government is responsible for its citizens, what position can citizenship rights play in providing a tool towards promoting an inclusionary environment that is considerate of Indian tribal minorities who are impacted by state-led development practices? As the displacement of tribals is due to state-led development practices, the following chapter will be comprised of two parts: a conceptual discussion of development and a conceptual discussion of citizenship, which I analyze in relation to one another.

The third chapter therefore start with a discussion of the various ways that development can be conceptualized and interpreted, such as Amartya Sen's (2000) notion of development as freedom. Emphasis will be placed on what development in principle sets out to achieve rather than how development is carried out. Since the tribal minorities are foremost citizens of India, what function does citizenship have, with particular emphasis on the vulnerable sector of society? To support the analysis, T.H. Marshall's discussions on citizenship, especially his discussion on social rights, will be examined. This will provide a foundation to further analyze the role of citizenship as a tool for the protection of a country's minorities.

## **Chapter 3: Towards Social Inclusiveness: A Discussion of Development and Citizenship**

### **3.1 Development: The Promotion of Freedom**

During the 1960s it was assumed that ‘development’, without a doubt, could improve the livelihoods of the disadvantaged sectors of society (Hayter in Rist, 2010, p. 20). As a result, the term *development* was to a certain extent viewed as innately positive, and development policies were thought to be directed towards the good of society as a whole (Rist, 2010, p. 20). From this perspective, development was not seen as a social construct or determined by political will, but rather part of the natural world order “that was deemed just and desirable” (Rist, 2010, p. 20). While development was primarily associated with positive social change, development practices simultaneously served as a political tool for the ruling ‘elite’ who were influential in the national and international development arena (Rist, 2010, p. 20). One example of development being used as a political tool was the Indian Government constructing the SSP to aid the building of an independent nation and a national identity. Simultaneously, the SSP provided a practical tool for addressing India’s need for the secure supply of water and the economic development of the country as a whole post-Independence. Thus, development practices served two purposes in India: nation building and economic development.

Interpretations of development vary depending on time, circumstance, and socio-political context with Ralph Grillo (1997) cautioning to not treat development as a “monolithic enterprise” (p. 19-20). The following questions will be addressed in the subsequent sections: (a) what are different ways development can be conceptualized; and based on the analysis of the various conceptualizations of development; and (b) how can development be defined for the purpose of this thesis? These questions will be examined



through normative and descriptive conceptualizations of development, which will aid to analyze the tension between minority and majority interests in India, particularly the SSP.

Understanding various conceptualizations of development will provide a foundation to define development for the purpose of this thesis, which will be done by drawing Sen's (2000) notion of development as freedom. Additionally, Nussbaum's (2011) Capability Approach will compliment Sen's (2000) stance on development by identifying the requirements for a minimally just society. This will help to establish a constitutive connection between rights as entitlements and the notion of development as freedom, which provides a point of departure to further expand on the meaning of development and the analysis of development practices in the context of the SSP in India.

### **Conceptualizations of Development: A Normative and Descriptive Stance on Development**

Normative and descriptive conceptions of development provide two ways of interpreting and justifying development practices. The former is concerned with development as the enhancement of the actual needs of people and their ability to lead long and healthy lives, whereas the latter is concerned with development as the enhancement of the economic profitability of people and society at large. Differentiating between these two conceptualizations of development is useful in further understanding the Indian Government's approach towards development in the SSP.

A normative stance on development primarily focuses on social norms and the meaning of 'good' development (Penz et al., 2011, p. 36). To determine what is considered as 'good' development, scholars focus on ethical questions in regards to how development practices are carried out, such as "development for whom?" and "development at what

price?” A normative conceptualization of development is therefore concerned with the actual needs of people, for instance, good health and the ability to provide for one’s family. Additionally, a normative stance of development places attention on a person’s ability to achieve things of value, which I will discuss in more detail in relation to Sen’s (2000) notion of development as freedom and Nussbaum’s (2011) Capability Approach in subsequent sections.

In contrast to a normative conception of development, a descriptive conception allows one to use the term development more freely. Developers and planners, who take a more descriptive stance, focus on a project’s ability to enhance the production and distribution capacity of a society in order to meet goals of public interest (Penz et al., 2011, p. 42-44). The focus is on the desired outcomes of a development project, such as economic achievements, rather than on the definition of what development should be. From a descriptive stance a person’s advantage is determined by the resources made available to him or her, which does not necessarily mean that a person is capable of accessing the provided resource or utilizing them for his or her own good (Sen, 2009, p. 231-235).

How do these two conceptualizations of development apply when interpreting the development practices used by the Indian Government in the context of the SSP? If interpreted from a normative stance, the SSP was designed to represent India’s Independence after British colonialism by symbolizing national unity. In this case the benefits of dam development were directed towards Indian society as a whole. While the displaced tribal minorities were, at times, classified as necessary casualties, the Indian Government saw the resettlement that resulted from displacement as an opportunity for the tribal group to benefit from the State’s development endeavour. Interpreted from a descriptive stance, the SSP meant economic development in the form of irrigation, food security, and electricity (Cullet,

2007, p. 14). The emphasis of the project was therefore on maximizing the economic profitability of the dam, such as raising the height of the SSP. Here, the economic well-being of the Indian Government and the Indian majority was taking priority over the needs of the tribal minority. All of these factors combined leads to development becoming a highly politicized process, creating tension between a state and its minority population (Schwenke, 2009).

Although a distinction can be made between whether development is approached from a normative or descriptive stance, one can argue that development cannot be defined descriptively without also defining it normatively. While a descriptive stance might be closer to the actual process of development, a project usually starts with a vision of what development strives to achieve. Therefore, I place attention on a normative conceptualization of development in the following section, by focusing on Sen's (2000) definition of development as freedom.

### **Development as Freedom**

Ideally, development refers to the enhancement of people's livelihoods by protecting them from existing social, economic, and political inequalities, and enhancing their freedom "so that they live longer, healthier and fuller lives within any given political entity" (Morvaridi, 2008, p. 9). Development is viewed as a "participatory democratic process" that aims to provide individuals with the opportunity to be active participants in decision-making processes affecting their livelihoods, with emphasis placed on the marginalized sector of society (Staudt, 1991, p. 28-29). The 2010 *Human Development Report (HDR)* by the United Nations defines human development as:

[T]he expansion of people's freedoms to live long, healthy and creative lives; to advance other goals they have reason to value; and to engage actively in shaping development equitably and sustainably on a shared planet. People are both the beneficiaries and drivers of human development, as individuals and in groups. (p. 22)

Thus, development seeks to facilitate the enhancement of people's basic human rights, such as the right to an adequate standard of living, the freedom to be informed, as well as equal legal treatment without discrimination (United Nations, 1948, p. 22).

The above definition covers three essential components of development, which provide a normative foundation of what development practices, in principle, set out to achieve. These three components of development include: (a) well-being, referring to the expansion of "people's real freedoms"; (b) empowerment and agency, referring to the enabling of "people and groups to act"; and (c) justice, referring to the expansion of equality, respect towards human rights and other aspirations that are of value to a society (UNDP, 2010, p. 22).

For the purpose of this thesis, I will use Sen's (2000) definition of development as freedom since it provides a normative foundation of what development strives to achieve, which is the expansion of people's real freedom. In addition, Nussbaum's (2011) ten capabilities provide a foundation to discuss what rights are needed to promote a just and fair environment for people's development, such as what capabilities the tribal minority group of the Narmada Valley requires in order for their freedom as citizens of India to be expanded rather than limited.

Sen (2000) defines development as the expansion of people's freedom, which means that rather than focusing on the primary goods a person has, such as resources and utilities, attention is placed on the substantive freedoms that the individual actually has (Sen, 2000, p. 3). Substantive freedoms refer to the freedoms that a person is actually capable of achieving.

For example, if a tribal were to possess the liberty to participate in political affairs or the ability to be an active participant in decision-making processes affecting his or her livelihood, one could say that he or she has some substantive freedoms. Sen (2000) identifies five types of freedom, including political freedom, economic facilities, social opportunity, transparency, and security. Sen (2000) refers to lack of freedom as unfreedom, such as not being part of decision-making processes affecting one's livelihood. Unfreedom therefore poses a hindrance to a person's ability to experience real freedom and hence development (Sen, 2000). An important aspect of understanding Sen's (2000) stance on development as freedom is his Capability Approach, which was expanded on by Nussbaum (2011).

The Capability Approach focuses on providing a person with a choice to lead the kind of life that he or she has reason to value (Nussbaum, 2011, p. 18). Attention is placed on the enhancement of people's choices, and how processes of injustice and inequality in a society are a hindrance to people's choices and thus their freedom (Nussbaum, 2011, p. 19). The Capability Approach is founded on the concepts of functionings and capabilities. Sen (1995) defines functionings as features that are part of a person's being, such as being healthy, sufficiently nourished, having a source of income, as well as happiness and self-respect (p. 39). Capabilities are actions a person is actually able to do; these are what Sen (2000) refers to as substantive freedoms. Thus, functionings refer to a person being able to realize certain capabilities, which means that a person needs to have the ability to realize the goals and values he or she sets out to pursue, which is referred to as a person possessing agency (Sen, 1995, p. 18 and 40). For example, while a resettlement and rehabilitation policy might include the provision of land for the displacees, the land must be available and individuals must have access to the land provided (Gore, 1995, p. 20).

Nussbaum (2011) expands on Sen's (2000) Capability Approach by providing a list of ten central capabilities, which, according to her, form the foundation for a minimally just society (p. 19 and 28). These ten capabilities are as follows: (1) life; (2) bodily health; (3) bodily integrity; (4) senses, imagination, and thought; (5) emotions; (6) practical reason; (7) affiliation; (8) other species; (9) play; and (10) control over one's political and material environment (Nussbaum, 2011, p. 33-34). All ten capabilities are interwoven and inseparable. This means that the lack of one capability cannot be compensated for via another. Therefore, each one constitutes an important part of an individual's well-being and the promotion of freedom and justice within a society (Nussbaum, 2011, p. 34).

Nussbaum (2011) views rights as entitlements to capabilities (p. 21). This means that the provision of rights provides people with the opportunity to achieve things of personal value and promote an environment of equal opportunities and justice. The absence of rights is then countering the opportunity for a minimally just society to exist. By identifying the above mentioned capabilities, Nussbaum (2011) provides a framework in which matters concerning "political entitlements and constitutional law" can be analyzed (p. 70). The aim of the Capability Approach is to protect the freedom of individuals by providing and enabling their entitlements towards a life of human dignity (Nussbaum, 2011, p. 31). The capabilities that are of particular importance for tribal minorities affected by the SSP are bodily integrity, control over one's environment, affiliation, and practical reasoning.

In the following section I will analyze how the realization of each of the four capabilities for the tribal minority in the Narmada Valley is hindered by the development practices in the SSP. I will then relate the analysis of capabilities to earlier discussions of citizenship rights in the context of the Indian Constitution, as discussed in chapter two. This

will support my analysis of Nussbaum's (2011) notion of rights as entitlements to capabilities.

### **The Capability Approach and the Indian Tribal Minority**

The capability of bodily integrity refers to a person "being able to move freely from place to place... [and] to be secure against violent assault" (Nussbaum, 2011, p. 33). The SSP undermines the capability of the tribal minorities to move freely by either direct displacement through police force, which has occurred in the village of Manibeli, or indirect displacement, such as the inevitably rising river waters of the Narmada River (Patwardhan, 2000, p. 7). The capability of bodily integrity relates to Article 19 (1.e) of the Indian Constitution, which is the right of individuals to reside and settle in any part of India (Government of India, 2007, p. 9). With the freedom of movement restricted through development-induced displacement, the tribal minority group is lacking the entitlement to bodily integrity and thus the right to this central capability.

The capability of control over one's environment is comprised of two parts: control over the political environment and control over the material environment (Nussbaum, 2011, p. 34). Having control over one's political environment means that a person has the opportunity to participate in political decision-making processes that affect his or her livelihood. This also means that an individual is entitled to participate in political affairs (Nussbaum, 2011, p. 34). Control over one's material environment refers to the ability to hold property and to possess property rights that are established on an equal basis to those of others (Nussbaum, 2011, p. 34). Additionally, having control over one's material environment refers to a person "having the right to seek employment on an equal basis.... [and] having the freedom from unwarranted search and seizure" (Nussbaum, 2007, p. 24).

In the SSP, the tribal group is not provided with the political and material control over their environment. This is due to the Indian Government inadequately informing tribals of their displacement and resettlement (see Article 14, 15, and 47 of the Indian Constitution [Government of India, 2007]). This capability is further limited due to tribal minorities frequently lacking legal entitlement to the land they reside on. Further, the *Land Acquisition Act* of 1984 is allowing the Indian Government to take land for ‘public purposes’. As mentioned in chapter two, while the State is providing protective measures to displacees, such as the *National Resettlement and Rehabilitation Policy* (2007), these measures have not been sufficient in countering the negative impacts of development practices on the livelihoods of tribal groups.

Although all of the central capabilities are interwoven, the capabilities of affiliation and practical reasoning play a “distinctive *architectonic* role”<sup>17</sup> for the others (Nussbaum, 2011, p. 39). Both the capability of affiliation and the capability of practical reasoning are neglected in the context of the SSP. Affiliation refers to human dignity and involves treating a person as a respectful human being that is equal to others, and a person’s ability to engage in social interactions (Nussbaum, 2011, p. 39). Further, the capability of affiliation includes “having the social base of self-respect and non-humiliation” (Nussbaum, 2007, p. 23).

The capability of affiliation can be secured via the following: protecting “institutions that constitute and nourish ... forms of affiliation”; securing “the freedom of assembly and political speech”; and providing entitlements that protect individuals from discrimination based on aspects such as ethnic background, religion, and caste (Nussbaum, 2007, p. 23). Although the Indian Constitution provides special protective measures towards its minorities, these measures have been ineffective in protecting tribal minorities who are affected by state-

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<sup>17</sup> Originally italics by Nussbaum (2011).



led development practices. As a result, the opportunity for tribal minorities to live a life of human dignity is limited.

Lastly, the capability of practical reasoning involves the empowerment of people to be active agents in decision-making processes concerning their livelihoods (Nussbaum, 2011, p. 39). Human dignity and empowerment play a central role in the expansion of people's substantial freedoms, and thus, based on the works of Sen (2000), they are supportive of true development. In the SSP, the Indian Government has not provided the tribal minority group with sufficient opportunities to be active agents in decision-making processes regarding their livelihoods, such as resettlement. This leads to the disempowerment of the tribal minority and places limitations on their freedom and autonomy, which relates to the right to liberty enumerated at Article 21 of the Indian Constitution (Tomas, 2005; Government of India, 2007; Gochhayat, 2011). The tribal minority group affected by the SSP lack at least four of Nussbaum's (2011) ten central capabilities. With this deficiency they are not only denied opportunities to a dignified life but also the entitlements (rights) required to live a life of human dignity, and thus the experience of equality and freedom.

Although I have largely discussed the capabilities in relation to tribals as a group rather than as individuals, the central capabilities are primarily concerned with the enhancement of choices and freedoms of the individual. Therefore, while the Capability Approach recognizes the importance of group membership and the achievement of capabilities within a group, Nussbaum (2011) emphasizes that each individual is "worthy of equal respect and regard" and thus entitled to live a life of human dignity (p. 35). This means that various degrees of freedom and equality exist with Nussbaum's (2011) ten capabilities by providing a baseline for a minimally just society. For instance, in the context of resettlement and the SSP, a displaced tribal will consider the possession of a fertile piece of land as a means to freedom,

while the Indian Government may interpret freedom as the possession of running water and electricity provided to tribals as a group in a resettlement site. Therefore, in order to determine whether a person experiences real freedom, one needs to consider whether a person is capable of pursuing and achieving personal goals or values, such as being healthy, having an adequate standard of living, as well as the ability to move freely (Sen, 2009, p. 228-231; Nussbaum, 2011, p. 33).

By analyzing Sen's (2000) notion of development as freedom and Nussbaum's (2007) notion of rights as entitlements to capabilities, I establish a relationship between rights and development through the Capability Approach. This link is further supported by Sen (2009), who states that a constitutive connection exists between development as freedom and democracy as the exercise of rights (p. 346).

### **Development and Democracy: A Constitutive Connection**

According to Sen (2000), development practices are ideally built on a democratic process and the promotion of a just and fair society; yet, both development and democracy have the ability to complement as well as counter one another. In principle, a democracy is based on promoting an environment of inclusion and equal membership, with processes of social exclusion countering the notion of equality that democracy is founded on.

The concept of democracy is tied to community membership, which is associated with a set of citizenship rights that are territorially bound to the nation-state. Community membership is based on cultural belonging; Kymlicka (1995) interprets cultural belonging as equivalent to national belonging (p. 18). According to Kymlicka (1995), a culture (nation) "provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life" in both the public

and private spheres (p. 76). More specifically, Kymlicka (1995) uses the term societal culture to emphasize that belonging to a culture does not only encompass the sharing of values and norms but also the sharing of “common institutions and practices,” within the territorial boundaries of a nation-state (p. 76).

While, in principle, a democracy is based on equal membership, in practice a democracy is based on a majoritarian model of governance. This can lead to the interests of majorities taking priority over those of minorities, which then limits the voices of under-represented societal groups. For instance, Nehru wanted to build a democratic India after Independence was gained in 1947 through large-scale infrastructure developments (Walsh, 2006, p. 208). While his aim was to create a strong national identity of a united and independent India, the development practices of the State and the resulting neglect of the citizenship rights of the tribal minority countered the notion of a just democratic environment. The *Land Acquisition Act* of 1894 from British colonial times poses an additional hindrance to a democratic environment in India, as it grants authority to the State to take land for public purposes. As a result, the voices of the tribal minority are overpowered by majority interests and the State.

One of the most difficult tasks of a democracy is to be representative of minority interests among majority rule (Sen, 2009, p. 352). This raises the following questions: (a) how can the rights of the tribal minorities, who are foremost citizens of India, be protected in the context of state-led development practices; and (b) how can citizenship rights act as a tool to enhance the capabilities of tribal minorities, and thus their freedoms, to live a life filled with dignity? As noted by Sen (2009), some scholars argue that a democratic environment is a pre-requisite for development while others argue that both cannot exist simultaneously (p. 346). Although development and democracy do not exist without tension,

in the analysis above I have demonstrated that from a normative stance both development and democracy set out to promote and facilitate a just socio-political environment that is based on the equal and fair treatment of its members. Based on these conclusions I draw on the link between development as freedom and the notion of rights as entitlements to capabilities, which will be further explored in the context of citizenship rights. In the subsequent section I establish a foundation for this analysis by discussing the communitarian and the liberal perspective of citizenship.

### **3.2 Conceptualizing Citizenship: Meanings and Functions**

#### **Conceptualizations of Citizenship: The Individual within the Collective**

Two normative conceptualizations of citizenship are the communitarian perspective and the liberal perspective. The communitarian perspective is based on the civic republican tradition of citizenship, which views citizenship as a status that is achieved through the active participation of individuals within their community (Oldfield, 1998, p. 76).<sup>18</sup> Citizens are empowered and encouraged to exercise their rights, with the decision-making power based on majority rule and democratic governance. From this perspective, individuals are seen as “members of social units larger than themselves,” such as a political community (Shafir, 1998, p. 10-11).

Because a citizen’s identity is based on community membership, one way community membership can be transmitted is through citizenship, which is bound to the nation-state (Heater, 1999, p. 44). In the communitarian perspective, citizens share a set of collective

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<sup>18</sup> The communitarian perspective can be traced to the Greek notion of citizenship, which was discussed by Aristotle. A ‘good citizen’, according to Aristotle, is “wholly and efficiently committed through thought and action to the common weal,” leading to the creation of a fulfilled human being (Heater, 1999, p. 45).

rights, which are thought to be representative of all community members. These rights mediate between the interests of community members and those between the State and its citizens (Summers, 1984). Emphasis is placed on the common good, which is seen as a standard of living that is perceived as good by the community as a whole (Kymlicka, 1990, p. 206). This means that the well-being of the community is of primary importance and takes precedence over claims made by individuals (Kymlicka, 1990, p. 206).

The case of the SSP illustrates this point; the displacement of the tribal minorities was justified on the grounds of development for the common good. As a result, dam development in India was directed towards the establishment of national unity and the creation of social bonds, with emphasis placed on the well-being of society as a whole rather than the individual (Shafir, 1998, p. 11; Nyamu-Musembi, 2005, p. 37). National development was therefore closer to a communitarian stance on citizenship, with emphasis placed on the well-being of the majority and the importance of social bonds that are necessary to establish and maintain a national community (Shafir, 1998, p. 11).

From a communitarian stance, if the rights of a citizen are bound to the collective, in order for these rights to be equally reflective of all community members, the community must function as a homogeneous entity (Kymlicka, 2002, p. 257). With emphasis on community membership and majority rule, the equal representation of all citizens in the communitarian perspective of citizenship becomes problematic when a community, such as a nation-state, is not homogeneous in terms of the interests and needs of the individual citizens (Kymlicka, 2002, p. 257). The outcome is the marginalization of some citizens over others, which primarily results in the social exclusion of the vulnerable and disadvantaged sectors of society.

In contrast to the communitarian style of citizenship is the liberal style of citizenship. Liberal citizenship focuses on the civil and political rights of individuals, with emphasis placed on the promotion and protection of individual freedom (Miller, 2000, p. 44; Kabeer, 2005, p. 2). From a liberal perspective, a person is bound to the State and his or her fellow citizens through a legal framework, which involves respecting the authority of the State by obeying its laws while simultaneously maintaining an individual identity that is represented through individual rights (Heater, 1999, p. 7). As a result, the individual maintains his or her autonomy and has no direct obligation to participate in the public sphere except to pay taxes (Heater, 1999, p. 7; Nyamu-Musembi, 2005, p. 37).

A defining feature of liberalism is that it “ascribes certain fundamental freedoms to each individual” (Kymlicka, 1995, p. 80). These freedoms are based on providing individuals with a choice in regards to the life they want to live (Kymlicka, 1995, p. 80). In principle, the primary motive of a liberal democracy is the promotion of freedom and equality of each citizen and the promotion of social justice among citizens (Kymlicka, 1995, p. 34; Miller, 2000, p. 44). A connection can be drawn between the liberal perspective of citizenship and Sen’s (1000) notion of development as freedom. While both set out to provide the individual with a choice and entitlements that promote the freedom of the individual, this does not imply that there is no tension between the promotion of liberal individual rights and development as freedom. The Indian Constitution and the SSP provide an example of the tension that can exist between the two concepts.

The Indian Constitution is based on a liberal stance of citizenship, with the *Indian Citizenship Act* identifying Indian citizens as individuals rather than as part of a collective entity (Harel-Shalev, 2010, p. 93). As a result, “India’s definition of citizenship is, in principle, universal,” and while it does not discriminate against individuals on the basis of

ethnicity, culture, religion, or language, it also does not address these matters, which can result in tensions between the representation of majority and minority interests (Harel-Shalev, 2010, p. 93). The Indian Constitution, as noted by Harel-Shalev (2010), is built on democratic, “ambivalent and elaborate rights discourses,” such as the right to liberty, the freedom of movement, and the right to receive equal legal treatment (p. 51). From a liberal perspective the Indian tribals are entitled to the citizenship rights laid out in the Indian Constitution, regardless of their participation in national affairs, such as state-led development.

In the context of the SSP, the rights of tribals as individuals and the promises of equality, that in principle are attached to liberal citizenship, are challenged by the potential for economic gains through state-led development. This limits the freedom of tribals and their ability to take advantage of the entitlements associated with being a citizen of India. Therefore, a discrepancy exists between the rights provided in the Indian Constitution and the implementation of these rights in practice, since current citizenship rights in India are not extending towards the tribal minorities affected by state-led development practices in the SSP. The challenge for liberal citizenship is thus to be reflective of the existing social diversities and the needs of under-represented societal groups, such as the displaced tribal minorities, who are not adequately represented through the individual rights provided within the framework of the Indian Constitution.

As noted by Kymlicka (1995), one way for liberal citizenship to be reflective of under-represented societal groups is by providing group-specific rights (collective rights). Although the term group-specific rights can easily be interpreted as being representative of a homogenous social unit, group-specific rights in themselves are marked by a diversity of claims towards entitlements, which will be expanded on in subsequent sections. I will use the

framework of liberal citizenship to explore how it can provide a space for group-specific rights without undermining individual rights. T.H. Marshall's definition of citizenship, especially his notion of social rights, will provide a foundation on early discussions of citizenship as a tool for social inclusiveness.

### **Social Cohesion and Social Exclusion: T.H Marshall and Beyond**

T.H. Marshall, an influential figure in early discussions on citizenship, defines citizenship as "a status bestowed on those who are full members of a community" and who receive the same equal legal treatment as their fellow citizens by the State (Marshall cited in Shafir, 1994, p. 102). Within the above definition three functions of citizenship can be identified: (a) citizenship connects the State and the individual; (b) citizenship implies community membership, which raises questions on the inclusion/exclusion of individuals; and (c) citizenship provides individuals with a social status, which in turn provides individuals with the opportunity to make claims towards entitlements (Lewis, 1998, p. 104). An integral part of discussing matters of rights as entitlements, as well matters of social inclusion and exclusion, is community membership and an individual's social standing within that society.

Marshall's main focus on citizenship and social class in England led to his view that the development of the market and the subsequent material inequalities result in the increasing exclusion of the working class due to their socio-economic standing in society (Kymlicka, 1995, p. 179-180; Barbalet, 1993, p. 37). To address these increasing inequalities Marshall proposes the welfare state as a solution, which would provide social security and entitlements to disadvantaged members of society (Hindess, 1993, p. 20; Turner, 1993, p. 3).



For Marshall, citizenship consists of three parts: the civil, political, and social. The civil element, which developed in the seventeenth century, includes the right to individual freedoms such as “freedom of speech, thought and faith” as well as the right to own property. The political element, which developed during the eighteenth and nineteenth century, includes the “right to participate in the exercise of political power”, such as the right to vote. Lastly, the social element, which developed in the twentieth century, and includes the right to health care, education, and social security (Marshall, 1965, p. 78; Turner, 1993, p. 6; Kymlicka, 1995, p. 180). A vital contribution of Marshall’s analysis of citizenship was his introduction of social rights, which he directed towards addressing matters of social inequalities and the facilitating of social cohesiveness within the welfare state.

Another significant aspect of Marshall’s stance on citizenship is his assumption that a ‘basic human equality’ exists, suggesting that the existence of inequality among the social class system might be acceptable if “the equality of citizenship is recognized” (Lipset cited in Marshall, 1965, p. 76). This means that the citizenship rights provided, such as freedom of movement and choice of residence, should in principle be built on a ‘basic human equality’ that establishes a foundation upon which all citizens are considered as equals. Thus, citizenship rights based on justice should facilitate an environment of fairness and promote social cohesion among members of a nation. To what extent this equality is practiced then becomes a matter of whether equality is promoted or limited through the social, political, and economic actions of the actors within a nation-state. This means that citizenship can simultaneously create cohesion as well as conflict through “expectations about entitlements,” which are not always met or carried out (Turner, 1993, p. 8).

Although Marshall was interested in the social exclusion of the working class and how to include these individuals within the welfare state, his theory has been criticized for lack of

acknowledging questions of “entitlements and provision” of citizen rights, such as the rights a citizen should possess in theory and the rights a citizen is provided with in practice (Heater, 1999, p. 21; Turner, 1990, p. 191-193). To further illustrate, a distinction can be made between formal and substantive citizenship: the former refers to citizenship in terms of “membership of a nation state”, and the latter to an “array of civil, political, and social rights” (Bottomore in Marshall & Bottomore, 1992, p. 66). Formal citizenship is associated with the possession of rights that are attached to being a member of a nation, whereas substantive citizenship is concerned with individuals who possess formal citizenship status, but may or may not enjoy all the rights associated with citizenship (Brubaker in Dwyer, 2010, p. 151). Therefore, certain individuals, mainly minorities, may be excluded from formal and substantive aspects of citizenship (Brubaker in Dwyer, 2010, p. 151).

This divergence of citizenship can be observed with the Indian tribal minorities: they are members and citizens of India (formal citizenship), but in practice do not enjoy all the rights traditionally owed to a citizen (substantive citizenship). For example, although tribals are considered citizens of India, in the context of the SSP their rights as citizens are limited, as discussed in chapter two. Consequently, possessing citizenship status does not guarantee equal legal representation and protection. As a result, the tribal minorities are not provided with the same opportunities towards realizing their freedoms as their fellow citizens, which turns them into second-class citizens. In Charles Gore’s (1995) words, this type of social exclusion results in incomplete citizenship, which is due to a divergence between the citizenship rights that an individual possesses and to what extent the individual is entitled to or has access to these citizenship rights (p. 19).

While Marshall’s (1965) social rights and the provision of material benefits via the welfare state have promoted social integration and cohesiveness, the social exclusion of

citizens occurs separately from a state providing citizenship rights and an individual possessing citizenship status (Kymlicka, 1995, p. 180). As noted by Kymlicka (1995), although social exclusion can be based on socio-economic status, the exclusion of individuals is also based on their socio-cultural identity, with material benefits not necessarily facilitating their social integration (p. 180). For instance, the tribals of the Narmada Valley are affected by state-led development practices not solely because they have a lower socio-economic standing in society, but also because of their socio-cultural identity within the larger context of India, such as stereotypes attached to their livelihoods.

Therefore, while a state might aim to have an inclusive national identity by allowing diversity in the form of sub-groups, Miller (2000) notes that a state will always have a biased tendency towards the national majority (p. 34). This stance is further supported by Bashir and Kymlicka (2008) who say that to a certain degree the establishment of a national identity always includes aspects of assimilation and/or exclusion (p. 11). The citizens who are primarily affected by this are the disadvantaged and vulnerable sectors of society, such as national minority groups (p. 11). As a result, a state will inevitably promote certain social identities over others (Kymlicka, 1995, p. 108).

If a democratic government by default is not neutral, how does this impact the notions of equality and justice of the individual that constitute the basis of liberal citizenship rights? The importance lies within recognizing that citizenship is associated with societal membership and a set of expectations, such as entitlements to rights, which are not necessarily met or carried out to their full extent (Turner, 1993, p. 9). Once a government recognizes that certain short-comings in state legislations exist, which result in the exclusion of certain societal groups, it has a responsibility to act on this knowledge.

As I have previously stated, liberal citizenship has the capacity to accommodate group-specific rights, thus providing a malleable tool to address potential short-comings. Therefore, to ensure the representation and inclusion of various societal groups and to avoid their oppression, a state might be required to articulate a set of rights that address the diversity within a national community and the various needs that accompany this diversity. I will introduce the topic of group-specific rights by providing a brief overview of various positions on the subject matter, which then will be further expanded on in an applied context in chapter four.

### **Group-Specific Rights: A Case towards Minority Rights**

While the Indian Constitution takes a liberal stance on citizenship, the State is countering the freedom of the individual by approaching development in the SSP from a communitarian style of citizenship. This is done with the Indian Government advocating development for the common good, which is undermining the needs of India's tribal minority groups. Although some argue that in order for the "citizenship tradition to survive it needs to ignore or at least to bypass this potentially fragmenting diversity," others believe that citizenship is capable of accommodating diversity (Shafir, 1998, p. 3). As noted by Iris Young (1989):

[A] democracy should provide mechanisms for the effective recognition and representation of the distinct voices and perspectives of those of its constituent groups that are oppressed or disadvantaged. (cited in Miller, 2000, p. 64)

As a majority will always be heard first in a democracy, attention must be placed on ensuring that all societal groups are fairly represented and have opportunities to maintain their distinct culture (Kymlicka, 1995, p. 113). Advocates of group-specific rights, such as Kymlicka

(1995), note that in order to ensure the 'true equality' of citizenship a state needs to accommodate diversity by providing rights that protect under-represented societal groups from majority decisions (p. 126). Kymlicka (1995) identifies three forms of group-specific rights, which are often grouped under the collective rights category: (a) first, self-government rights, which refer to political autonomy, self-determination and the decentralization of political power; (b) second, polyethnic rights, which protect ethnic groups against discrimination by providing them with the opportunity to culturally express themselves; and (c) lastly, special representation rights, which ensure the representation of minorities in legislation (p. 27-32).

Opponents of group-specific rights fear that providing special legal provisions to minorities will interfere with the stability of a democracy, since it may encourage differences rather than social cohesion (Kymlicka, 1995, p. 173). Group-specific rights, they argue, would undermine a common citizenry identity (Kymlicka, 1995, p. 175). Furthermore, from a liberal stance, group-specific rights are often thought of as undermining an individual's freedom by focusing on an individual's group membership rather than his or her own individual status (Kymlicka, 1995, p. 34).

Countering this criticism, Kymlicka (1995) draws attention to the heterogeneous characteristics of group-specific rights (collective rights) by distinguishing between two kinds of claims that can be made by a group: internal restrictions and external protections. Internal restrictions are based on intra-group relations, and protect group members from internal conflicts (Kymlicka, 1995, p. 36). From a liberal stance, internal restrictions can more easily counter the freedom of the individual, since this kind of claim can be manipulated by elites within the group to control or restrict the rights of individuals within the group (Kymlicka, 1995, p. 36). External protection involves a group demanding

protection from external decisions made by society at large (Kymlicka, 1995, p. 35-36). Depending on the context, a group can make both kinds of claims simultaneously, with the kind of claim/claims made having an important influence on the rights required (Kymlicka, 1995, p. 37). In the context of the SSP, tribals are making claims towards external protection due to the tension between majority and minority interests in state-led development practices. The tribals of the Narmada Valley are asking the State to grant them with the means to protect their livelihoods, by providing them with the permission to stay on the territory that is a vital component for their religious and cultural practices.

An example of an external restriction in relation to the tribals affected by the SSP are land claims, with the State being able to take land for public purposes, as laid out by the *Land Acquisition Act* of 1894. Kymlicka (1995) notes that land claims are one of the largest sources of ethnic conflict; these matters are politically and economically charged, with the establishment of reserved land providing a certain degree of protection from external influences (p. 43). Institutions and existing societal structures play a key role in excluding, restricting, and including individuals in societal processes by either providing or not providing entitlements that promote social inclusiveness.

The main objective of Kymlicka (1995) differentiating between these two kinds of claims is to demonstrate that group-specific rights do not imply internal restrictions towards group members, but rather the inclusion of minorities within a society (p. 35-36). Kymlicka (1995) expands on Marshall's (1965) analysis of civil, political and social citizenship by suggesting a fourth type of citizenship: cultural citizenship, which Young (1998) refers to as differentiated citizenship (in Shafir, 1998, p. 263). This means that under-represented and disadvantaged societal groups are provided with group-specific rights to ensure their inclusiveness in socio-political affairs affecting their livelihoods. A liberal approach towards

minority rights thus needs to acknowledge the freedom of individuals as well as the freedom of under-represented societal groups.

As the construction of the SSP is nearing completion, important questions on protecting Indian tribal minorities who are impacted by state-led development practices remain. The SSP provides a detailed case study to advance discussions on the protection of minority rights and, most importantly, people's livelihoods. The aim of chapter three was to provide a conceptual understanding of development and citizenship. By using Sen's (2000) definition of development as freedom, it becomes apparent that the development practices are countering the freedom associated with citizenship of the tribal minority group in the Narmada Valley. As membership to a national community is associated with the possession of citizenship rights, which in principle are based on the equal treatment of community members, the question arises: can a focus on minority rights contribute to responsible and accountable development practices in state-led development practices? With state-led development countering the equality upon which citizenship is established, special attention must be placed on the protection of India's tribal minority. In the following chapter I use the framework of liberal citizenship to discuss how minority rights can compensate for shortcomings in a nation's constitutional rights, with the SSP serving as a context for this analysis.

## **Chapter 4: Citizenship and Development: Enhancing the Protection of Minorities**

### **4.1 People: The Wealth of a Nation**

Since post-independence, India's system of governance has been described as a liberal democracy, as well as one of opposition and conflict (Harel-Shalev, 2010, p. 17).<sup>19</sup> As Bashir and Kymlicka (2008) note, a nation's past is characterized by social attitudes, cultural patterns, and institutional rules. Depending on the socio-political context, these characteristics may pose a hindrance to the establishment of an inclusive democratic society that is representative of the individual citizen (Bashir & Kymlicka, 2008, p. 1). An important aspect of what India is today and how it functions is therefore shaped by its colonial past and its gaining of Independence in 1947. According to Harel-Shalev (2010), the Indian system has become less collaborative and more adversarial over the last decades. In the context of India, the Hindu majority has a strong voice in political affairs, with the majoritarian model of democracy described as innately exclusionary by Bashir and Kymlicka (2008, p. 2; Harel-Shalev, 2010, p. 17). This results in the social exclusion of some citizens over others, creating second-class citizens.

In the previous chapters of this thesis I have provided a contextual (the SSP) and conceptual (development and citizenship) background to explore the central research question of this thesis: can a focus on minority rights contribute to responsible and accountable development practices in state-led development that aim to bridge the interests of majority and minority groups? In regards to minority representation in the context of the SSP, the following has occurred: (a) the government has not adequately considered the needs

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<sup>19</sup> India's democratic status is mainly allocated to the wave of liberalization that took place in the early 1990s, which involved: the deregulation of foreign investments; the opening of the labour market to multinational companies; the gaining of self-sufficiency in the production of food-grains; as well as various achievements in the power and irrigation sector (Chowdhury, 2011, p. 1; Dwivedi, 2006, p. 41).



of tribals in the initial planning stages of the SSP; (b) the government has underestimated the number of development-displacees; and (c) the government has underestimated the severity of its own development practices on the livelihoods of the tribal minority.

In regards to group-specific rights, one of the central questions “is whether one accepts in principle the idea of giving political recognition to communities or group differences” (Kymlicka, 1995, p. 129). While most legislation of democracies already include group-specific rights, the following questions must be addressed: (a) to what extent do group-specific rights reflect the needs of the diverse minority groups within a country; and (b) to what extent are these group-specific rights enforced? Although the Indian Constitution includes rights that are directed towards its minorities, in the case of the tribal minority group affected by the SSP there is a lack of effective minority rights that protect their livelihoods from state-led development practices.

In this chapter, I analyze the following: (a) to what extent are the voices of the displaced tribals as citizens of India being heard and taken into consideration by state institutions; and (b) to what extent do current legal provisions impact the need for minority rights for tribals displaced by state-led development practices? I will address these questions using two examples: the activism by the Indian non-governmental organization Narmada Bachao Andolan (NBA) and current revisions to the *Land Acquisition Act* of 1894.

### **Advocating for a Voice: The Case of the Tribals and the Narmada Bachao Andolan**

The Indian Government’s development practices in the SSP have received criticisms on national and international levels. Critics include the affected tribal minority, activists,

scholars, and organizations, such as the Narmada Bachao Andolan<sup>20</sup> (NBA), also known as Save Narmada Movement. The NBA is a key opponent of dam development in India, using non-violent protests, marches, hunger strikes, as well as “noncooperation movements,” such as denying entrance into villages or not paying taxes to create pressure on government institutions (Narula, 2008, p. 359; Basu, 2010, p. 103). Although the NBA uses a human rights discourse to discuss the government’s neglect towards the rights of the tribal minority, it has used the framework of citizenship to advocate for the protection of the rights of the tribal minority group in the Narmada Valley.

In 1994, the NBA filed a petition, asking the Indian Supreme Court to review the SSP (Cullet, 2001, p. 973). In the case of the *Narmada Bachao Andolan v. Union of India* the NBA emphasized Article 21 of the Indian Constitution: “the right to life” and “personal liberty” (Cullet, 2001, p. 978). The NBA also emphasized that the government is not providing resettlement and rehabilitation guidelines that adequately protect the livelihoods of the displacees (Cullet, 2001, p. 978). The NBA, together with the support of the tribal minority group of the Narmada Valley, advocated for justice as a group, using the liberal rights of the Indian Constitution as a foundation.

In relation to Article 21 of the Constitution, reference to the International Labour Organization’s (ILO) *Convention 107 on Indigenous and Tribal Populations* of 1957 has been made. The Convention is known as C107 and has been signed by India. Article 12.1 of the Convention states:

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<sup>20</sup> The NBA was founded by a group of NGOs comprised of local dam opponents, scientist, academics, and activists, such as Medha Patkar and Arundhati Roy (Narula, 2008; Dwivedi, 2002; Basu, 2010).no pg. #'s here..

[tribal populations] shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development. (ILO, 1957)

Under exceptional measures, meaning when the removal of tribal populations is necessary (see Article 12.2), C107 requires that land of the same quality must be provided to support the future development of the displacees (ILO, 1957). In the case of the displaced tribal minority of the Narmada Valley, quality land has not been provided by the government (International Environmental Law Research Centre, 2000, p. 8).

Shri Shanti Bhushan, an Indian civil liberties lawyer who worked with the tribal petitioners of the Narmada Valley, notes that in regards to the SSP there is no proof of exceptional measures, such as wide spread public benefits that would justify the displacement of the tribal minority group (Anton & Shelton, 2011, p. 8). He further states that under present circumstances and with the failure of existing rehabilitation measures, the SSP was not directed towards the national and public interest, as was used to justify the displacement of people (Anton & Shelton, 2011, p. 8). In 1989 the ILO Convention was revised and is now referred to as C169. Article 12 under C169 states: “The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings ... for the effective protection of these rights” (ILO, 1989). The Indian Government has not yet signed the new Convention.

While the Supreme Court halted the construction of the SSP from 1995 to 2000, it concluded that the dam contributes to provide “irrigation for food security, domestic and industrial water supply... [and] hydroelectric power” with no signs that the dam is not cost-effective (Cullet, 2001, p. 976; McCully, 2001, p. 1). In regards to the displaced tribal minority, the Supreme Court stated that resettlement does not necessarily lead to the

violation of their rights. This was justified on the grounds that resettlement sites provide better living conditions for displacees (Routledge, 2003, p. 252). Overall, the Supreme Court declared the conditions and current resettlement and rehabilitation policies by the government as satisfactory. This provided the government with the authority to continue to construct the SSP (Narula, 2008, p. 377). For the tribal minority group, the Supreme Court's verdict not only meant the inevitable loss of their land and home, but also a loss of "faith in the process of law and justice" (D'Souza, 2002, p. 160).

The activism by the NBA and the decision by the Indian Supreme Court demonstrate: (a) claims towards entitlements in the SSP were made by the tribal minority as a group rather than as individuals; (b) the Supreme Court's decision supports the government's pursuit of development for the common good; and, as a result of the Supreme Court's decision, (c) the voices of the tribal minority as citizens of India are diminished by majority interests. The achievement of justice is therefore dependent on the choices made by individuals, groups, and societal institutions who take on a vital role in promoting or hindering justice (Sen, 2009, p. 82).

While a country's judicial institutions are responsible for representing the interests of its nation's citizens, a dependable government needs to be accountable for approving national development projects that are beneficial to its citizens (Anton & Shelton, 2011, p. 18). According to Anton and Shelton (2011), the Supreme Court should not become an "approval authority" for development projects that the government designates for the benefit of the public good (p. 18). Instead, the role of the Supreme Court is to safeguard the rights of the Indian Constitution by upholding the rule of law for the public interest, which means the Indian Government is ultimately responsible to act in the interest of its citizens (Anton & Shelton, 2011, p. 18). Sen (2009) states:

[A] capability is the power to do something, the accountability that emanates from that ability - that power - is a part of the capability perspective, and this can make room for demands of duty. (p. 19)

For instance, an institution that has the power, and thus the freedom to choose, is accountable for its actions. The individuals who comprise the institution then have a responsibility to ensure that the choices made are not hindering the freedom of others. If the choices made are a hindrance to freedom, then the power to choose is countering Nussbaum's (2011) central capabilities and Sen's (2000) notion of development as freedom.

Since the Supreme Court's decision, the Indian Government has made two important advancements on furthering the protection of development-displacees: the drafting of the *National Resettlement and Rehabilitation Policy* (NRRP) of 2007 and amending the *Land Acquisition Act* (LAA) of 1894 in 2011. As I have discussed the NRRP in the second chapter of this thesis, I focus on the amendments to the LAA in 2011. The main question guiding my analysis is to what extent the current revisions to the LAA of 1894 are setting out to protect the livelihoods of India's development-displacees?

### **The Land Acquisition Act: Past and Present**

As stated by Kymlicka (1995), rights are often the "result of historical agreements" that are established at a certain point in time and under certain circumstances, and may no longer suffice with the passing of time and the changing of circumstances (p. 116). For instance, the *Land Acquisition Act* (LAA) of 1894 was initially drafted to maximize Britain's profitability, allocating Britain with the authority to take land for economic gains (Patel, 1995, p. 180). When India gained Independence in 1947, the Indian Government took over the existing

provisions of the LAA. Subsequently, land ownership was monopolized by the government. This especially affects under-represented and vulnerable societal groups, such as the Indian tribal minorities who occupy rural land that is of interest for state-led development projects. In addition, tribal minorities often lack legal entitlement to the land they inhabit, resulting in their exclusion from decision-making processes regarding land acquisition, and thus their livelihoods.

In an attempt to address issues related to land acquisition, the Indian Government amended the LAA in 2011. The LAA of 1894 is now known as the *Land Acquisition, Rehabilitation and Resettlement Bill* (LARR) of 2011.<sup>21</sup> The purpose of this Bill is:

[T]o ensure a humane, participatory, informed consultative and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families. (Government of India, 2011, p. 1)

Families, whose land is acquired, are to receive adequate and fair compensation to improve their social and economic standing. These families are then supposed to become partners in the development process, empowering them by turning them into active rather than passive participants (Government of India, 2011, p. 1). Although the LARR of 2011 promotes that project-affected people are part of the decision-making process, it does not seem to hinder the government's development projects under the public purpose slogan. For example, the Rural Development Minister of India, Jairam Ramesh, said:

It is a bill that gives maximum flexibility to the state governments. It is a bill, in my view, that brings about balance between the objective of faster industrialization and the need to protect land owners and livelihood losers. (First Post Politics, 2011)

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<sup>21</sup> This Bill has not been finalized yet.

This means that while project-affected people are to participate in decision-making processes and to be compensated for their losses, the LARR is primarily directed towards making the development process as efficient as possible for state governments.

Further supporting the government in its development endeavour is the broad definition of what constitutes public purpose under the LARR of 2011. Under the current provisions of the Bill, public purpose, as defined under Clause 3(za), includes: highway, power, and irrigation projects, land for project affected people, as well as for “planned development or the improvement of village sites .... [and] the weaker sections in rural and urban areas” (Government of India, 2011, p. 6). While the LAA of 1894 was criticized for its lack of clearly defining public purpose, the definition of the LARR of 2011 remains vague. This continues to allow the government to take land for national development projects that set out to improve the living conditions of the weaker sectors of society.<sup>22</sup>

In regards to compensation, Clauses 26 to 28 of the LARR state that the compensation of lost land needs to be based on the market value or higher and that lost assets also need to be compensated (Government of India, 2011, p. 15-16). Additionally, Clause 30 lays out extensive resettlement and rehabilitation measures for project-affected families, including: rehabilitation and resettlement amount payable to the family; house and land assigned to the displaced families; payments for cattle sheds, artisans, and small trades; as well as information regarding mandatory employment to members of the affected family (Government of India, 2011, p. 16). Clause 30 also states that every displaced family shall be resettled (Government of India, 2011, p. 16). Although resettlement, rehabilitation, and

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<sup>22</sup> The concept of usufructuary rights has been used in relation to indigenous land in countries such as Canada and Australia, and refers to indigenous people using the land but ownership is allocated with someone else, such as Canadian First Nations using land owned by the Crown (McNeil, 2004; Engel, 2010).

compensation must be provided for project-affected people, promises of adequate compensation have failed in the past.

Further, the argument can be raised that under the LARR of 2011, the Government of India would still be able to construct a dam such as the SSP. This is made possible by current provisions allowing the government to take land for public development purposes that provide benefits, such as irrigation, food security, and electricity, to the wider public. Furthermore, the process of displacement falls under public purpose itself, with displacement and resettlement marketed as providing a development opportunity for the weaker sectors of society.

In regards to Sen's (2000) notion of development as freedom, development does not imply modernizing the livelihoods of the tribal minorities, providing monetary compensation, and industrializing the nation. Development as freedom refers to providing people with a choice in achieving things of personal value, such as being able to provide for one's family and to live a healthier life. The objective of Sen's (2000) notion of development as freedom is therefore to enhance people's livelihoods and the equality and justice between community members. Under the current provisions of the LARR of 2011 emphasis is placed on improving the economic advantage of India's industrial sector and increasing the efficiency of the development process. Although the government attempts to consider the needs of its vulnerable societal sectors, development projects, such as dams, continue to be classified as development for the common good, jeopardizing the citizenship rights and freedom of the tribal minority group affected by the SSP.

Subsequently, the LARR of 2011 is not only countering a normative approach towards development, but also the liberal citizenship rights of the Indian Constitution. While, in principle, liberal citizenship is based on the freedom of each individual, the Indian



Government undermines the freedom of some of its citizens by promoting development for the common good. This creates tension between majority and minority interests, with state-led development leading to the under-representation of vulnerable societal groups, who have their individual freedom taken away. Thus, while tribals are foremost citizens of India, a discrepancy exists between state-led development and citizenship, with the development practices in the SSP opposing the liberal citizenship rights of tribals as citizens of India.

McDowell and Morrell (2010) emphasize that providing a compensation-based resettlement package, which supports individuals through the potential “shocks” associated with “land acquisition, displacement, asset loss” and cultural upheaval is extremely challenging and the difficulty should not be misjudged (p. 91 and 105). With current provisions in the LARR of 2011 further promoting the acquisition of land for public development purposes, and thus serving majority interests, how can liberal citizenship act as a tool to bridge majority and minority interests? Furthermore, apart from civil and political rights, “what else, or what more, is needed to create a genuinely inclusive democracy?” (Bashir & Kymlicka, 2008, p. 3). I respond to these questions in the subsequent sections.

#### **4.2 Minority Rights: Towards Inclusive Citizenship**

##### **The Promotion of Justice: Towards an Inclusionary Democracy via Minority Rights**

The Indian Constitution states the following:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to

promote among them all FRATERNITY assuring the dignity of the individual and the [unity and integrity of the Nation]. (Government of India, 2007, p. 1)<sup>23</sup>

Simultaneously, Article 39 of the Indian Constitution counters the notion of personal liberty by emphasizing the common good:

The State shall, in particular, direct its policy towards securing: (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. (Government of India, 2007, p. 21)

As the notion of liberal citizenship is embedded within India's system of democratic governance, so is the concept of development for the common good. This results in tension between the interests of the majority and the interests of the minority.

Therefore, with the government promoting the interests of the majority in the case of the SSP, it subsequently undermines the freedom of the under-represented tribal minorities of the Narmada Valley. As the national legal provisions of a democracy should be directed towards enhancing the equality between a country's citizens, legal provisions also create, enforce, and maintain positions of power (Boltanski & Thévenot, 2006, p. 29). With the Indian Government not adequately addressing the needs of India's displaced tribal minority in the Narmada Valley, it is countering their liberal citizenship rights of the Indian Constitution.

As I have stated in chapter three, a right is an entitlement to a capability. This means that if an individual is not provided with rights that promote Nussbaum's (2011) capabilities, the individual is then not provided with the power to achieve things of personal value. This results in unfreedom and hinders the promotion of social equality and justice. To illustrate,

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<sup>23</sup> Original capital letters as written in the Indian Constitution.

the Indian Government has the power, and thus the responsibility, to provide the tribal minority group with entitlements that restore their freedom and protect their rights as citizens of India. With the absence of successful legal provisions that protect the livelihoods of development-displacees, in addition to the current tension between majority and minority interests in state-led development practices, a space for new demands towards entitlements that protect their substantial freedoms has been created.

In principle, if approached from a normative stance, citizenship and development have the ability to facilitate the promotion of equality within a society. While state-led development practices are classified as development for the common good, thus countering development as freedom, I argue that the framework of liberal citizenship has the capacity to act as a tool to protect the interests of minorities in state-led development practices. This is due to the following: liberal citizenship establishes community membership, which is based on the equal treatment of community members; this equality is based on individual rights, and thus the freedom of the individual. If the liberal rights provided within a country's constitution are not supporting an individual in achieving capabilities of value to him or her, and thus freedom, claims towards entitlement via specific group-rights can and should be made.

While liberal citizenship is based on the freedom of the individual, a country's constitution, or any legal document on its own, will face challenges of adequately representing the needs of all its citizens equally. If supplementary rights are not provided to compensate for the under-representation of vulnerable societal groups, these individuals are then excluded from enjoying their individual freedoms attached to liberal citizenship. Due to the consequences that the SSP has on the livelihoods of the tribal minority, individually and collectively, a shared common ground exists for group-specific rights towards entitlements to

be made. The aim of group-specific rights is to decrease the vulnerability of under-represented societal groups by acknowledging, among others, their “territorial autonomy, veto powers, guaranteed representation in central institutions, land claims, and language rights” (Kymlicka, 1995, p. 109).

Here, reference can be made to Kymlicka’s (1995) notion of external protections discussed in chapter three, which involves individuals making claims as a group against external decisions made by the majority. An example of an external protection mechanism is the right to veto decisions made by one group over another. Although these types of rights ensure that minorities may have advantages to land claims, these rights can create restrictions for the majority, such as making it more difficult to gain access to certain territories inhabited by minorities (Kymlicka, 1995, p. 109).

For example, as I have stated in chapter two, the compensatory-preferential treatment program by the government, although directed to benefit under-represented societal groups, simultaneously has resulted in hostility and resentment of minorities among the majority. Further, development for the public good under the LAA of 1894 and LARR of 2011, as well as the emphasis on the common good under Article 39 of the Indian Constitution, may be interpreted as a power to veto concerns by the public, particularly minority groups, as long as state-led development projects are interpreted to serve a national purpose by the government.

Rather than providing special protection in the form of veto powers, the question is how to include second-class citizens, such as the Indian tribal minority of the Narmada Valley, within the larger framework of citizenship without socially marginalizing and disconnecting them from their culture. I argue that minority rights, which are based on Nussbaum’s central capabilities, are able to promote the equality of under-represented

societal groups while maintaining the equality among members of a nation at large. The aim is not to set tribal citizens apart from their fellow citizens. Rather, the aim is to elevate their level of legal representation and protection to that of their fellow citizens.

Thus, in order to achieve social justice for the people who have their livelihoods threatened by development practices, emphasis needs to be placed on their fundamental rights associated with being a citizen of a country, such as the right to livelihood, survival, and cultural integrity (Mehta and Gupte, 2003, p. 35). In the following section I emphasize the need for minority rights, which are based on Nussbaum's (2011) capabilities, to safeguard the citizenship rights of the tribal minority.

### **Safeguarding the Rights of Tribal Minorities as Citizens of India: The Importance of Land**

The UN *Human Development Report* (HDR) of 1990 notes that “people are the real wealth of a nation” (cited in UNDP, 2010, p. 12). The aim of minority rights, as advocated by Kymlicka (1995), is to alleviate “the vulnerability of minority cultures to majority decisions” by providing them with the opportunity to “live and work in their own culture as members of the majority” (p. 109). As I have proposed in the context of this thesis, Nussbaum's (2011) central capabilities provide a starting point for the drafting of minority rights that promote a minimally just and inclusionary society. To realize Nussbaum's (2011) capabilities, the government needs to be an active agent in promoting a minimally just society where individuals are provided with the opportunity to live a life that promotes their human dignity and enhances their substantive freedoms. Sen (2009) states:

The success of a democracy is not merely a matter of having the most perfect institutional structure.... It depends inescapably on our actual behaviour patterns and the working of political and social interactions. (p. 354)

A democracy is thus characterized by the choices and actions of individuals within a nation-state, which can either contribute to the enhancing or lessening of social equality (Sen, 2009, p. 354). This means that the realization of rights as entitlements to capabilities is highly dependent on institutional support by the Indian Government (Nussbaum, 2007, p. 21). In order for majority and minority interests to be bridged, focus must be placed on elevating tribals to a level of protection that restores their equality as citizens of India.

To promote social justice, individuals must find a common understanding regarding equality and justice, which Taylor refers to as a “convention of equivalence” (Taylor cited in Karagiannis, 2004, p. 57). Here, Nussbaum’s (2011) ten central capabilities can help to determine whether the requirements for a minimally just society are met. If the requirements are not met, specific minority rights for tribals that are based on Nussbaum’s (2011) central capabilities can serve as a tool to establish and promote such a society. Mehta and Gupte (2003) note that if official recognition regarding the protection of people’s livelihoods is insufficient, those people will fight for what is central to their livelihoods, which in the case of the tribal group in the Narmada Valley is “the right to remain in their ancestral homes” (p. 25). A key component of the Indian tribals livelihood is access to fertile agricultural land, in addition to tribals having strong spiritual and ancestral ties to their land, which are becoming lost through their displacement.

The importance of land for indigenous people and tribal populations has been widely recognized. For example, in the report of the World Commission on Environment and Development (1987), also known as the Brundtland Report, states that: “[T]he starting point

for a just and humane policy” for indigenous people, such as the Indian tribals, “is the recognition and protection of their traditional rights to land and the other resources that sustain their way of life” (p. 115). Additionally, as I have stated in chapter two, Article 10 of the *Declaration on the Rights of Indigenous Peoples* notes that indigenous people should not be forcefully removed from their lands and should not be relocated without their free, prior and informed consent (United Nations, 2007, p. 6). Further, Article 11(2) of the Declaration states that the “cultural, intellectual, religious and spiritual property” of indigenous people should not be taken without their “free, prior and informed consent or in violation of their laws, traditions and customs” (United Nations, 2007, p. 6).

The importance of land for people’s livelihoods is also emphasized within Nussbaum’s (2011) capabilities. For instance, the capabilities of bodily integrity, affiliation, and control over one’s environment are concerned with the ability to move freely, hold property, possess property rights, and to live a dignified life, which are all dependent on the ability to live on land that supports one’s livelihood (Nussbaum, 2011, p. 34). If the land central to one’s livelihood is taken away due to state-led development, the question arises whether resettlement and rehabilitation measures have the ability to restore the ancestral and communal bonds that are attached to the land. The matter is further complicated by the fact that a primary characteristic of development projects, particularly infrastructure development, is the availability and need for land. Although the SSP may have aided to build a national identity and to achieve economic growth on a macro-level, inequalities become apparent on a micro-level where economic growth and development exists “side-by-side with poverty and unemployment” (Dwivedi, 2006, p. 41-42).

Providing rights to tribal groups that protect their use of land, and thus their livelihoods, would have far reaching implications on how development practices are carried

out. As initially advocated by Gandhi, a shift from large-scale to small-scale development projects would have to take place. While this matter is beyond the scope of this thesis, if development is approached from Sen's (2000) notion of development as freedom, development provides an opportunity to address societal issues, such as inequality and poverty, by advocating for a just development process that is not countering the freedom of the individual. Attention must be placed on what capabilities tribals have and what capabilities are hindered by state-led development practices. If India views itself as a liberal democracy, established on the just and fair treatment of its citizens, then national development should strive towards enhancing the freedom of India's citizens and their entitlement to a dignified life, as individuals and as a collective group.

Furthermore, a connection can be established between minority rights, the Capability Approach, and the Universal Declaration of Human Rights (UDHR). Nussbaum (2007) notes that if individuals are provided with rights that are based on her central capabilities, neglect for their human rights will be avoided. This is due to capabilities providing a minimal level of justice regardless of whether they are applied on local, national, and international levels. Therefore, as the extension of citizenship rights via minority rights will provide an adequate tool to protect the livelihoods of displacees on a national level, the provision of minority rights, based on Nussbaum's (2011) capabilities, will simultaneously protect the human rights of the tribal minority.

According to Nussbaum (2011), "nations... are systems of principles" that are based on laws, which are established and enforced by its people (p. 113). This makes people active participants in ensuring that all individuals are equally represented within a society, making the State a key participant in this regard. Therefore, what happens if a national-development project undermines some of its people's rights? It not only results in a government



undermining its own rights, but also the disempowering of its citizens, the discrediting of government institutions, and an exclusionary democratic environment. Sen (2000) and Nussbaum (2011) argue that if development actors, such as the Indian Government, consider questions of “what makes for a minimally just society?” awareness will be created that a just society requires active participation of its members, particularly state institutions (p. 77). One way a government can be active is by providing equal representation to its citizens, such as minority rights. The furthering of majority interests, such as state-led development projects, will then be dependent on decisions that protect the rights of minorities and their equal representation within the national community.

### **Representing Minority Interests: What can be gained from Minority Rights in the Context of the Sardar Sarovar Dam Project?**

As the SSP is nearing completion, the dam has “acquired a symbolic status in development debates” on issues pertaining to responsibility, accountability, and the protection of project-affected people, which has not been acquired to the same extent by other development projects (Cullet, 2007, p. 1; Parasuraman et al., 2010; Isaacman, 2005). In India, the intentions of the government towards its tribal minority are put into question due to: the marginalization of tribals in the Narmada Valley; pre-existing state legislation that allocates land ownership to the Indian Government; in addition to the *National Resettlement and Rehabilitation Policy* of 2007 and the *Land Acquisition, Rehabilitation and Resettlement Bill* of 2011 not adequately reflecting the needs of development-displacees.

As of today, the tribal minority in the Narmada Valley, together with activists, such as the NBA, continue to fight to have their voices heard through protests and occupy movements. While the SSP is still being built, the NBA continues to file petitions, asking

state governments to stop constructing dams along the Narmada. For instance, the NBA filed a petition in 2011 against the construction of the Omkareshwar Dam in Madhya Pradesh. Young girls who inhabit the area started the “Beti Bachao Abhiyaan” (Save the Daughters Campaign), urging the Madhya Pradesh Chief Minister Shivraj Singh Chauhan to ensure their future and safety (Singh, 2011, n.p.). Undoubtedly the key contributions of the SSP are the many social movements that arouse in India, the fight for people’s rights and legal representation, and awareness regarding the consequences of large-scale development projects from local to international levels.

Further, the government has acted in favour of tribal minorities in cases where private development projects would pose a hindrance to tribal livelihoods. For example, a proposal for the construction of a mine on sacred tribal land by the private development company Vedanta Resources in the state of Orissa has been rejected by the Indian Government (Wray, 2010, n.p.) The primary reasons for the government’s decision against the project were the environmental damage and the human cost associated with building the mine. The campaigners described the government’s decision as a “stunning victory,” providing hope for the “little people” (Wray, 2010, n.p.). Notably, Vedanta Resources is a private company, meaning that the stakes are higher in state-led development projects that bring direct benefit to the government. At present, the economic and political agenda as well as the lack of proper communication between the affected tribal population and the Indian Government result in the unequal distribution of development benefits. As a result, protective measures in the form of minority rights need to be provided to safeguard the livelihoods of tribals and their rights as citizens of India.

In order for minority rights to contribute to responsible and accountable development practices, a country’s government needs to be an active participant in the creation of a just

environment. In principle, if a government is adequately securing Nussbaum's (2011) central capabilities within the framework of minority rights, these minority rights will provide individuals with political entitlements, protect their substantive freedoms, and thus facilitate development practices that promote freedom. Primary importance must be placed on what development sets out to achieve, which is to enable people to achieve and enhance their freedom to live a life worth living (Sen, 2000; Nussbaum, 2011).

Presently, the tribal minority of the SSP can be described as 'political outsiders' who are not part of decision-making processes affecting their livelihoods. Although new measures such as the *Land Acquisition, Rehabilitation and Resettlement Bill* of 2011 and the *National Resettlement and Rehabilitation Policy* of 2007 are trying to be more inclusive of tribal minorities affected by development-induced displacement, there are continuous gaps in the adequate protection of these groups. Any attack on justice and institutional fairness will lessen unity, and instead encourage a society of protest. Thus, Nussbaum's (2011) capabilities provide a foundation for the drafting of minority rights that promote the freedom of a country's vulnerable citizens, the establishment of a minimal just society, and thus national unity.

## **Conclusion**

It has been 50 years since the foundation stone for the SSP has been laid, and the promised large-scale benefits, such as water supply and food security, have yet to be seen. As a result, India's proneness to droughts and talks of a pending water crisis, which are issues that are supposed to be addressed by dam development, are persisting today and the secure supply of water remains a pressing national concern (The Economist, 2009; Kannan, 2011). Datye notes that the storing of water is a vital function for any society and an important contributor to "raising people's standard of living" (cited in D'Souza, 2002, p. 44).

In India, as discussed in chapter one, the initial construction of the SSP served two purposes: economic development and the construction of a national identity, following the 1947 Declaration for Independence. Both economic development and the creation of a national identity were directed towards the common good, with the aim of Prime Minister Nehru to make India a democratic, independent, and self-sufficient nation after British colonial rule. This was to be achieved through dam development, which would symbolize the temples of modern India. The benefits of these dams, such as drinking water and irrigation, were directed towards Indian society as a whole, which was thought to facilitate the creation of national unity. In the context of the SSP, India's goal of national unity and economic development, while advertised for the common good, came at a high human cost. This primarily involved the displacement of India's tribal minorities from their homelands, with displacement classified as an unfortunate but necessary by-product of national development. For the affected tribals, displacement resulted in the dismantling of their livelihoods, with state-led development practices neglecting their entitlement to the rights provided to citizens

of India. The SSP therefore provides a context in which the tension between majority and minority interests becomes apparent, creating inequalities amongst a nation's citizens.

In principle a democracy is based on equal community membership and the sharing of citizenship rights that are representative of the individual citizen. Simultaneously, a nation is comprised of individuals with distinct ethnicities, religions, cultural practices, and various needs, who may require additional legal representation and protection in cases where the rights provided are not supporting their individual freedom. As I discussed in chapter three, an important characteristic of a democratic government is the provision of citizenship rights, which in principle should be allocated to all citizens equally. In practice, some individuals are excluded from fully enjoying the rights associated with citizenship, which leads to their social exclusion and thus turns them into second-class citizens. This is either due to the needs of some individuals not adequately addressed within the rights provided, or social and institutional structures hindering the effective functioning of these rights. In India, state-led development practices, as well as the *Land Acquisition Act* of 1894 and the *Land Acquisition, Rehabilitation and Resettlement Bill* of 2011, are countering the liberal citizenship rights of the Indian Constitution, and therefore the rights of India's tribal citizens.

The development practices in the Narmada Valley are thus countering the freedom of the individual, and Sen's (2000) notion of development as freedom. Sen's (2000) normative definition of development utilizes the Capability Approach, with Nussbaum's (2011) ten central capabilities providing a foundation for a minimally just society. The capabilities that are the most pressing for tribals affected by the SSP are bodily integrity, control over one's environment, affiliation, and practical reasoning. As stated in chapter three, Nussbaum (2011) views rights as entitlements to capabilities, which will provide individuals with an

opportunity to achieve things of personal value. If an individual is not provided with those rights, he or she then lacks entitlements that promote his or her individual freedom. As stated in chapter three, a link between rights as entitlements to capabilities and development as freedom exists.

If approached from a normative stance and via a democratic process, development practices ideally promote a just and fair society, and thus freedom. As noted by Sen (2009), a democratic government is based on equal community membership (p. 326 and 349). Further, a democracy is “a responsibility and a right,” which means that it “combines opportunities and duties, liberties and accountabilities” (Scholte, 2005, p. 349). Yet, as the SSP illustrates, both development and democracy can counter each other. As India is following a majoritarian model of democracy, tension exists between the representation of majority and minority interests, which has been perpetuated by the SSP. Therefore, while India is considered to be one of the largest democracies in the world, state-led development practices in the Narmada are countering the country’s democratic status.

As I have discussed in chapter two and three, the livelihoods of the displaced tribals are not adequately protected within the framework of the Indian Constitution. This is due to development-displacees in the Narmada Valley lacking at least four of Nussbaum’s (2011) ten central capabilities, with state-led development practices countering the individual freedoms of tribals. State-led development practices are thus creating new demands towards entitlements, particularly for the affected tribal minorities. Protective mechanisms are therefore required, such as effective minority rights that provide entitlements to under-represented and disadvantaged societal groups who are impacted by state-led development practices.

Liberal citizenship, which is the foundation of the Indian Constitution, provides a tool to promote equality and justice within a society by accommodating group-specific rights. Within the framework of liberal citizenship, community membership is based on the equal representation of individuals. Attention is placed on individual rights, and thus the individual freedom of each community member. In instances where discrepancies between the legal representation of minority and majority groups exist, a demand for rights that represent minority groups is created. Claims towards entitlements are usually made as a group, who advocate for their rights via the framework of citizenship. Liberal citizenship can therefore serve as a tool to restore the freedom of the individual through group-rights.

As I have proposed in this thesis, Nussbaum's (2011) central capabilities provide a foundation for the drafting of minority rights. In relation to Sen's (2000) notion of development as freedom, individuals must be provided with an opportunity, a choice, to participate in decision-making processes regarding their livelihoods. Therefore, addressing past inequalities and promoting reconciliation between members of a society requires active participation of the government. By promoting social justice, a nation has the ability to bring disputes to an end and to take responsibility for its actions (Lévy-Bruhl in Boltanski & Thévenot, 2006, p. 37). Providing group-specific rights in conjunction with individual rights involves a state accommodating social diversity by providing equal representation to its members, thus ensuring the true equality of its citizens (Shafir, 1998, p. 18; Kymlicka, 1995, p. 108).

Momentarily, the choices and freedoms of the tribal minority in the Narmada Valley are taken away by the government's development practices. In order for development to provide a tool that facilitates the existence of a minimally just society, tribals need to be

provided with entitlements towards Nussbaum's (2011) central capabilities that bridge the representation of majority and minority interests. Accommodating social diversity via minority rights, can facilitate community membership by treating each community member as "worthy of equal respect and regard," and therefore human dignity (Nussbaum, 2011, p. 35). This will promote a truly inclusive democracy and contribute to the enhancement of people's freedom, for both the majority and minority, entitling them to live a life of human dignity.



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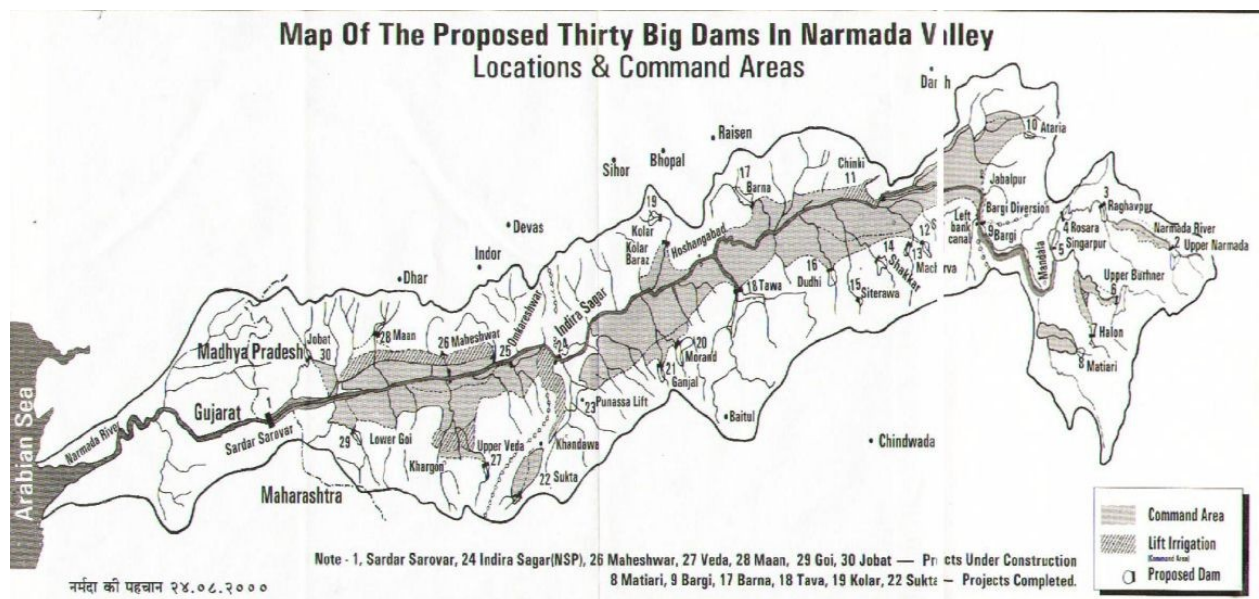
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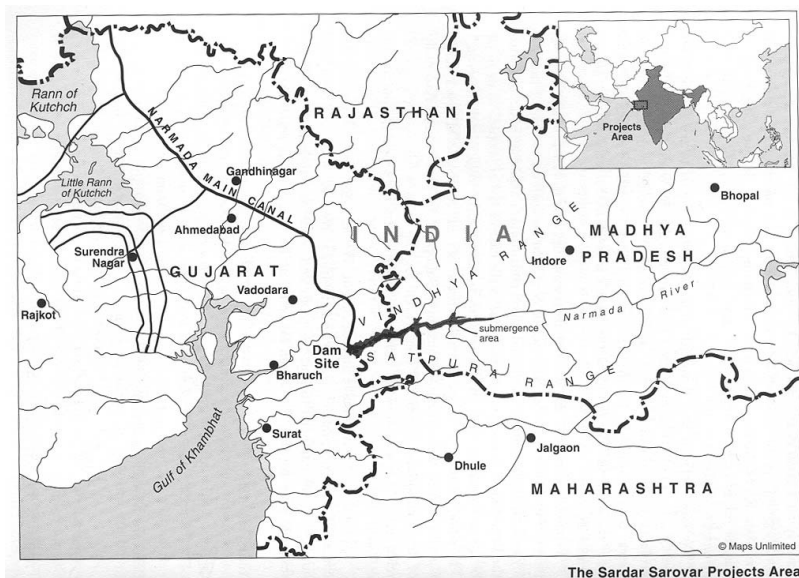
## Appendix A

### Map of the proposed dams along the Narmada River



Friends of the River Narmada (2006). Map of the proposed thirty big dams in Narmada Valley. Retrieved from <http://www.narmada.org/nvdp.dams/>

### Map of the Sardar Sarovar Project Area



Friends of the River Narmada (2006). The Sardar Sarovar Projects Area. Retrieved from <http://www.narmada.org/nvdp.dams/>

## **Appendix B**

Excerpts taken from the *National Resettlement and Rehabilitation Policy* (2007), retrieved from <http://dolr.nic.in/actandrulr.htm>.

### **Chapter 1: Policy**

1.4 “*The aim should be to minimize large-scale displacement, as far as possible... Prior to initiating the acquisition of land for a project, the appropriate Government should, inter alia, take into consideration the alternatives that will (i) minimise the displacement of people due to the acquisition of and for the project; (ii) minimise the total area of land to be acquired for the project; and (iii) minimise the acquisition of agricultural land for non-agricultural use in the project*”<sup>24</sup> (p. 34).

1.7 “It is acknowledged that many State Governments, Public Sector Undertakings or agencies, and other requiring bodies either have their own Rehabilitation and Resettlement (R&R) policies or are in the process of formulating them. *The provisions of the National Rehabilitation and Resettlement Policy, 2007 (NRRP-2007) provide for the basic minimum requirements, and all projects leading to involuntary displacement of people must address the rehabilitation and resettlement issues comprehensively*” (p. 35).

### **Chapter 2: Objectives of the NRRP**

2.1 “(a) to minimise displacement and to promote, as far as possible, non-displacing or least-displacing alternatives;  
(b) to ensure adequate rehabilitation package and expeditious implementation of the rehabilitation process with the active participation of the affected families;  
(c) *to ensure that special care is taken for protecting the rights of the weaker sections of society, especially members of the Scheduled Castes and Scheduled Tribes, and to create obligations on the State for their treatment with concern and sensitivity;*  
(d) *to provide a better standard of living, making concerted efforts for providing sustainable income to the affected families;*  
(e) to integrate rehabilitation concerns into the development planning and implementation process; and  
(f) where displacement is on account of land acquisition, to facilitate harmonious relationship between the requiring body and affected families through mutual cooperation” (p. 35).

### **Chapter 7.21: Rehabilitation and Resettlement Benefits for Project Affected Families Belonging to the Scheduled Tribes and Scheduled Castes**

7.21.1 “In case of a project involving land acquisition on behalf of a requiring body which involves involuntary displacement of two hundred or more Scheduled Tribes families, a

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<sup>24</sup> Parts of section 1.4, 1.7, 2.1 (c and d), 7.21.3, and 7.22.3 italicised for emphasis.

Tribal Development Plan shall be prepared, in such form as may be prescribed, laying down the detailed procedure for settling land rights due but not settled and restoring titles of tribals on alienated land by undertaking a special drive together with land acquisition. The Plan shall also contain a programme for development of alternate fuel, fodder and non-timber forest produce (NTFP) resources on non-forest lands within a period of five years sufficient to meet requirements of tribal communities who are denied access to forests” (p. 52-53).

...

7.21.3 “*Each affected family of Scheduled Tribe followed by Scheduled Caste categories shall be given preference in allotment of land-for-land, if Government land is available in the resettlement area*” (p. 53).

7.21.4 “In case of land being acquired from members of the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families at the outset as first instalment and the rest at the time of taking over the possession of the land” (p. 53).

7.21.6 “The Scheduled Tribes affected families will be re-settled, as far as possible, in the same Schedule Area in a compact block, so that they can retain their ethnic, linguistic and cultural identity...” (p. 53).

...

7.21.9 “Any alienation of tribal lands in violation of the laws and regulations for the time being in force shall be treated as null and void. In the case of acquisition of such lands, the rehabilitation and resettlement benefits would be available to the original tribal land-owners” (p, 54).

## 7.22 Provision of Infrastructure in Resettled Areas

7.22.3 “*If relocation takes place in an existing settlement area, the same infrastructure shall also be extended to the host community*” (p. 55).

7.22.4 “While shifting the population of the affected area to the resettlement area, the Administrator for Rehabilitation and Resettlement shall, as far as possible, ensure that:

a) In case the entire population of the village or area to be shifted belongs to a particular community, such population or families may, as far as possible, be resettled *en masse* in a compact area, so that socio-cultural relations and social harmony amongst the shifted families are not disturbed.

b) In the case of resettlement of the Scheduled Caste affected families, it may, as far as possible, be ensured that such families are resettled in the areas close to the villages” (p. 55).

## **Appendix C**

Excerpt taken from McCully (2001) of a letter written by a tribal in the Narmada Valley to the Independent Review Panel of the World Bank in 1992.

“The government wanted our land to build Sardar Sarovar Dam and some of our men agreed to move to Parveta village in Gujarat. Since then, we have known only grief and the strain of trying to build our lives in an alien place.

This village, Parveta, is different from Manibeli. There we lived by the river, and the forest was close by. Our children would take cattle to graze and made them drink from the river, We got so much else from the forest- bamboo with which to build, fibre to make rope with, food to eat, all kinds of herbs, and animals to hunt. Now all that is gone and we are poor....

We now have to pump water for all our cattle and goats. And the pump itself- how can it replace our wide, freely flowing river where we could bathe and wash and drink?

...

The soil in Parveta is different from Manibeli. The land here calls for water, fertilizer and pesticides, which we haven't used before. We need money for this, but sine we do not have titles to the land, it is hard to get loans... Forty households moved from Manibeli to Parveta. In our first year here, we watched 38 of our children die... Now we live far away and, though Parveta is by the road, we cannot go home, because it means spending money for the bus. So only men travel; we cannot. We have to stay in Parveta, where our presence is resented by the people who live here from before. We lived in the mountains. Paraveta is on the plain and flat so you see everything around....

We have to live here now in this land where we and our children go hungry; even though we get no rest from work. The promise of new wealth lured our men, but we now wish we had stayed behind in Manibeli, among the people and on the land we call our own.” (McCully, 2001, p. 65).

McCully, P. (2001). *Silenced rivers. The ecology and politics of large dams*. London: Zed Books.