

## **Water Privatisation: Case Study Plachimada, India**

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**Abstract:** Water privatisation has become a major issue in the study of international politics, democracy and development. Most societies recognise that water should be a resource common to all of mankind, a principle which conforms to natural law. In this essay the issue of water privatisation and its relation to democracy and development will be explored through the examination of a case study in Kerala, India. The traditional inhabitants of this land are engaged in an ongoing legal battle against the Coca Cola Company who has allegedly contributed to the water scarcity in the region. This essay explores the effect of the unsustainable development by Coca-Cola and examines how top-down and bottom-up democratic initiatives acted to protect the peoples fundamental right to life.

Article 1 (2) of the International Covenant on Civil and Political Rights provides that: ‘All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.’

This general principle ratified by most nations espouses what most people believe: that natural wealth such as water should be protected for the populace. However, in a rapidly globalising world, public infrastructure and what was previously ‘commons’, has become open to privatisation as a result of ‘centralised state democracies’<sup>1</sup> and pressure from international organizations and multinationals such as The Coca-Cola Company (TCCC). Vandana Shiva writes that globalisation ‘is undermining the planet’s water democracy through overexploitation of groundwater, rerouting and diverting of rivers, and privatisation of public supply’<sup>2</sup>. The case study of Kerala, India is a clear case of water being exploited undemocratically. While the democracy provides the statutory framework and the judicial power to ensure that the local people’s rights to water are enforced, there is often a lack of will within the authorities to enforce these principles against large multinationals and the perceived benefits that flow from this economic development.

Water privatisation represents a conflict at the core of democracy – a struggle between economic development and the needs of the people.<sup>3</sup>

To examine the nature of this crisis one need look no further than the Coca-cola plant that was built in Plachimada, a small village in Kerala, India. Most of the inhabitants of this area suffer from extreme levels of poverty. “Within six months, the villagers saw the level of their water drop sharply and the water they did draw was filthy.”<sup>4</sup> Sujith Koonan of the International Environmental Law Research Centre writes: “The villagers are predominantly landless, illiterate, agricultural labourers. Almost 80 per cent of the

population depends upon agriculture for their livelihood.”<sup>5</sup> The village and its surrounds are important as one of the main agricultural areas of the state, known as “the rice bowl of Kerala”<sup>6</sup> yet due to the fact that it is a drought prone area “...the location of an industrial plant, which consumes water heavily, in a socially and economically backward ... region that is agricultural but drought prone would result in serious adverse implications to the life and the environment.”<sup>7</sup> The Kerala High Court later found that Coca-Cola had been illegally extracting 1.5 million litres of water a day, an amount greatly exceeding that that had been allowed on the conditional license issued by the locally elected council<sup>8</sup>.

Not only did Coca-Cola appropriate more water than had been allowed under the terms of their development, the transnational corporation had been pumping waste material outside the factory, which spread into the nearby canals and estuaries, and pumped wastewater into dry bore wells<sup>9</sup>. In August 2002 the Adivasi women of Plachimada initiated a peaceful agitation process, organising sit-ins at the Plachimada plant and exercising their legal rights by taking the Coca Cola plant to the Kerala High Court. Shiva refers to this type of behaviour as ‘Cowboy economics’<sup>10</sup>, that is a ‘...doctrine of prior appropriation and... water marketing. This system provided the essential ingredients for an efficient market in water wherein property rights were well defined, enforced and transferable’<sup>11</sup> This so called doctrine of ‘Cowboy economics’ arose on the American frontier, where water rights first became open to appropriation by self-interest groups. However, in light of significant contributory factors such as climate change, overpopulation and agrarian crises such a neoliberal framework for the distribution and control of water resources requires stringent standards of regulation. By adapting Shiva’s notion of ‘Water democracy’, a balance could be struck between the needs of development and the needs of the people.

However, the actions of Coca-Cola go beyond this notion of Cowboy economics. The actions of this company have been irresponsible and negligent towards the existence of the people of Plachimada. In 2004, as a result of testing in London laboratories the BBC reported that the effluent that was improperly disposed of had more than 50mg/kg cadmium content.<sup>12</sup> “...The people who used this brackish, bitter water complained of a variety of illnesses...burning sensation in the face...greasy, sticky hair, stomach disorders and skin deformities”<sup>13</sup> As well as contributing to the water scarcity in the region the company had made the people of Plachimada sick.

As a result of this water appropriation by Coca-Cola “the Panchayat<sup>14</sup> [local council] asserted its rights by withdrawing the license granted to Coca-Cola to operate its bottling plant after local wells and aquifers ran dry. The Panchayat did this by filing public interest litigation in the Kerala High Court.”<sup>15</sup> The judiciary provides a strong role in any healthy democracy, and this case study is a powerful example of its role, not as a facilitator of economic development, but as a protector of the people. Justice Balakrishnana Nair was unable to pursue the Coca-Cola Company in any statutory

initiatives at the time, as the Kerala Ground Water (Control and Regulation) Act had not yet passed into law, coming into effect in 2004. Instead he was forced to apply the common law principle of the public trust doctrine. In his judgement delivered on the 16th of December 2003, Justice Nair said:

“The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters, and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of their status in life. The doctrine enjoins upon the government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purpose....”<sup>16</sup>

This judgement conforms to article 1, section 2 of the ICCPR as laid out in the introduction. However the judiciary and the established legal system cannot on its own protect the rights and resources of human beings. When the case went on appeal to the division bench of the High Court, the bench chose to largely ignore the issues of water scarcity, focusing solely on constraining the legal powers of the Panchayat. “The power of the Panchayat to control the water resources (groundwater) in its jurisdiction was questioned before the Court”<sup>17</sup> The judiciary is just one part of any rigorous democracy, and is limited in the scope of its authority – it cannot make laws, only make suggestions and interpret the law which is already in force.

On appeal to the division bench of the High Court (a higher authority), the court ignored the issues of how Coca-Cola had polluted, instead focusing on maintaining the idea of privatised water, recognising:

“...groundwater as a ‘private water resource’ and accepted the proposition of law that the landowner has ‘proprietary right’ over it. Based upon this premise it was held that ‘the Panchayat had no ownership over such private water resources and in effect denying the proprietary rights of the occupier and the proposition of law laid down by the learned judge (single bench) is too wide for unqualified acceptance...”

In effect, this limited the Panchayat’s powers, giving TCCC a free reign in terms of the extraction of groundwater. The division bench failed to recognize or discuss the underlying sustainability issue, focusing on entrenching traditional notions of property rights. Michael Saward writes in his paper ‘Green Democracy’, that “the hope and the belief is that truly ecological societies will be small, decentralised communities with decision-making procedures based on ‘direct’, rather than ‘representative’ democracy”<sup>18</sup>.

The Panchayat is one such organization – a local council, with members directly elected from the community, with the power to issue licenses for groundwater and monitor resource consumption under the Kerala Panchayat Raj Act (1994), and the 73rd and 74th constitutional amendments<sup>19</sup>. This was all part of the decentralization policy. By allowing the Panchayat to perform this role, it would strengthen the democratic integrity

of the government and protect resources for the local people.

Koonan raises the question of how a large multinational received permission to operate in such a drought prone and populated area. In 2007 a State of the Environment report (hereafter 'SOE' report) was commissioned, the goal and scope of the study being to "provide directions to policy makers and regulators for making wise decisions to promote sustainable development of this precious resource."<sup>20</sup> The 2007 SOE Report performed various analytical tests on water quality in the Kerala region, including Plachimada. It found that out of 151 wells, 101 were safe for drinking, 30 were semi-critical (in terms of quality and supply), 15 were critical and 5 were considered 'over-exploited'.<sup>21</sup> The five wells that are considered 'over-exploited' all fall within the Chittoor block, where the village of Plachimada and the Coca-Cola plant are located.<sup>22</sup> It is therefore completely reasonable to assume that the Coca-Cola Company is contributory to this water scarcity. However, the environmental reports issued by the Central Ground Water Department and the Kerala Ground Water Department do not draw the same conclusion. They argue that it is because of the drought and a lack of rain in the region that there is water scarcity.

Subsequent to the events of Plachimada The Energy and Resource Institute commissioned an independent report entitled 'Independent Third Party Assessment of Coca-Cola facilities in India' which was designed to analyse the water management and sustainability "to gauge the procedures used by, and commitment of, Coca-Cola India to maintain sustainable water resource management practices in all plants where its products are manufactured in India"<sup>23</sup> This report is valuable in examining democracy in the Plachimada context, for while it does not specifically address the Plachimada plants operation; (as at the time of the investigation the plant was no longer in operation), it does provide information that is relevant to the issue of water privatisation and top down democracy initiatives. The National Water Policy, an Indian federal government initiative:

"Demarcates water allocation priorities in the planning and operation of the systems in the following order: drinking water, irrigation, hydropower, ecology, agro-industries and non-agroindustries, navigation, and other uses. All the study states except Maharashtra accord greater priority to agriculture use of water over industrial use, [and] Advocates that exploitation of groundwater resources should be so regulated as not to exceed the recharging possibilities and development of efficient water pricing system for use of water."<sup>24</sup>

The central union government recognizes the above policies as matters of law. Arguably, the problem that Plachimada raises is not the ineffectiveness of democratic structures such as the courts, legislature and executive – it is the inefficiency of the system in dealing with profound social problems and the influence of transnational corporations, i.e. pressures from outside the traditional state-centric model of international relations, which cause the sustainability crisis.

Koonan argues that the state government had behaved irresponsibly and that their attitude is “biased in favour of the big multinational companies”<sup>25</sup> The effect of such a bias is inevitably negative on the local population. Ananthakrishnan Aiyer argues that: “Corporate and government strategies to privatise water, ... especially had a devastating effect on peasants and farmers in rural India and provide[s] new avenues for the reconfigurations of intra- and interclass conflicts between and across the rural–urban divide in neoliberal India”<sup>26</sup>

When analysed from this perspective, this particular development is unsustainable not only in terms of water resources, but also politically unsustainable. The effect of such widespread unrest and dislocation of people will inevitably contribute to India’s growing problem of extreme poverty. Shiva writes that “Globalisation is a political project and it needs a political response which puts human beings in all their diversity and the centre of economic thought”<sup>27</sup> This ties in with notions of water democracy and earth democracy. Shiva is calling for a paradigm shift away from traditional free-market neoliberalism and corporate greed. In light of issues such as climate change, resource scarcity and inequality between nations it is time that corporations accept that they have a corporate social responsibility to the communities that they locate themselves in and that profits must be limited by ethical trade and commerce. Our current global society is unsustainable on many fronts – it is time to adopt change.

Plachimada has galvanised many people into action against TCCC. The women of Plachimada successfully shut down the plant in Plachimada. Mylamma, the local woman who started the movement against TCCC said, “When you drink Coke, you drink the blood of the people”<sup>28</sup> They organised large-scale protests at the Coca Cola plant, which subsequently drew the attention of the government and the media. In 2003 the Panchayat and the people of Plachimada issued TCCC with an ultimatum to shut down operation of the plant in the area, and subsequently in 2004, a World Water Conference and its activists supported the Plachimada villagers. “A movement started by local Adivasi women had unleashed a national and global wave of people’s energy in their support”<sup>29</sup> (Shiva also alleges that TCCC unsuccessfully tried to bribe the president of the Panchayat with 300 million rupees, roughly \$AUD 8, 028,256.) Shiva writes that it was this local movement of the Adivasi women of Plachimada that “triggered recognition of people’s community rights to water in law, while also triggering movements against the 87 other Coca Cola and Pepsi plants where water is being depleted and polluted.”<sup>30</sup>

Further, this massive collective action spurred the creation of the ‘Plachimada declaration’ that set up eight principles of the people’s defiant rejection of the appropriation of their resources, and also implored the global society to “boycott the products of Coca-Cola and Pepsi Cola.”<sup>31</sup> The action of the people has had several effects: The Kerala chief minister bowed to public pressure and closed the Coca-Cola plant, and it raised awareness of exploitation of water resources by TCCC and its franchisees in other areas of the state. Subsequently, the TERI report has done a thorough

analysis of all of Coca-Cola's facilities in India and drew the conclusion that Coca-Cola was irresponsible in its appropriation of water resources, insensitive to customary ideas of water, and did not engage in communication with the communities in which they arrived. This kind of behaviour represents the very worst aspects of globalisation, where the multinational exploits the poor of the third world at an unsustainable pace. However, in a globalising world, the ease of communication and availability of information allowed the people to go after the company, assert their democratic rights, and halt (to an extent) the unsustainable use of water. The eyes of the world's media were fixed upon Plachimada. The people of India had won a victory against TCCC that may have a far-reaching effect on the policies and business practices of the company.

A neoliberal framework for global society affects all. Water privatisation as a principle conflicts with democracy where it is appropriated without regard to issues of sustainability and ecology. The Plachimada case shows us that top-down democracy can fail the people and that governments are influenced by the power of transnationals. While the Plachimada issue is currently in the Supreme Court, the institutions did play a vital role in the Plachimada case. The judiciary upheld the Panchayat's statutory and constitutional authority in the single bench decision, and while the division bench refuted the decision, choosing to constrain the Panchayat powers, commentators argue that they erred in law in that decision. Cases like Plachimada can be avoided in the future by allowing local communities power over their resources, in court the council made it clear that they had no problem with Coca Cola operating in their village – it provided employment and did stimulate the local economy, the problem was that Coca-Cola pushed their agenda too far. Their lust for profits had a two-fold effect – the polluting of the local environment, and the over exploitation of water resources. To prevent these effects there should be more regulation of resources by the government, decentralised to local communities where possible. This would strengthen democracy, giving it a sounder ecological basis and a defence against Shiva's 'corporate gangs', corporations who unethically exploit the weak of the third world. Realistically, in the absence of a paradigm shift in the thinking of corporations, who are driven by profit, regulation and decentralised government is an effective means of strengthening democracy and encouraging sustainable development.