

STATUE OF UNITY AND LEGAL ASPECTS: AN ANALYSIS

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Abstract

The Statue of Unity is a massive statue of Indian statesman and independence activist Sardar Vallabhbhai Patel, who was India's first Home Minister and the most ardent supporter of Mahatma Gandhi during the nonviolent Indian Independence movement; he is widely regarded for his leadership in uniting India's 562 princely states to form the single large union of India. The Statue is situated in the state of Gujarat. The Statue of Unity is the world's tallest statue, with the height of 182 mts. It is located in Kevadiya colony, 100 kilometres (62 miles) southeast of Vadodara, on a river island facing the Sardar Sarovar Dam on the Narmada River. The statue of unity is believed to have many legal flaws though it is being considered as an infrastructure beauty. The statue is said to have violating certain provisions of the following laws namely: The Wildlife (Protection) Act 1972, The Environmental Impact Assessment Notification 2006, The Environment (Protection) Act 1986, The Wetlands (Conservation and Management) Rules 2010, The Solid Waste Management Rules, 2016, The Water (Prevention and Control of Pollution) Act, 1974, etc.

Keywords: Violations, Sardar Vallabhbhai Patel, Environmental Law, Wildlife Law.

Introduction

On October 7, 2010, at a press conference to mark the start of his 10th year as Gujarat Chief Minister, Narendra Modi first announced the project to honour Sardar Vallabhbhai Patel. The project was dubbed "Gujarat's tribute to the nation" at the time.¹ The Gujarat government established a special purpose vehicle called the Sardar Vallabhbhai Patel Rashtriya Ekta Trust (SVPRET) to carry out the project.

To raise funds for the statue's construction, the Statue of Unity Movement was launched. It aided in the collection of the iron required for the statue by asking farmers to donate their used farming equipment. By 2016, a total of 135 metric tonnes of scrap iron had been collected, with approximately 109 tonnes of it being used to make the statue's foundation after processing. In support of the project, a marathon called Run For Unity was held on December 15, 2013 in Surat.

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¹ The Statue Of Unity, available at: <https://www.coursehero.com/file/65685713/statue-of-unity-projectpdf/> (last visited on September 7, 2022).

Facts About the Statue of Unity

Following are some important facts about the Statue of Unity:

- i. Sardar Patel, known as the ‘Iron Man of India’, was instrumental in uniting hundreds of princely states that divided India into many parts. With his efforts, India’s modern political boundary could be established.
- ii. The Statue of Unity and its surroundings cover an area of more than 2 hectares (4.9 acres). It is surrounded by a 12-square-kilometer artificial lake.
- iii. Larsen & Toubro (L&T) won the design, construction, and maintenance contract for the Statue of Unity in October 2014 for 2,989 crore (US\$420 million).²
- iv. The Statue of Unity was designed by Indian sculptor Ram Sutar.
- v. The statue was constructed using a Public-Private Partnership model. The Gujarat government raised the majority of the funds. The Indian government had budgeted 3 billion rupees (US\$42 million) for the project from 2012 to 2016.³

Impact of Statue of Unity

Due to this project local tribes were relocated as their land was acquired for the statue’s construction. The Tadvi tribe was opposed to the acquisition of land for the construction of tourism infrastructure around the statue. They were, however, offered cash and land compensation, though the rate at which they were compensated is said to be less than the minimum prescribed.

Violations During this Project

The statue of unity is not just a statue, it’s the world’s tallest statue with large scale implications. The Statue of Unity is the largest statue in the world, but it seems to have been in certain violations of different laws:

² Statue of Unity, available at: <https://statueofunity.in/> (last visited on September 8, 2022).

³ Editorial, “Sardar Patel’s Statue of Unity: Must-know facts about this pride of India” *The Times of India*, Nov13, 2018. (last visited on September 8, 2022).

Environmental Laws

Environmental law refers to rules and regulations governing human conduct likely to affect the environment. It reflects the judicial, administrative, and legislative frameworks in place to safeguard the environment.⁴

In the Constitution of India, it is clearly stated that it is the duty of the state to ‘protect and improve the environment and to safeguard the forests and wildlife of the country.’⁵ The first step in seeking environmental clearance for a development project is to determine what statutory legislation apply to the particular project. Environmental clearance for development projects can be obtained either at the state level or at the central level depending on certain criteria concerning the characteristics of the project.⁶

The term ‘Environmental Impact Assessment’ refers to the systematic identification and evaluation of the potential impacts of proposed projects, plans, programme, or legislative actions on the physical-chemical, biological, cultural, and socioeconomic components of the overall environment. Environmental Impact Assessment is the official assessment of the likely environmental effects of a proposed policy programme or project, alternatives to the proposal, and measures to be implemented to protect the environment. EIA is a process that must be completed before any project or major activity is undertaken to ensure that it will not negatively impact the environment in the short or long term.⁷

The statue of unity is said to have been violating the different environmental laws, that include the Environmental (Protection) Act 1986, Wetlands (conservation and management) rules, 2010, Environmental protection rules, 1986 and EIA notification of September 2006. The reason being that the statue of unity is situated on the middle of the river, near the Sardar Sarovar dam and not only that it also nears a wildlife sanctuary (just 4 km from sou) , which requires a environmental assessment but no such kind of assessment has been taken place, that is no environmental clearance has been given to statue of unity. When asked the same to SSNNL (Sardar Sarovar Narmada Nigam Ltd), they answered that the project is sanctioned by all the concerned authorities and further said that environmental clearance is required for constructions

4 Environment Laws In India, available at: <https://www.mondaq.com/india/waste-management/624836/environment-laws-in-india> (last visited on September 7, 2022).

5 Article 48A of The Constitution of India.

6 Environmental Impact Assessment & Inter Basin Water Transfer, available at: <http://ecoursesonline.iasri.res.in/mod/page/view.php?id=1952> (last visited on September 9, 2022).

7 Canter Larry W “*Environmental Impact Assessment*”115 (2nd edition, McGraw Hill MC, USA, 1996).

over 20,000 sq m, whereas statue of unity is spread just over 19,731 sq m and hence no environmental clearance is required. This is a clear violation of the laws.⁸

Wildlife Laws

After inauguration of the 182-feet tall statue by Prime Minister Narendra Modi, the government had started a chopper service in the area to give an aerial view of the structure. Hence, the crocodiles and many other reptiles were shifted. The mugger crocodile (*crocodylus palustris*) is a species protected under Schedule I of the Wildlife Protection Act, 1972. A Schedule I animal means that it is highly endangered and hence the shifting of the crocodiles and other reptiles is violations of various different acts including the Wildlife Protection Act, 1972, the Environment (Protection) Act, 1986, and the Wetlands (Conservation and Management) Rules, 2010.⁹

Not only that, the project involves construction in the river bed and a proposed reservoir near the shoolpaneshwar sanctuary in an eco-sensitive zone, which shall have serious consequences for the ecology and environment.

The Constitution and Judicial Precedents

The Seventh Schedule of the Indian Constitution differentiates the subjects on which the Parliament and State Legislatures can make laws. Entry 18 of the state list mentions 'land',¹⁰ empowering only the state government to make laws concerning it, including construction on the land. The courts have consistently upheld this observation, referring to the state government as the 'owner' of all public lands in their jurisdiction.¹¹

Since state governments have the authority to make laws governing construction on lands within their borders (including the installation of statues), each state has enacted its own set of rules. The common thread is that a decision to install a statue must first be approved by the

8 Environmental Laws in India, available at: <https://www.clearias.com/environmental-laws-india/> (last visited on September 10, 2022).

9 Nandini Oza, "Statue of Unity: NGO sues Gujarat govt over shifting of crocodiles" *The Week*, Feb 5, 2019). (last visited on September 10, 2022).

10 The entry reads:

"18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

11 *T. Amirthalintam v. State*, (2010) 2 MLJ 1022.

District Administration, then by the state government. In fact, the decision of the state government in this regard is given top priority.¹²

A statue's location has always been significant. For example, the Statue of Unity was constructed near the Sardar Sarovar Dam, and statue of Lord Ram is being formed near his alleged birthplace. Interestingly, governments do not have unrestricted authority to decide where to position a statue, as there are mandatory regulations that must be followed when determining the location.

The Statue of Unity not only violates statutory law, but it also violates judicial decisions. The courts have repeatedly warned the government against building projects that disrupt ecological balance,¹³ and have even warned judicial intervention if the instructions are not followed.¹⁴

The Punjab and Haryana High Court dismissed a government project to install a statue of a leader in the case of *Jagdev Singh v. State of Haryana*,¹⁵ because it required the diversion of water bodies. Although the Court stated that it “respects the sentiments of the village to honour a martyr, it directs the authorities to demarcate alternative land for the memorial”.

The supreme court mandated the state governments to not grant permissions to install/construct statues in public roads, pavements, sideways or other public utility places. This decision has been strongly enforced by the Courts and permission to install statues of leaders like Mahatma Gandhi, Birsa Munda, etc. have been refused, when proposed on a public utility place.¹⁶

In a case, Justice Jagdeesan opined , “the political leaders, as well as freedom fighters, can be remembered in a more respectable manner by having a memorial in the form of a community hall or a library in their name, which may not create any problem for the public and will be more useful and beneficial for them”.

In the case of *Abdul Farook v. Municipal Council*,¹⁷ The Supreme Court overturned the government of Tamil Nadu's order granting permission to build an arch to commemorate the Chief Minister's birthday. The court upheld the doctrine of good governance, holding that the

12 *Zila Jat Mahasabha v. State of Rajasthan*, (2002) SCC Online Raj 74.

13 *Hinchlal Tiwari v. Kamla Devi*, (2001) 6 SCC 496.

14 *Yogendra Singh Tomar v. State of M.P.*, AIR 1997 MP 124.

15 *Jagdev Singh v. State of Haryana*, (2013) SCC Online P&H 10564.

16 *Chandan Kumar Singh v. State of Bihar*, (2000) SCC Online Pat 574.

17 *Abdul Farook v. Municipal Council*, 2009 (15) SCC 351.

government should rise above political considerations and pursue activities that benefit the public welfare. In light of the preceding decision, every political party should act in accordance with public welfare by utilizing taxpayer funds to create public welfare and refrain from erecting statues in public places that foster communal hatred and obstruct public movement.

Although the High Court's ruling is not legally binding on Gujarat, it does have persuasive power and issue a call to protect the environment. Although the courts have always regarded the government as the environment's trustee, it appears that this sentiment is not reciprocated.

Other Legal Issues Relating to this Project

The Statue of Unity Area Development and Tourism Governance Act, 2019

The Statue of Unity Area Development and Tourism Governance Act, 2019 (SoU Act) was enacted on December 20, 2019 to develop the area around Sardar Vallabhbhai Patel's statue in order to promote tourism in Gujarat's Narmada district. A Sou tourism authority has been established as a result of the Statue of Unity Area Development and Tourism Governance Act, 2019 (SoU Act) to carry out the functions assigned to it under the act.

The Statue of Unity Area Development and Tourism Governance Act, 2019 (SoU Act) contains draconian provisions that appear to be arbitrary, unconstitutional, and in conflict with the Panchayat Extension to Scheduled Areas Act, 1996 [PESA]. The Act's various provisions are not only exclusive in nature, but also take away the tribal population's autonomy in resource management, which is guaranteed by the PESA Act and Gujarat PESA Rules. Even though the statue's surroundings have been notified under the Fifth Schedule, which was added to the constitution to protect the rights of the country's tribal population, this remains the case.

Clash with Panchayat Extension to Scheduled Areas Act, 1996 (PESA)

Section 10 of the Act emphasizes the conversion of the Sou area to an urban area for tourism promotion, stating that the provisions of the Gujarat Town Planning and Urban Development Act, 1976, will apply to the tourism area. Furthermore, Section 31 (1) of the Act states that, in accordance with Article 243Q, the state government may convert the tourism development area into an industrial township and declare it a notified area. Section 31 (2) states that if the

development area is designated as a notified area, the provisions of the Gujarat Municipalities Act, 1963 will apply.

The entire Narmada district is included in Schedule V, making it subject to the PESA Act and the 2017 Gujarat PESA Rules. These clauses of the SoU Act are clearly unconstitutional. According to Article 243-ZC of the Indian Constitution, Part IX-A, which mentions municipalities, will not apply to scheduled areas unless Parliament passes a law to that effect. Sections 31(1) and (2) fail the constitutionality test as a result.

In a case that assessed Parliament's legislative competence in enacting PESA, the Gujarat High Court held in *Patel Vaktabhai Punjabhai v. State of Gujarat*¹⁸ that, under Article 243-M(4)(b), only Parliament has the power to enact legislation covering Panchayats in scheduled areas. The constitutionality of PESA was upheld in this decision. As a result, the state legislature lacks the authority to apply the Gujarat Municipalities Act to a rural area in a Schedule V region.

Unbridled Power to Authority

This law has more problems than just being clearly unconstitutional. Its arbitrary rules, which disregard natural justice principles, and complete disregard for traditional knowledge, governance structures, and local population autonomy are notable. Section 27(1) of the Act states that the prescribed authority may prohibit any 'nuisance' from being caused or prevent any activity or process that, in their opinion, has a negative impact on the region's tourism potential.

Furthermore, Section 27(2) mentions the issuance of notice, but only after the authority has taken action, and no hearing is provided.¹⁹

The phrase "damage or affect to tourism potentiality" is not only ambiguous, but it also grants the authority unrestricted authority. Because the prescribed authority has quasi-judicial powers, the process must include prior notice and a hearing. However, the process disregards this, making it arbitrary and in violation of a long line of Supreme Court rulings.

¹⁸ *Patel Vaktabhai Punjabhai v. State Of Gujarat*, (2001) 4 GLR 2873.

¹⁹ Editorial, "In Gujarat, Tribal Evictions, State Repression in the Guise of Tourism" *The Wire*, 6 Feb, 2020.

Gram Sabha can Step into the Matter

Section 4(A) of the PESA Act states that no state legislation shall be inconsistent with customary law, social and religious practices, or traditional community resource management processes. This is not a directory, but rather a requirement.

To give effect to this provision, rule 17 of the Gujarat PESA Rules requires state laws to be consistent with customs, social, religious, and traditional management practices of community resources. According to Rule 17(1), the Gram Sabha may pass a resolution stating that a particular law is in conflict with customary law, social and religious practices, and traditional management practices of community resources, or any subject matter that falls under the purview of the Scheduled Areas. This resolution can be forwarded to the district development officer (DDO), who is obligated to forward it to the state government and the governor. Rule 17(3) requires the State government to take action on such a resolution and notify the Gram Sabha. This is, once again, a mandatory provision, and the state government is required to respond to such a resolution.

If the Gram Sabhas in the affected areas pass a resolution stating that the application and implementation of the Statue of Unity Act, the Gujarat Town Planning and Urban Development Act, and the Gujarat Municipalities Act in the area violates the Adivasi people's rights to manage their cultural and traditional resources, the state is required to respond.

This resolution also highlights a violation of Rule 24 of the Gujarat PESA Rules. This rule states that all rehabilitation details must be presented to the Gram Sabha, and the minutes of queries and responses must be recorded by the authority, which has not been done in this case. This resolution may be passed in an extraordinary meeting of the Gram Sabha under Rule 46(1)(iv), if more than 5% of the total members or 25 Gram Sabha members give written notice to the panchayat secretary. The secretary is bound to call a meeting within seven days and if they fail, then the sarpanch or the deputy sarpanch can convene the meeting and pass a resolution to that effect. But the Gram Sabha will have to make sure at least 10 per cent of the registered voters or 50 people, a third of them women, take part in this Gram Sabha for it to be legally valid as per Rule 58 of Gujarat Rules.

If the Gram Sabha decides to go to court in the future, these resolutions could be the tipping point that keeps the state in check for any further actions in the area around the statue as well as in other Scheduled Areas, stating how the state government's laws impede the

community's traditional management and cultural practices, violating the principles enshrined in the constitution and PESA.

Restrictions Introduced on Tribal People

Not only is the welfare of the tribal is absent as a concern, but Chapter VI (Control, Regulation and Development in Tourism Development Area) the Act actually places restrictions on them. Local tribal people must renew or re-register everything, including their very existence, through a written application, as if they were outsiders.

Restriction on the Right to Protest

The Act attempts to redefine citizen's right to protest by stating under Section 26 of the Act that, no person or any company or association shall create any nuisance within the tourism development area.

Conclusion

The statue of unity might be an Infrastructural win for India though in the terms of Legality, the statue of unity lacks behind. The statue seems to violate many laws, the main being the environmental law. The statue also seems to violate the right of life of certain human beings (mainly the owners of the lands, the farmers) as well as that of the animals. Also, it would have been better if the government had spent the huge amount of Rs.3000 Crore in other important priorities such as affordable education, affordable health, affordable electricity, water and fuel, etc. If the goal was to create jobs for locals and promote tourism, the project could have been partially fulfilled by constructing hospitals, schools, and infrastructure facilities in the most economical and socially backward areas instead of erecting a symbolic statue that has disrupted the ecosystem of the surrounding area and harmed the sentiments of the local tribal community of 72 nearby villages calling for inclusive growth and progress to fulfill Sardar's dream.