



WATER MANAGEMENT, WATER POLITICS AND RULE OF LAW IN INDIA

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ABSTRACT

The countries around the world which follow constitutional democracy are fully committed to the Rule of law principle, and to the concept of economic, political, social and also environmental justice. This commitment which is enshrined in the Constitution of India preamble raises the question as to how Rule of Law, which is used as a mechanism for the Government will be effective in providing social justice particularly environmental justice to the people. This paper analyzes struggles for access to clean and sufficient water since these struggles engage both social justice and environmental regulation and arise in legal systems throughout the world. The paper mainly focuses on the prevailing situation in India. India has an unequal distribution of water. Some States receive heavy rainfall and some faces drought. In this kind of situation, there has to be proper water management because half of the country's economy is dependent on the agricultural sector for which water is essential and also due to increasing urbanization the need for clean drinking water has increased much fold in the recent times. If there is no proper water management then firstly the economy of the country will be adversely affected along with the health of the people. In order to have proper management of water, Rule of Law plays a significant role. If proper rules and guidelines are framed then the authorities playing a role in the management has an obligation to fulfil their duties and will also be held liable in case of mismanagement. India is a democratic country which chooses its own government by virtue of adult suffrage or voting. In order to get maximum votes from the people, political parties frame certain policies and make promises to people keeping in view their interest and as well as the targeted people's interest from which they can get votes. Water has always been a prime issue among the States. Political parties take the advantage of the practice of water politics or also known as hydroponics. For example, if a state has some kind of problem with its neighbouring states it will create problems with regard to water sharing from the river or might

oppose the construction of the dam. Water management, Rule of Law and Water politics are all interlinked with each other. If one fails then the others will also fail and it can create havoc in the society.

The paper in depth with case study first defines the role of water management, Rule of law and water politics in India and goes on further to establish the relationship between them and how they are closely linked with each other. In order to achieve a more just society, to ensure the integrity of environmental resources from which water is drawn and to secure safe and sufficient water for all, will continue to face opposition and in this situation the rule of law offers the promise, if conditions of regulatory harmony and institutional unity are met, that our rivers will run clean, our cisterns will stay full, and a turn of our taps will fill our glasses to the brim.

Keywords: Water Management, Rule of Law, Water Politics, Social Justice and Environmental Justice

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1. INTRODUCTION

India is mainly an agro-based country where the majority of the people are involved in agricultural activities since ancient times. With the advancement of technology, the agriculture society is slowly moving towards modernization by using machines instead of manual labour and using hybrid seeds and fertilizers which will give more output to sustain the growing population of India. For agriculture one of the most important thing which is required is a continuous and regular supply of water and the maximum output is received from agriculture is during the few days of monsoon. The climate of India is highly uneven. Some regions receive annual precipitation as low as 50 centimeters and some regions receive as high as 156 centimeters of precipitation. Over the years the rain showers have become more unpredictable because of global warming. Therefore, India needs to have a large storage of water and a mechanism for efficient water sharing among the states and regions within the states to be used in off monsoon months or in days of drought, so that their livelihood which comes majorly from agricultural sector is not hampered. The need to reserve water was recognized much earlier, the evidence of which can be seen in various archaeological remains and many ancient texts which refers to numerous tanks, wells, canals and embankments, but in spite of adopting various innovative strategies to store water for the last sixty or more years it has been found that India's per capita reservoir and water use efficiency both are low. Though with the use of technology there has been a slight improvement in the supply of water with respect to the demand, still the country has deficiencies in law, regulations and policies relating to the water sector. Another major deficiency is non-availability of adequate scientific data on quality and quantity of water, demand for water in various sectors and the exact quantity of water required which causes a major hindrance in developing sustainable and equitable water management strategies and policies. The existing institutions in the water sector are technically oriented and lack the skill to respond quickly to the conflicting needs of various stakeholders due to poor coordination. These irregularities cause much pressure on the poor farmers and as well as on the poor and middle-class people. The further water sector is also affected by politics, technocracy and work culture problems. Water plays such an important role in human life, be it for survival, having a religious association or any other

aspect; that it can be used as a weapon to achieve many interests. The association of water with culture and religion is one of the hurdles to water management. Before making any policy the government has to keep in mind a lot of stakeholders and various parties with various aspirations. Water which was once an abundant natural resource is now becoming an expensive commodity due to pollution, overuse and drought. In today's market, there is a lot of scope in water management and much politics is involved, also called water politics. Water management has indeed become an international and multidisciplinary subject to study.

2. WATER MANAGEMENT IN INDIA

Water management generally means a system by which water resources are regulated by virtue of laws, rules and regulations so that the States are supplied with adequate water for its people. The need for proper water management was felt after the Independence of India when there was an immediate need to overcome food shortage and to sustain the people of India. The best option left at that time was to make an investment in large scale irrigation projects. The evidence of the implementation of this idea can be found in Five Year Plans (FYPS) in the year 1951[1]. In the first two plans big projects were taken up like the Damodar valley, BhakraNagal, Hirakund project along with large scale surface irrigation projects. During this period minor irrigation projects were not given much priority. Since post-Independence era large new projects and dams were built, the then Prime Minister of India, Jawaharlal Nehru took pride in this progress and called it as "Modern Temples of Modern India" [2]. These large scale irrigation schemes were multi-purpose and were dependent on reservoirs and not on the run of river irrigation schemes. With the eagerness for rapid social progress, more than ninety per cent of public investment in the agricultural sector were allocated for these projects. This allocation of fund continued for almost forty years after the Independence. This was seen as positive progress but it had also negative impacts and as a result of which there was a severe deterioration of quality in the subsequent Five Year Plans. Because of the huge investment in this sector gradually people became greedy and wanted an opportunity to take advantage, which led to lobbyism among the engineers, contractors and many others.

The so-called "Temples of Modern India" were turned out to be a failed project because of the following reasons:

- a) The projects that were taken were huge because of which there were many delays in the completion of the project and as a result of this delay the cost of the projects were further increased.
- b) The environmental and as well as the topographical condition was not taken into consideration before setting up the dams or the reservoirs. For example, canals could not be extended to the eastern floodplains.
- c) There were no proper regulations framed for the water sector and as a result of which much of the power was given to the government and the Irrigation Department (ID). There is a saying "power corrupts and absolute power leads to absolute corruption". This is what happened with these projects also and the water users were deprived of their rights. Since the Irrigation Department had the power they tend to favour influential farmers for their mutual benefit. This gradually led to large scale corruption. Vote bank politics also came into the picture. The government officials favoured those sections from whom they could get maximum votes in a particular constituency. Sometimes, they even lowered the water rates which let to constraints on the budget and because of which the employees involved in these projects were not paid adequately and there was a lack of

motivation to work which led to mismanagement and poor performance of big irrigation projects.

However, there were few exceptions to the above-mentioned problems. Like the water irrigation scheme introduced in the North-West India led to the decentralization of canal management system which was only in the hands of bureaucrats. But most of the schemes suffered from the above-mentioned problems.

The water management problems were acknowledged in the early 1970s when the second Irrigation Commission Report (ICR) was released. After the report was released the problem for the failure of the big projects were taken to be ineffective use of water by the farmers and the solution recognized was to create awareness among the farmers for the effective use of water but they did not realize the mismanagement of the projects was the system and the lack of proper rules, regulation and laws. Command Area Development Programme (CADP) was initiated in the year 1974- 1975 by the Central Government to look into water management in command areas but this programme did not take into account the central issue because of which there was mismanagement, that is, system design and the management practice which was being followed. Therefore, though CADP was done with a good motive but could not be effective in solving the problem.

3. RULE OF LAW

It is plain to all of us that water is a necessity of life. We build our cities and villages near rivers, divert their flow and dam them, and pipe or carry their water to our homes and to our farms. We mine the ground to suck water from aquifers. Countries around the world having Constitutional Democracy have a sacred commitment towards Rule of Law, and environmental justice which comes within the ambit of social justice. This commitment towards ensuring environmental justice and Rule of Law raises a vital question that till what extent Rule of law, which is used as a mechanism of the government, will be effective in protecting and promoting environmental justice.

The United Nations has long recognised the necessity of water to life and to the quality of life and has acknowledged that access to water is a component of various human rights enshrined in international human rights instruments. The right to ‘an adequate standard of living...including adequate food’ encompasses a right to water Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) as interpreted by the UN Committee on Economic, Social and Cultural Rights (CESCR) in ‘General Comment 15: The Right to Water’.

In India, the constitutional right to life has expanded to include a right to the material necessities of life, including water, and the Constitution’s ‘Directive Principles of State Policy’ require policy goals to include access for all to adequate means of livelihood and the protection and improvement of the environment, including lakes and rivers. Water appears as a subject in the Constitution only where the distribution of powers between the various levels of government is set out, and in describing procedures for settling water disputes between states [3].

The Water (Prevention and Control of Pollution) Act 6 of 1974 (‘the Water Act’) and the Environment (Protection) Act 29 of 1986 (‘the Environment Act’), providing a somewhat more secure statutory basis, and thus greater regulatory recognition, for the right to environment than for the right to water.

The constitution of India has a provision that in case of disputes regarding water sharing then Inter-State Water tribunals can be formed to resolve the matter peacefully.

The first of these disputes concerned the waters of the Cauvery (or Kaveri) River. The river rises in western Karnataka, and flows east and south over the Deccan Plateau and through Tamil Nadu, spreading into a large delta before meeting the Indian Ocean in the Bay of Bengal. Over its 802 kilometres, it drains a river basin that extends into the state of Kerala and the Union Territory of Pondicherry. A 1976 agreement between Tamil Nadu, Karnataka and Kerala apportioned the Cauvery's waters in the ratio 30:53:17, respectively, but in 1983 the agriculturalist Tamil Nadu Ryots Association filed a petition before the Supreme Court asking it to compel the central government to constitute a tribunal and refer a water dispute to it, under the 1956 Inter-State Water Dispute Act [4]. The Court complied, and in June 1990 the Cauvery Water Disputes Tribunal (CWDT) was established. One year later the Tribunal made an interim order directing the state of Karnataka to release specific amounts of water at scheduled times from its dams on the Cauvery, to ensure the flow of water to downstream states. The Karnataka government promptly issued an ordinance explicitly overriding the Tribunal's order and authorising the state government to 'abstract or cause to be abstracted' from the Cauvery River as much water as the state government may deem fit or proper, claiming authority to do so under Entry 17.83 The President of India then referred the matter to the Supreme Court, seeking its opinion on whether Karnataka's ordinance was constitutional. It held, on two bases, that it was not. Firstly, reading Entries 56 and 17 in the broader context of the Constitution's distribution of powers, the Court held that states are not competent to legislate in respect of inter-state rivers where the effects of legislation will be felt downstream. Though the waters of inter-state river passes through the territories of many states but this water cannot be said to be belonging to one state only and deprive the other states of using it because of the fact that the rivers are in a constant state of flow and the legislative power of the state cannot extend to other territories. Secondly, the Court relied on an important substantive idea in its reasoning. It held it to be 'an acknowledged principle' that the distribution and allocation of water between riparian states should yield an 'equitable share' of water for each state. In framing this principle the Court referred to the case of Kansas v Colorado (1907), in which the US Supreme Court extended common-law rules governing the use of river water by private persons to relations between states. The US Supreme Court concluded that no state can legislate for or impose its policy on another state since each state stands 'on the same level with all the rest'. Each riparian state is entitled to an 'equitable apportionment' of the flow of a river. The US Supreme Court held that while there could not be said to be an inequitable division of the waters of the Arkansas River as between Kansas and Colorado, it intimated that it would be prepared to intervene where it was satisfied that distribution of water between states was inequitable. The Indian Supreme Court added that an equitable share of an interstate river's water will depend on the facts of each case.

There are a lot of cases where farmers do not get adequate water for their land because of which their cultivation gets affected and as a result of which many farmers are committing suicide.

The Constitution of India which is considered to be the ground norm and as well as many statutes makes a commitment to provide the people with clean and sufficient drinking water. It also ensures to protect waters in streams and rivers. If these commitments are not fulfilled then there is a gross violation of the Rule of Law principle.

4. WATER POLITICS

Water politics has become widespread. Water politics is also known as Hydro politics. The name suggests that the conflict in issue is water resources. It generally means the interstate and intrastate relations with regard to water sharing or any other issues relating to water. There is an acute shortage of drinking water today around the world which affects the economy and ecosystem of all the countries. Because of this reason all the States want to exercise their control over water resources so that they can use it to their own benefit. This has given rise to many conflicts in recent times [5].

A case study of Water Politics is given in the following case:

Transboundary water politics in the Ganges-Brahmaputra-Meghna basin are affected not only by inter-government relations between India, Nepal, Bhutan and Bangladesh but also by dynamics on different scales, including the hydro-politics between Indian states within the basin. At the same time, the disputed issues, and the patterns of power dynamics between actors are similar in transboundary interactions in the basin as well as in inter-state interactions within India. Both transboundary water disputes and India's inter-state ones are subject to intense politicking. Within the Indian polity, however, domestic water issues divert political attention away from transboundary ones. Indian states also have significant influence over transboundary water governance, and at times this is at odds with India's central government.

Indian states have significant influence over the governance of Transboundary Rivers. States are, in the words of an environmental lawyer, the biggest stakeholders in transboundary water interactions and must be part of discussions about how transboundary waters that flow within their boundaries should be managed though there are numerous joint river commissions to which state representatives are invited, rarely they come. The governance of the Ganges Brahmaputra-Meghna basin is largely dependent on how Indian states manage their water because most of these rivers flow through India: how much water is taken out or polluted within Indian states, will have effects downstream, i.e., for Bangladesh, and how much water Indian states claim they need will enter water-sharing negotiations with upstream Nepal and Bhutan. States are also influential over the central government, though this is not often acknowledged. For example, Gujarat saw the World Commission on Dams as a conspiracy against and a threat to the [Sardar Sarovar Project], and its perceptions had a strong influence on the government of India that resulted in India rejecting the findings of the Commission's report [6]. In terms of transboundary water governance, the influence of the states is significant because international water-sharing treaties cannot be reached with the input of the central government alone; the support of the relevant states is crucial. The water interactions between India and its co-riparians are complicated by the involvement of several Indian states, such as Uttar Pradesh, Bihar, and West Bengal [7]. For example, Sikkim was recently able to prevent a water-sharing deal that the central government was negotiating with Bangladesh on the grounds that it did not allocate satisfactory amounts of water for Sikkim. There are other complicated issues in northeastern India that affect transboundary water governance. Arunachal Pradesh, for instance, holds enormous hydropower potential on the Brahmaputra River, which is fast-flowing in the state's mountainous terrain. There are 160 dams being planned to harness this potential and boost economic development in Arunachal Pradesh, but the state is having trouble reaching an agreement with downstream Assam, which is concerned about flooding and siltation. Assam could strengthen its case against Arunachal Pradesh by engaging directly with Bangladesh which is downstream of Assam and would likely also be affected by dams in Arunachal Pradesh. However, an ongoing dispute between Assam and Bangladesh over compensation for Bangladeshi migrants stands in the

way of any such discussion being instigated. Bangladesh has also been affected by the influence of the state of West Bengal. That state's Chief Minister, Mamata Banerjee, refused to endorse the proposed agreement between India's central government and that of Bangladesh over the Teesta River [8]. The Modi government may be more successful in getting the agreement signed because it has a better relationship with the government of West Bengal than did the previous central government. Again, domestic politics matter in transboundary hydro-politics and must be factored into policy-making processes at the international level. Similarly, Bihar continues to resent the central government for not being brought into negotiations over the Ganges Treaty with Bangladesh like the state of West Bengal was. This is important because the support of Bihar, and that of Uttar Pradesh, will be critical for any agreements India negotiates with Nepal. Significantly for the negotiation process, Bihar does not have a great power asymmetry with Nepal, unlike India as a whole.

5. INTERRELATIONSHIP BETWEEN ALL OF THEM

Since 15 years now the UN member states have realised the importance of biodiversity and recognising it as a 'common concern' of humankind to conserve and use it sustainably. From the human rights perspective under the General Comment 15 of the first Covenant, it has been felt that there is an absence of water concern in the human rights law. Navigational and non-navigational aspects both are covered under the international law but still not efficient in the context of cooperation on water-related issues within territorial boundaries. The United Nations Millennium Development Goal emphasizes on providing safe drinking water to all in a time-bound manner. The United Nations General Assembly on 25 Sept 2015 take on the 2030 development agenda named *Transforming our world: the 2030 Agenda for Sustainable Development*. One goal in this agenda was on water but its dimensions were covering multiple roles in environmental conservation, economic progress and human well-being. Sustainable Development Goals indicators in March 2016 approved the United National Statistical Commission. As per Goal 6, it is emphasised to ensure water availability, sustainable water management and sanitation for all. According to the 2015 report data, 82% out of the global population used improved drinking water till 2000. Approximately 91% of the total global population used improved drinking water till 2015. It's estimated from the 2015 report that 663 million people are still using unimproved surface water. All states are confronted, at least, with administrative and hydro-geographical questions of how to divide and distribute water in society, whatever the rights framework for water happens to be. Situations, upholding the rule of law will more effectively promote the achievement of social and water justice goals when the regulatory mechanisms for the management of water resources and delivery of safe and sufficient water are rationally and coherently aligned with the legal system's vision of social or water justice. From the above two case studies, we can clearly draw the conclusion that water management, water politics and Rule of Law is closely related to each other and if one fails the others will be default be ineffective.

6. CONCLUSION

India's socio-economic-political and ecological condition is very uneven across the country and that is why the issue of water management has always created conflicts of interest among the states and has been a tricky issue to come up with a comprehensive solution. Various factors like vote bank politics, lack of coordination, caste and class differences, farmers' heterogeneity, corruption, lack of proper monitoring, rules, regulations and many more have made adverse effects on water management.

Water management has become a complex issue as there is an overlapping between water politics and Rule of law. This area is not given much importance but this is one of the vital areas where the economy is dependent and the life of the farmers are at stake. Water management if done properly can create employment opportunities for many and also the health care facility will improve.

There is a need of proper application of the doctrine of Rule of law to govern water management and control water politics which will improve the sustainability of the nation as water is an important natural resource without which life would be impossible. There has to be a proper balancing of a particular state's interest with that of the interest of the entire country.

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