

# WATER POLICIES AND LEGAL FRAMEWORK IN INDIA

SUBMITTED BY :- VAIBHAV VASTI

COURSE :- BBA LLB(HONS.)

## ABSTRACT

This study examines the legal frameworks governing the water industry in India, starting with the initial legislation created during British rule and continuing with amendments and additions made after independence. In order to address the issues of the environment, ecology, equity, and development, it discusses the contents of the legislation as well as its short comings and omissions. It also recommends reviewing and bolstering the current water laws and policies. An alternative socio-legal discourse and practice must be developed, one in which the relevant authorities consider people's struggles for water resource management as a means of pursuing their human rights and use organic knowledge of water resource management as seriously as scientific knowledge.

## INTRODUCTION

For all species on Earth to survive, natural resources (NR) are necessary. owing to the unsustainable use of these resources in all forms (caused by a rise in demand owing to an increase in human population), there is now more rivalry for NR, which might result in an endless depletion. The ecology is widely threatened as a result of the widening gap between supply and consumption. Over the past 20 years, water policy have prioritized the physical availability and growth of water resources over sustainability. This strategy has resulted in subpar administration of water resources and institutional frameworks. The water concerns of the future century could be beyond the scope of current water management techniques. There is a need to re-examine these institutional structures. In India, property rights on land are strongly associated with rights to water. Ground water overexploitation is the overall effect of this. Significantly declining water tables are occurring in three states in India that are vital for agriculture. Conventional water collecting has become less important. Drinking water in rural areas is a problem. Locals no longer have authority over conventionally maintained tanks and other common pool resources (CPRs) according to Panchayat 4. The goal of the study is to draw attention to the salient elements of the current legal framework and demonstrate how these flaws and inadequacies have led to circumstances that are not consistent with sustainability.

## WATER POLICIES IN INDIA

Technology advancements are having a negative impact on both non-renewable and renewable resources. Non Renewable: are supplies that have built up over geological time and are exhausted with usage, such as land in minerals; Renewable: are refilled regularly or to some extent by human action, such as water and forests. In Punjab, over 98% of the population is exploited. Following with 80% is Haryana. States like Rajasthan and

Tamil Nadu, where the percentage of exploitation is almost 62% and 54%, respectively, are also experiencing unstable situations. Water tables have rapidly declined in a number of these states, which frequently suggests that water is being "mined" or removed at unsustainable rates (TERI Information Monitor on Environmental Science, Vol. 2, no. 1; Ministry of Water Resources, Govt. of India, 1994).

India's water crises: Avenues for Policy and Institutional Reform, TERI Vol2. According to the Panchayat Acts, financial gains from village resources have not gone to the Gram Panchayat but rather to government departments up to the administrative hierarchy, facilitating the control of external agencies over the village resources.

## **Government Policies: A Historical Background**

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Future irrigation projects will be built by the states through their own agencies and funded by public loans, according to a decision made by the British government. In light of the current water problem and the states' claims to exclusive control over it, this judgment was made far in advance of its time. The five governments decided that states would not be permitted to obstruct the implementation of the best options. During the British era, governments prioritized commerce above social issues. Agricultural works were categorized as either commercial or non-commercial by the British government. If, by the tenth year after the project's completion, the stipulated rate of return was obtained from that specific effort, it was considered commercial.

### The 1935 Government of India Act

The legislation gave the states authority over irrigation, taking it away from the federal government. This had a significant impact as the central only became involved when disputes arose between nearby provinces.

The Bengal famine of 1947 had raised serious concerns about food security. Food security informed the prioritization of water development. The irrigation infrastructure underwent construction throughout the planned development era. The people's needs were identified, and the appropriate action was taken. This helped to construct six massive infrastructure projects for the production and storage of water.

Over the forty years following independence, no significant effort was made to develop detailed policy standards. Before 1987, there was no comprehensively established water policy. There were just a few policy recommendations available for flood control. The country's umbrella organization for water management was established in the 1980s. The Indian prime minister presided over it, and it was known as the National Water Resource Council (NWRC). The National Water Board backed the council. The National Water Policy was completed by the council in 1987. This publication provided a thorough analysis of several policy topics while taking the views of the states into consideration. State governments decided to support the federal water strategy as they represented NWRC as well. As a result, the NWRC completed policy papers such as the irrigation management policy, asset management policies, operational and procedural modification policies, etc.

A chronology of events in the evolution of the Government Water Policies in India is given below:

1866 The government is given the main role in the irrigation and development  
1935 Central government transferred irrigation to the states governments.  
1950 Beginning of the planned development  
1972 Second irrigation commission report

1980 The Rashtriya Barh Ayog (National Commission on Floods ) submitted its report.

1986 Formulation of NWRC

1987 National Water Policy (1987) finalized in the first meeting of NWRC

1994 Modified draft of National Water Policy Allocation among states, circulated to the states.  
1998 Water sector review by the GOI and World Bank

1999 Second meeting of NWRC considered water allocation and river basin authorizes  
1999 Report of the National Commission on integrated water development

2000 Water vision by India Water Partnership

2002 National water Policy (2002)

2004 CPSP India studies by ICID-IAH

### **The National Water Policy 2002: Salient Features**

The National Policy on Water 1987 has been superseded by the National Water Policy 2002 (see to Table 2 for a matrix showing the structural modifications made to NWP 2002). The integration of integrated water resource management (IWRM) was the primary modification. The management of river basins was highlighted. Since the Policy's creation in 1987, a number of new challenges have surfaced, and in response, it has been reviewed and revised. Water is viewed

as a component of a broader ecosystem in NPW 2002, and because fresh water is scarce and important, it must be regarded as such for the continuation of life. The policy acknowledges that water is a finite and valuable natural resource that requires planning. As a result, it places a strong emphasis on creating management plans for water conservation while taking state and socioeconomic requirements into consideration. Although ecology is not given much prominence , its significance for the management of fresh water has been acknowledged inadvertently. According to the policy, maintaining the ecological balance and managing the environment's quality should be the seven main priorities. The strategy calls for an integrated, multidisciplinary approach to project planning, formulation, clearance, and execution, which includes command area development and rehabilitation of individuals.

According to the policy, the state and federal governments are responsible for managing the negative environmental effects associated with ground water extraction and usage. The policy discusses the procedure for coordinating the national water policy's execution. Given the extensive use of water in agriculture and the tenuous relationship between land rights and water rights in India, the policy also discusses the integration of 9

the water use and land use regulations. Both the federal and state governments have equal accountability for stopping the harmful overuse of water.

The Policy considers the industries that release waste into rivers, streams, and other bodies of water. It states that before effluents are released into main streams, they must be treated to acceptable levels of pollutants and that a minimum flow must be guaranteed in order to maintain the ecology while taking social concerns into account. According to the policy, every effort should be taken to create programs that guarantee tribal people and other socially disadvantaged groups in society have access to water. The strategy also makes a strong case for using public- private partnerships to get scientific and technical support as needed for the planning and development of the water sector.

### **The preamble**

The preamble to the policy gives the understanding of the important principles on which the policy is based. The principles identified in the Preamble to the Policy are-

- (i) Commitment for an Integrated Water Resource Management and Development.
- (ii) Importance of environment related concerns
- (iii) The importance of innovative techniques and better strategies resting on a strong science and technology base.

Section 2: The value of having a well-developed information system is discussed. The necessity of providing public access to the material is not addressed in this section.

Section 3: This section addresses the idea that water resources should be transformed into resources that may be used. predicated on the idea that the water supply that isn't being exploited constitutes a waste of resources used to address ecological issues. The section disproves the idea that maintaining the estuarine, coastal, and riverine ecosystems' environmental balance requires maintaining the balanced use of water.

Section 4: This section addresses the Act's institutional framework. The focus has been on concepts such as operation and management (O&M) of improved institutional mechanisms.

Section 6: Project planning is covered in this section. It states that the government will still be in charge of developing specific water projects. The much-discussed idea of public-private partnerships for development projects in the future has been disregarded here, as the section makes no mention of the private sector's involvement in project design or implementation.

Section 11: Dealing with the financial sustainability, this is a significant requirement. It states that the usage of water must also pay operating and maintenance expenses and recapture construction costs.

Section 13: Recently, the policy has addressed private sector engagement in this area. It recognizes that involvement from the corporate sector may aid in bringing fresh concepts, producing funding

### **Conclusion to the policy**

The policy concludes on the remark that the depending on the specific situation, private participation in building, owning and operating, leasing and transforming water facilities may be considered.

#### National Water Policy 2002 & Issues in drinking water

"India has spent \$7.5 billion on drinking water and \$50 billion on developing water resources over the last 50 years." [L.C. Jain, a former Planning Commission member of India]

The Indian Constitution's 73rd and 74th Amendments were drafted with the empowerment of rural communities through the Panchayat system in mind. It was also intended that the Local Bodies that they formed would handle all of the issues facing the rural populace. Experience, however, has produced different outcomes.

It has also been recognized that the true problem with decentralization is not so much its level of optimization as it is ensuring local performance and responsibility. According to the figures, over 176 million people, or 27% of the country's rural population, lack access to clean drinking water. Since the NDWM's founding, it is alleged that the government has already invested Rs 150000 million on drinking water services through a number of programs and initiatives. While official figures indicate that a significant number of communities have access to clean drinking water, they only indicate that hand pumps and standposts have been built in the majority of the locations.

Some significant information was uncovered by a UNICEF (United Nations International Children's Emergency Fund)-commissioned research on India's water supply sources. It stated that in most places, the conventional open-dug well remains the main supply of drinking water for all purposes. According to the study, the hand pump that the Indian government had constructed was either inoperable or too far away for people's convenience. The survey also revealed that one of the three participants who did not use hand pumps thought that the water from the hand pump had a medical scent, looked rusty, or tasted salty.

According to a research, people in locations like the Baroda district of Gujarat spend four to five hours a day, or seven hours a week, gathering drinkable water. If the time and effort required to gather water were measured in terms of missed income and work hours, it would appear that the whole nation's economy would be seriously impacted. According to a different research, schoolchildren's growth and development are hindered by the inability to obtain drinking water since they must carry it over great distances, which results in discomfort and health issues for them. It is astonishing that only after the National Water Policy 1987 was established has the issue of sinking water become a top priority.

## State Water Policies

India's several states each have their own water policies. These regulations are exact copies of the National Water Policy, which they frequently transform into a state-specific plan. Water policies in states like Tamil Nadu and Himachal Pradesh are more oriented toward the equity principle and do take into consideration the community-based control over water resources or the participation role of peoples organizations.

## CUSTOMARY RIGHTS OVER WATER RESOURCES

In terms of usage and associated customary rights, rather than chronology, water is an old resource.

User groups have benefited from customary rights over water for millennia, and these rights have developed over a lengthy 15-year period. These unofficial laws and guidelines, which developed over a protracted period of time, represented the political, social, and economic makeup of society at any particular moment. They were also impacted by variables including the degree of technical advancement at a certain period, socioeconomic and political circumstances, and geophysical and meteorological conditions. The establishment of welfare states and the rise of colonialism in India have changed the balance of power and exacerbated the erosion of these rights to natural resources, particularly water.

Post-independence industry led to urbanization, which granted the state the authority to expand cities and towns as well as irrigation systems in order to annex additional territory. The people's existing rights have been all but stripped away by the state. In India, land and water law have long been intertwined. The colonial era's policies reveal a great deal about this relationship. A same proportion of farmers are denied access to water since 80% of them do not own land. Furthermore, other government-sponsored development initiatives like dam building and repair as well as periodic relocation plans have eliminated the customary or user rights to water that the local population had been enjoying for decades.

1. As a result, vulnerable individuals whose rights have been violated are helpless and unable to seek redress in a court of law since customary water rights and community management of water resources are not covered by Indian law. The question of development and the state's need to provide fair water control over resources highlight the ways in which official institutions have disregarded customary rights. The following questions can be researched in relation to these developments:

What were the customary rights that user communities enjoyed since ages?

2. How these rights have been appropriated by the state?

C. While having control over water resources, did state achieve equitable distribution of rights?

## Tank Water Bodies

Tank-based irrigation has long been used in several regions of India. Just 36% of the agricultural land is currently used for food production, with the irrigation canals serving as the so-called "major irrigation system." Sixty-four percent of croplands are irrigated by rain, ground water, artificial or natural tanks. In spite of this vital reliance on wells and tanks, thousands of tanks have been destroyed, neglected, and reclaimed in India, along with egregious groundwater exploitation. The main stream concern is slowly coming to terms with the fact that ground water is unsustainable in an ecological system where forests are completely exploited, soil protection is blatantly disregarded, and rivers have been quickly supplied. There is a lot of possibility for different approaches to water management with that tank irrigation.

The proper legal framework has to be changed in order to support local regulations and offer incentives for the egalitarian and sustainable usage of water tanks. Extensive fieldwork is required to investigate customary practices for water management and institutional frameworks, as tanks in India have historically been governed by community resource management systems and customary rules.

### Legal framework

The existence of the tanks has legal implications that are related to the political economy of the nation. Tanks are local water supplies that people may utilize right away, removing their reliance on distant authority for their water needs. The tanks' presence suggests that authority over water resources is decentralized. The development of the contemporary state, which aims to centralize resource management and increase reliance on the government or capitalistic authority, is

inherently opposed to the technology and resource distribution that would support them. In order to adhere to the economic and social justice mandate of the constitution, it is critical that resources be used in a way that promotes fairness and independence from external dependency.

### Dam Construction

The focus on building dams has resulted in a disregard for tank and ground water laws, since they have been perceived as the primary scientific option for food production and irrigation. It is doubtful that focus will shift to the creation of tank and ground water legislation until the proper legal framework is developed for the design and construction of dams.

Large dam construction, which was seen as beneficial to growth in the first 20 years following independence, is becoming the subject of negative inquiries in both official and public debate. These patterns demonstrate how little legal and juristic information there is in relation to it.

## The legal framework

In this domain, the executive power is more prevalent than the legislative or judicial branches. Discretion is indeed involved in making extraordinarily important and substantial judgments. Examples of such decisions include those on building dams, organizing national and international aid, choosing locations, approving the size of the dams, rejecting alternatives for medium- and small-scale projects, and organizing design and safety. Though not to the extent necessary to guarantee the reasonable, equitable, and responsible use of sweeping presidential power, the legislation does interfere in this area. The constitutional framework is completely missing from all of this.

## CONCLUSIONS

Water law reform is essential to India's growth on the social, ecological, and economic fronts. The current legal system, which was mostly carried over from the colonial era, urgently needs significant revisions and democratization, as well as suitable replacements. However, socio-legal strategies for the administration of India's water system have up till now been glaringly ignored. The author's research of the policy and legal framework leads her to the conclusion that civil society, rather than the state, created the rights and obligations that make up the regime of water law.

Second, several administrations appropriated and misappropriated water legislation over the pre- colonial and post-colonial periods of India's history. Furthermore, the state's erroneous notions of growth are involved in the evolution of regimes pertaining to people's rights over water.

Therefore, future work in water law must develop an alternative socio-legal discourse and practice wherein the relevant authorities take into account people's struggles for water resource management as a pursuit of human rights and use organic knowledge of water resource management as seriously as scientific knowledge.