

WATER RIGHTS IN INDIA

Law, Ethics, and Governance

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Abstract: This article seeks to probe the legal structures which are in place to ensure orderly and judicious allocation of water amongst various stake-holders in the country, i.e. households, farmers, industries, etc. In formulating a policy for the same, a good consideration of both 'Right to Water' and 'Right over Water' is necessary. The paper will also deal with the issue of pollution and indiscriminate usage of water and the laws to regulate the same. The problem of water scarcity cannot be dealt with by incoherent and unstructured efforts; there is a need of integrated and multi-pronged approach towards the mitigation of the problem of water scarcity. After detailing the issues and challenges involved in the problem of water scarcity, the paper investigates the legal frame work at international conventions and the governance of water allocation at the national level. It is, however, noted that mere enactment of legislations or formulation of policies will not prove to be a panacea for the water related ills, proper enforcement and earnest compliance of these laws and policies would go a long way in curing this problem. Integrated Natural Resource Management is suggested as an answer for overall, combined policy towards conservation, protection and resource enrichment.

Keywords: Water, Right to Life, Right to Water, Planning Commission

1. Introduction

There is a famous paradox, i.e. water-diamond paradox, according to which, even though water is essential for life, it costs much lesser than diamonds, which are used only for ornamental purposes and are not essential for life. The explanation tendered for this paradox

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by the economists is that since diamonds are scarcely available and water is available in large quantities, the consumer is willing to pay more for diamonds but not for water. However, this paradox may not be able to stand valid for long, as the basic premise on which it stands, i.e. water is available in large quantities, may itself become invalid. Therefore, in the wake of such impending fear of water scarcity, the task of governing the allocation and usage of water has become all the more imperative.

India is gifted with good water resources; nine major rivers and more than 60 minor rivers and innumerable streams. Though water contamination has been the larger issue, shortage and scarcity have often been neglected due to poor governance. Each summer witnesses water scarcity in all the major and minor cities of the Country. Ground water has been exploited beyond replenishment and contamination due to landfill waste dumping, which has only added to water borne diseases. 'Right to water' may have been declared a fundamental right, but the biggest question one would fail to answer - Is the State in any way responsible/liable to provide safe potable drinking water to all its population? If one is injured due to unsafe water, can one claim compensation under Article 21 for 'Right to Life'?

It is in this context that this paper seeks to probe the legal structures which are in place to ensure orderly and judicious allocation of water amongst various stakeholders in the country, i.e. households, farmers, industries, etc. In formulating a policy for the same, a good consideration of both 'Right to Water' and 'Right over Water' is necessary. The paper will also deal with the issue of pollution and indiscriminate usage of water and the laws to regulate the same.

2. Water Scarcity: Issues and Challenges

It's a foregone conclusion that the need of the hour is to draft legislations giving due consideration to the prevailing circumstances, i.e., scarcity of water and the consequent inevitable crises. Mention must be made, in this regard, of the Draft National Water Framework Act framed by the Sub-Group on a National Water Framework Law set up by the Planning Commission's Working Group on Water Governance for the Twelfth Plan.¹ Of course, water falls under the state list, but the Planning Commission recommended that, in the light of the concerns like, right to water being a fundamental right,

¹N. R. Madhava Menon, "Fostering Development through Opportunity, Inclusion and Equity," *The World Bank Legal Review* 5 (2013), 231.

mounting pressure on this finite natural resource, inter-use and inter-state conflicts, etc., uniform and general principles for water governance have to be laid down so that there may be a coherence in the approach towards the distribution and use of water among the different states. The Planning Commission emphasises the fact that although there is already a national Water Policy in place, it has no legal status, and being so, a national water law is the need of the hour. The Commission suggested that such a law can be enacted either by persuading a certain number of state assemblies to pass a resolution authorising Parliament to enact such a legislation.² An alternative, albeit a difficult, way has also been proposed by the Commission, i.e., by transferring the subject of water from the state list to the concurrent list by appropriate amendment. The draft legislation incorporates concepts like ‘precautionary principle’, ‘public trust doctrine’, ‘sustainable use’, which, till now, have found mention only in judicial pronouncements. The draft legislation recognises water as an economic and a social good, as well as a ‘common pool resource’. The proposed legislation emphasises that the prime principles governing water-use of all kinds shall be “equity, economy, efficiency, minimisation of waste, resource-conservation, and ecological sustainability.”³ It has been suggested by the Commission that the legislation is not intended to be a Central water management law or a command-and-control law, and therefore, would not establish any administrative machinery or lay down any penal provisions. However, the proposed Act lays down certain general principles which should act as guiding principles for the legislatures and policy makers of various states shall have to conform to them, and in that sense it is justiciable.

Scarcity of water poses before India the question as to how to allocate water in a manner as to subserve the essential human needs without jeopardising the economic growth of the country. Various different approaches have been proposed to deal with this dilemma. The National Water Policy 2012, seeks to declare water as an economic good, which needs to be priced on economic principles. Doing so would, undoubtedly, result in efficient use of water because of the fact that a commodity which is priced would be judiciously used by the end user; however, the question which looms over the

²The same is possible under Article 252 of the Constitution of India, 1950.

³<http://www.planningcommission.nic.in/aboutus/committee/wrkgrp12/wr/wg_wtr_frame.pdf> 12, accessed 5 May 2014.

proposal is the fact that the same would spiral up the water prices as well as adversely affect the agricultural sector in the country. However, the latest draft of the National Water Policy states that water for domestic use and drinking should be kept out of the proposed pricing mechanism. Another important proposal has been to conserve water at all levels and to keep it from wastage or pollution. The same proposal has been duly incorporated in some measure; there are various legislations on rain water harvesting whereby every new building having a roof area of a certain size must be equipped with Rain Water Harvesting facility.⁴ Water scarcity is also suggested to be dealt with by way of treating and recycling polluted water so as to render them useable for certain purposes.

However, it is to be noted that the problem of water scarcity cannot be dealt with by incoherent and unstructured efforts; there is a need of integrated and multi-pronged approach towards the mitigation of the problem of water scarcity.

3. International Conventions

At the international level, the World Bank, UNICEF and the WHO have served as the auspices under which some of the most important international conventions recognising and establishing right to water have been held. The earliest attempt towards the crystallisation of the right to water can be traced back to the Stockholm Declaration of the UN Conference on the Human Environment, 1972, which stated it to be the responsibility of humankind in general to safeguard the natural resources of the earth (which most obviously includes water) for the benefit of the present and future generations.⁵ Mar del Plata Declaration of 1977 which was adopted by the UN Water Conference made an explicit reference to the right to drinking water. However, Dublin Principles of 1992, which was adopted at the International Conference on Water and Sustainable Development, 1992, can be said to be the first of the documents at the international level which expressly recognised the human right to water. Most notable of its provisions include one which although recognised water to be an economic good, but subjected the statement to the exception that

⁴Marilyn Waite, *Sustainable Water Resources in the Built Environment*, London: International Water Association, 2010, 161.

⁵Stockholm Declaration, UN Conference on the Human Environment, 1972, Principle 2. < <http://www.unep.org/Documents.Multilingual/Default.asp?documented=97&articleid=1503>> (accessed 12 April 2014).

access to clean water and sanitation at an affordable price is a basic right of all human beings.⁶ The Principles also recognised that the provision of water for basic human needs is a tool for poverty alleviation.⁷

Even the Millennium Development Goals (MDGs) adopted by the United Nations General Assembly in 2000, enunciates, as its goals, increase in the access to safe drinking water and prevention of the unsustainable exploitation of water by developing water management strategies at the regional, national and local levels.⁸ Various international conventions like Convention on the Elimination of Discrimination against Women (CEDAW),⁹ Convention on the Rights of Persons with Disabilities (CRPD),¹⁰ and Convention on the rights of the child (CRC)¹¹ also made mention of right of access to water in their relevant contexts.

4. Legal Regime at the National Level for Governance of Water Allocation

Water law encompasses laws governing rivers, groundwater, tanks, irrigation, riparian rights, and water harvesting structures such as dams, and the use and accessibility to such structures as well as the quality of the water itself. If the natural habitat and biodiversity are sought to be conserved, the law has to monitor, control and regulate the use and abuse of water and air in order to maintain its purity.

While the Union has exclusive powers with regard to inter-state

⁶Dublin Statement on Water and Sustainable Development, 1992, Principle 4. <<https://www.wmo.int/pages/prog/hwarp/documents/english/icwedece.html>> accessed 12 April 2014).

⁷Dublin Statement on Water and Sustainable Development, Action Agenda, Alleviation of Poverty and Disease. <<https://www.wmo.int/pages/prog/hwarp/documents/english/icwedece.html>> (accessed 12 April 2014).

⁸United Nations Millennium Declaration, September, 2000, Articles 19 and 23. <<http://www.un.org/en/development/devagenda/millennium.shtml>> (accessed 12 April 2014).

⁹Convention on the Elimination of Discrimination against Women, Article 14(2)(h). <<http://www.un.org/womenwatch/daw/cedaw/>> (accessed 3 March 2014).

¹⁰Convention on the Rights of Persons with Disabilities, Article 28(2)(a). <<http://www.un.org/disabilities/convention/conventionfull.shtml>> (accessed 3 March 2014).

¹¹Convention on the Rights of the Child, Article 24(2)(c). <<http://www.unicef.org/crc/>> (accessed 3 March 2014).

rivers and river valleys (List I Entry 56), States have powers on water, that is to say water supplies, irrigation and canals, drainage and embankments, water storage and waterpower subject to entry 56 of List I' (List II Entry 17). The reason behind the latter position is that there is diversity amidst states in the matters of climatic and geographic conditions, rainfall, topography, crop pattern, extent of groundwater resource and irrigation methods which require regional policy making and implementation. But discomfort arises with states' inactions and retrograde actions.¹²

At the national level, the water allocation is governed by a plethora of legislations, Rules, and Policies. One of the most important legislations that acts as a bulwark towards water pollution, happens to be the Water (Prevention and Control of Pollution) Act, 1974. The Act itself is an outcome of the deliberations at Stockholm Conference, 1972 and the commitments of India therein. The Act, as the name suggests, seeks to prevent and control the pollution of water and also to preserve the wholesomeness of the water. The same is sought to be done by way of establishing Boards both at Central level as well as at the State level and they have been vested with appropriate powers to achieve the said goals. In addition to the provisions providing for the abovementioned, the Act also prohibits the use of stream or well for the disposal of poisonous, noxious or polluting matter. The Act also regulates and restricts the establishment of industries, operations, processes, etc., which are likely to discharge sewage or trade effluents into streams, wells, sewage, etc.

However, it has been time and again pointed out by various scholars that the water laws governing the preservation, use and allocation of water in India are not adequate to achieve the goals of preservation and judicious allocation of water; they are rather modelled on a presumption of a water surplus conditions and fail to address the concerns of water scarcity conditions.¹³ Thus, a need was felt to formulate water policy which would better reflect the concerns of the present times. It was also realised that although water is a state

¹²Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India*, 2nd ed., New Delhi, Oxford University Press, 2001, 48-9.

¹³R. Maria Saleth, "Strategic Analysis of Water Institutions in India: Application of a New Research," <<http://core.kmi.open.ac.uk/download/pdf/6481865.pdf>> (accessed 12 February 2014).

subject under the Constitution of India,¹⁴ the aspects other than water supplies, irrigation and canals, drainage and embankments, etc., like, environmental protection, water management, etc. needs common approach and guidelines. As a direct result of such a beckoning, National Water Policy, 1987 was formulated. The Policy, *inter alia*, focused on the optimum utilisation of the available water resources in consonance with the international agreements and domestic laws.¹⁵ It also highlighted the importance of the improvement in the water quality and keeping it from getting polluted. However, one of the most important features of the Policy, which is relevant for the purpose of our discussion happens to be that the Policy made a statement as to the ‘Water Allocation Priorities’, and mentioned Drinking Water, Irrigation, Hydro-Power, Navigation and Industrial and other uses as the water allocation priorities in the descending order.¹⁶ The Policy also referred to the ‘Participatory Irrigation Management’, i.e., a policy objective whereby efforts was sought to be made to involve farmers in various aspects of management of irrigation systems. Of course it is quite difficult to directly involve farmers into the irrigation management; therefore, same is achieved generally by letting Water User’s Association to take over the management of the irrigation in a particular area.¹⁷ In fact, some state legislations have statutorily provided for the creation of Water Users’ Association.¹⁸

The National Water Policy was reviewed and updated in the year 2002. One of the most important change brought about in the policy is in the water allocation priorities, ‘Ecology’ has been introduced as one of the priorities. The significance of this change can be understood from the fact that if allocation of water is done without paying any regard to the ecology of the water bodies, it will inevitably lead to such water bodies becoming devoid of any life whatsoever. The reason for the same lies in the fact that a minimum

¹⁴Entry No. 17, List II, Schedule Seventh, The Constitution of India, 1950.

¹⁵National Water Policy, 1987, Para 3.3, Ministry of Water Resources. http://cgwb.gov.in/documents/nwp_1987.pdf (accessed 12 February 2014).

¹⁶National Water Policy, 1987, Para 8, Ministry of Water Resources. http://cgwb.gov.in/documents/nwp_1987.pdf (accessed 12 February 2014).

¹⁷Rakesh Hooja, *Users in Water Management*, Jaipur, Rawat Books, 2002, 3.

¹⁸See The Andhra Pradesh Farmer’s Management of Irrigation Systems Act, 1997; The Karnataka Irrigation and Certain Other Law (Amendment) Act, 2000.

flow of water is required to be maintained in order to let the aquatic life present in such streams to sustain, as also for the purpose of facilitating the dilution of effluents discharged into the water.¹⁹

Although the National Water Policy of 2012 recognised that right to user of water for drinking, sanitation, domestic needs, and agriculture, is a pre-emptive right, yet it proposes that for uses other than this, water be treated as an economic good and be priced on economic principles. This proposal of the National Water Policy 2012 has been challenged on the grounds that making water as an economic good would lead to spiralling of water prices and, given that the policy also proposes to end all the water subsidies, it would also jeopardise the agricultural sector in the country. The Government seeks to justify this step by arguing that water is a scarce resource, and being so it is needed to be used judiciously and that providing subsidies on the water has been leading to waste and misuse of the same. On the other hand, Government argues, that pricing of water on economic principles will lead to a better conservation of water. This has been widely criticised.²⁰ Even one of the World Bank Papers proposed pricing system for water in India for ensuring sustainability and better allocation of water.²¹ Vaidyanathan Committee Report on Pricing of Irrigation Water also recommended the discarding of subsidies for water and supported the pricing of water.²² Another feature of the 2012 Water Policy which received condemnation is that the 'Water Allocation Priorities' which was envisaged in the Water policies of 1987 and 2002, has been done away with in the 2012 water policy.

¹⁹Asit K. Biswas, R. Rangachari, Cecilia Tortajada, *Water Resources of the Indian Subcontinent*, New Delhi: Oxford University Press India, 2008, 315.

²⁰Majority of the comments on the Draft National Water Policy 2012, received by the Drafting Committee, decried the proposal of water privatisation and pricing laid down in the Draft. <http://www.thehindu.com/news/national/after-outcry-centre-backs-off-on-water-pricing-privatisation/article3501953.ece?ref=relatedNews> (accessed on 25 April 2014).

²¹John Briscoe and R. P. S. Malik, *India's Water Economy: Bracing for a Turbulent Future*, No. XX. < <http://documents.worldbank.org/curated/en/2008/06/16784682/indias-water-economy-bracing-turbulent-future>> (accessed 3 March 2014).

²²Vaidyanathan Committee Report on Pricing of Irrigation Water, Planning Commission, September, 1992. < <http://www.indiawaterportal.org/articles/vaidyanathan-committee-report-pricing-irrigation-water-planning-commission-1992>> accessed 12 February 2014).

Not only should we have a look at the National Water Policy, but also at the National Urban Sanitation Policy, 2008, because both the aspects are interrelated with each other. Almost 75 percent of all surface water across India has been contaminated as a result of the untreated domestic/municipal wastewater and therefore, sanitation is a major concern for water conservation and management as well.²³ The Policy has, as one of its objectives, the goal of promoting recycle and reuse of water, as well as promoting the technological advancement in the field of waste-water treatment and recycling of the same, which happens to be one of the important goals of the National Water Policy as well. Therefore, in the view of the authors, it would be beneficial to both the causes if both the policies are fused into a single document or are formulated at least in consonance with each other.

It is imperative to spare a thought for groundwater as well which is getting depleted day by day and is being incessantly polluted. The reason for the same would again appear to be obsolete laws governing the use of groundwater. Under the Easements Act, 1882, groundwater is considered to be an easement attached with the land and therefore, it is the right of the owners of the land to use the groundwater as they will.²⁴ This has led to the indiscriminate use of the groundwater and depletion of the same. In a measure to regulate the use of groundwater, the Model Groundwater (Control and Regulation) Bill, 1992 was prepared and circulated among the states by the central government. The idea was that states can take a cue from the Model Bill and frame their own on the lines of the same.

Till 2010, 11 States and Union Territories enacted and implemented groundwater legislations on the lines of the Model Bill.²⁵ The Bill in its third provision lays down that a groundwater authority should be established. The authority shall, when it is of the opinion that, having regard to the public interest, it is imperative to control or regulate the extraction or the use of ground water in any

²³National Urban Sanitation Policy, 2008. www.indiasanitationportal.org/78 (accessed 12 February 2014).

²⁴Illustration (g) appended to Section 7 of the Easements Act, 1882. <<http://admis.hp.nic.in/himpol/Citizen/LawLib/c88.htm>> (accessed 12 February 2014).

²⁵Press Information Bureau, Government of India, Released on 4th February, 2010; <<http://pib.nic.in/newsite/erelease.aspx?relid=57628>> (accessed on 25 April 2014).

form in any area, advice the state or the union territory government to declare such area to be notified under the Act.²⁶ Any person desirous of sinking a well within the notified area will have to apply to the groundwater authority for a permit to do so.²⁷ The factors which the authority need to take into consideration before granting the permit includes, among other things, the purpose or purposes for which water is to be used, the existence of other competitive users, the availability of water, quality of ground water with reference to use, etc.

5. Maintaining the Wholesomeness of Water

It would be apt at this juncture to discuss the take of the judiciary on the water allocation and conservation related issues. The Judiciary in India has been repeatedly emphasising the fact that right to water is an essential facet of right to life enshrined in Article 21 of the Constitution of India.²⁸ The remedies against violation of water rights are both statutory as well as common law. The statutory remedies are found under the Environmental (Protection) Act, 1986; the Water (Prevention and Control) of Pollution Act, 1974; the Indian Penal Code, 1860; and the Criminal Procedure Code, 1973. A writ petition can also be filed under Article 32 in the Supreme Court or under Article 226 in the High Court for seeking remedy against violation of water rights.

The Kerala High Court in *Attakoya Thangal v. Union of India* observed: "The administrative agencies cannot be permitted to function in such a manner as to make inroads into the fundamental right under Art. 21. The right to sweet water and the right to free air are attributes of the right to life, for these are the basic elements, which sustain life itself."²⁹ The major question in the above case was that of pumping up ground water for supplying potable water to the Lakshadweep islands in Arabian Sea, when implemented, would

²⁶Fifth Provision, The Model Groundwater (Control and Regulation) Bill, 1992. <<http://www.indiawaterportal.org/articles/model-bill-regulate-and-control-develop-ment-groundwater-ministry-water-resources-1992-1996>> (accessed on 12 February 2014).

²⁷Sixth Provision, The Model Groundwater (Control and Regulation) Bill, 1992.

²⁸"Subhash Kumar v. State of Bihar," *All India Report, Supreme Court* 1991, 420; *A. P. Pollution Control Board II v. Prof. M.V. Nayudu (Retd.) and Ors*, (2001) 2 Supreme Court Case 62.

²⁹1990 KLT 580.

bring more long-term harm than short-term benefits. Interfering, the Kerala High Court asked for a deeper study to examine whether the scheme, if allowed to operate, would not dry up, and result in salt water intrusion into the aquifers. The Court stressed on the need for interdisciplinary cooperation for providing of civic amenities.³⁰

In *Delhi Water Supply and Sewage Disposal Undertaking and Another v. State of Haryana and others*,³¹ a writ was filed by one of the residents of the city of New Delhi stating the grievance of the residents of New Delhi regarding the inadequate supply of water for domestic use. This writ petition was clubbed with another petition filed by the Delhi Water Supply & Sewage Disposal Undertaking, which sought to enforce the Memorandum of Understanding among Delhi, Haryana and Uttar Pradesh for the release of extra water to Delhi for the purpose of domestic consumption. The apex court, while providing relief to the petitioners, held that the need of water for drinking and domestic use is such which cannot be made subservient to any other use and should rather prevail over all other uses. Thus, the court recognised the right to drinking water as a pre-emptive right.

Another case worth mentioning here is that of *Ashok Kumar Agarwal v. Hyderabad Metropolitan Water Supply and Sewerage Board and Ors.*³² In this case, a person was denied the water supply on the grounds that he was not the owner of the premises to which connection was given. Therefore, a writ petition was filed by the person in question in the Andhra Pradesh High Court. The court held that water supply cannot be denied to a person on the grounds that he is not the owner of the premises. The important dictum which the court laid down in this case is: “Right to access to drinking water is fundamental to life and there is a duty on State under Article 21 to provide clean drinking water to its citizens.”³³ It would be apt to

³⁰The right to enjoy life as a serene experience in quality for more than animal existence is thus recognized. Personal autonomy free from intrusion and appropriation is thus, a constitutional reality. The right to live in peace, to sleep in peace and the right to repose and health, is part of right to live. See “*Madhavi v Thilakan*,” *Criminal Law Journal* 499, 1989, 501.

³¹“*Delhi Water Supply & Sewage Disposal Undertaking and Another v. State of Haryana and others*,” *All India Report, Supreme Court* 1996, 2992.

³²“*Ashok Kumar Agarwal v. Hyderabad Metropolitan Water Supply and Sewerage Board and Ors*,” *All India Report, Supreme Court* 2006, 541.

³³The National Commission to Review the Working of Indian Constitution [2002 report] in its report has mentioned that the right to safe drinking water,

discuss another case in conjunction with the *Ashok Kumar* case; In *Municipal Council, Ratlam v. Vardichan and Ors*,³⁴ it was held by the Hon'ble Supreme Court that paucity of funds is not an excuse which can validly exonerate a municipal council from the duty of providing proper sanitation to the public. It is quite interesting to note that no fundamental right was referred to by the court to support its decision and the decision was given solely on the basis of Section 123 of the M.P. Municipalities Act, 1961, which imposes, upon the municipal councils, the duty of maintaining cleanliness in the public streets, places and sewers, among other things.

It has been held by the Hon'ble Supreme Court that while deciding disputes regarding water management, its development and its distribution, what needs to be taken into account is not rigid technical or legal considerations, but they should be rather looked at from humanitarian point of view. The reason put forth by the apex court for this observation was that water wealth "forms a focal point and basis for the biological essence and assistance of socio economic progress and well being of human folk of all the countries."³⁵

True equitable distribution of water is an attribute of right to live. It is also an integral part of the right to development, as the people should have equal access to the basic resources. The rights of the people living in the riparian regions in different States are more important than the rights of the riparian States as such to use the water from inter-State rivers. Juristic discourse on the problem is often confined to the constitutional riddle.³⁶ On the contrary, sharing of Inter-State River basically involves the right of the people to have access to the environmental resources and has to be considered as a human rights problem. In *Narmada Bachao Andolan v Union of India* the Supreme Court declared that water is the basic need for the survival of human beings and is part of right to life and human rights as enshrined in Art. 21. The Court observed: "It is a matter of great concern that even after more than half a century of freedom, water is

clean environment etc, is to be included as Art 30-D of the Constitution, thus making it a fundamental right on its own standing.

³⁴"Municipal Council, Ratlam v. Vardichan and Ors," *All India Report, Supreme Court* 1980, 1622.

³⁵"State of Karnataka v. State of Andhra Pradesh & Ors," *All India Report, Supreme Court* 2001, 1560.

³⁶P. Leelakrishnan, *Cochin University Law Review, Compilation, CEERA*, 164.

not available to all citizens even for their basic drinking necessity violating human right resolution of all international convention and Art. 21.”³⁷ The Judgment has received criticism as the consequences of the judgment saw the submergence of large vests of forestland which were rich in biodiversity. The Court laid more emphasis on rehabilitation of the evictee rather than on the impact of the dam on natural resources. That the Court justified its judgment as lot of money, time and energy was already spent on the project and hence any abandonment was futile and cannot be accepted. The Court strangely relied on the right to access to drinking water to the Rann of Kutch at the cost of submergence of forestland in Madhya Pradesh. However, one must note that these decisions are often driven more by anthropocentric needs than ethical concerns for plant and animal species as such.

6. Enforcement and Compliance

Mere enactment of legislations or formulation of policies will not prove to be a panacea for the water related ills, proper enforcement and earnest compliance of these laws and policies would go a long way in curing this problem. One of the most important steps needed to be taken in this respect is to involve the stakeholders, i.e., water users in the management of water. In other words, management of water resources should be done by resorting to participatory approach. Such involvement can be made at the planning, design, development and maintenance aspects of the projects for water conservation. In order to implement this approach effectively, necessary changes in the legal and organisational structures is required. In addition to this, the Draft National Water Policy, 2012, also emphasises on localised research for a better understanding of the conditions prevailing in a particular local area. Various states in India have already enacted legislations to facilitate Participatory water management and according to the latest estimates, approximately 63, 167 Water Users Associations have been formed and around 14.62 Million Hectares of land has been covered under participatory water management.³⁸

³⁷“Narmada Bachao Andolan v. Union of India,” *All India Report, Supreme Court* 2000 SC 3751.

³⁸Status of Participatory Irrigation Management (PIM) in India-Policy Initiatives Taken and Emerging Issues, Ministry of Water Resources.

Change in the legal provisions related to water law is another step which, if taken, would go a long way in making water management much more efficient. The draft National Water Law Framework is an applaudable initiative and should be enacted by Parliament at the earliest so that water governance would usher in the era of uniformity of approach and coherency in policies. Also, states which have not yet enacted the groundwater legislation on the lines of the Model Groundwater (Control and Regulation) Bill, 1992, they should be persuaded to do so, so that depletion of groundwater can be arrested and the use of the same may be regulated. Similarly, the states which have not enacted the legislation making it mandatory for new buildings to install rain water harvesting systems, should emulate the ones which did enact such a legislation.

Another important step needed on behalf of the government is to invest heavily into the water management, conservation, recycling and storage projects. Government investment on water conservation and management has historically been low and the same was admitted by the Government of India in the Seventh Plan Document.³⁹ Not only the inadequacy of the investment is the problem, even the manner of investment is a problem in the Indian scenario. The money invested by the Government is used for irrigation projects, but there is a lack of long-term strategy for large-scale irrigation development through investment in surface water schemes.⁴⁰ Private investment should also be encouraged in this regard; the same can be done by formulating such Public-Private partnership models as would attract private investments.⁴¹

The contrast can also be found in the powers and function of the Pollution Control Boards. Neither the 1974 Water Act nor the 1981 Air Act prescribes any function to the Board to purify the polluted water or to take any steps for the conservation of water. The Boards

<<http://wrmin.nic.in/writereaddata/mainlinkFile/File421.pdf>> (accessed on 26 April 2014).

³⁹Vasudha Chhotray, *The Anti-Politics Machine in India: State, Decentralisation and Participatory Watershed Development*, London: Anthem Press, 2011, 56.

⁴⁰M. Dinesh Kumar, *Water Management, Food Security and Sustainable Agriculture in Developing Economies*, London: Routledge, 2012, 12.

⁴¹"Report of the Expert Group on Investment Credit," Reserve Bank of India, 63.

<<http://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/63919.pdf>> (accessed on 21 January 2014)

are only busy with ‘Consent fee’ and preventing and controlling pollution. The water and air already polluted is nobody’s business, until the Courts intervene, pass orders and fail to monitor.

The Courts are doing the job of at least delivering what the people would want in terms of ‘justice’. Unfortunately the Judiciary is caught in its own web creation. Having being active over the years, it is now being asked to interpret history, forestry, science and technology. Though the Supreme Court has accepted its inability to decide technically complicated cases, it is today the only source of governance for the people. So, is the problem of environment so severe and critical? Is Governance towards the environment failing in India? The answer to this stream is unfortunately negative.

Governance of India’s environment and resources is fragmented, congested and superficial. Fragmented because, there are too many Departments looking after one resource. Take the example of ‘water’. Irrigation department for surface water from river, Minor Irrigation department for streams and wells, Geology department for ground water, pollution, Pollution Control Board, Interlinking-Central Government, floods, no department (except in A. P where the Disaster Management policy is in place).⁴² Governance is congested because there is lack of accountability among the manager of India’s resources. There is no sense of responsibility on the Officers, and bureaucracy struggle makes it impossible to fix environmental damage.

Governance is superficial because there is no sincere attempt to conserve and preserve the environment. To protect India’s rivers, on the basis of the Colorado River Authority, the country could have a single authority to manage, control, conserve the rivers in India. Governance of the Pollution Control Board is also under the scanner, as State in competition for more Industries has only compromised on standards for emission and discounts on environmental damage.

The underlying fact remains that the legal governance system is still reeling hard on its colonial past. Lack of transparency, accountability, information and responsibility are just contributing factors. The past is not promising; the future though does look bright. The hope is on the fact that compared to the USA, India still has natural forestry and biodiversity, even though on its 18% of land.

⁴²The State of Andhra Pradesh has done well with the passing of the Land Trees and Water Act 2002; however, its implementation is not yet done.

Integrated Natural Resource Management⁴³ may be the answer for overall, combined policy towards conservation, protection and resource enrichment.

7. Conclusion

Water, being both a finite and an essential natural resource, deserves exceptional management of the same on our part as a nation. It is high time that we move the issue of water management and allocation higher up the list of priorities. Earnestness on the part of the governments at various levels will be apparent only when the steps taken by it would be characterised by co-ordination and uniformity among various ministries and departments as well as among different state governments and between the central and the state governments. Not only should the laws in this regard be passed but also enforced, not only should the policies be formulated but also implemented, it should not only be an issue discussed in the chamber of a minister but a result evident on the grass-root level. The nation right now needs a blue revolution on the lines of the Green Revolution of the 1960's and Operation Flood of the 1970's.

Tenets like 'Public Trust doctrine', 'Polluter's Pay', and 'Precautionary Principle' should be used as guiding principles in all the levels of water management and allocation. Water should be treated as a common pool resource as well as an economic good so that its wastage can be contained. It is also to be realised that as daunting a task as water management is one which cannot be done without the government alone; public participation in the same is indispensable in this regard.

⁴³In line with the New Zealand Natural Resource Management Act 1991.