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WATER LAWS AND POLICIES IN INDIA: A CRITIQUE ON EXISTING FRAMEWORK

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INTRODUCTION

Water is the most basic necessity for human life, it is the very factor survival for a human is based upon. it is necessary that water is preserved, and utilized in the most optimal manner possible. United Nations also places water in the category of basic human rights, which gives the importance of water a legal dimension, and given the scarcity of water in the country and across the globe it can be rightly pointed out that water needs protection as well as preservation and to place an obligation for proper utilization of water upon the state and its citizens legal perspective is required. However, when we talk about water laws it should be noted that water laws is a mixture of various components such as environmental aspect, social aspect, economic aspects, and agricultural aspects.

Water is nowhere specifically defined but what constitutes water bodies has been provided in the section 2(j) as “stream” includes— (i) river; (ii) water course (whether flowing or for the time being dry); (iii) inland water (whether natural or artificial); (iv) sub-terranean waters; (v) sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf.¹ Water is a state subject and the regulation of water is taken up by the individual states whereas the central government has very little say in interstate water transactions and regulations. The scarcity of water has been a point of concern. It is believed that governmental planning for the use of water resources should be done in order to accomplish the greatest good and obtain the maximum advantages from the available

¹ WaterAct-1974.pdf, <https://cpcb.nic.in/upload/home/water-pollution/WaterAct-1974.pdf> (last visited Jan 12, 2023).

sources of water.

National policy for the development and utilisation of India's water resources should be developed by an apex authority. The management of water is essential for the socioeconomic growth of the nation since it is a valuable resource. In addition to creating policies and procedures to guarantee effective and sustainable use of water resources, an apex organisation would be in charge of coordinating the work of various government departments and agencies involved in water resource management. Such a committee would also be in charge of analysing and monitoring how these regulations are being implemented, as well as taking any required remedial action. A climate should be created in which national water plans are prepared keeping in view the national perspective as well as State and regional needs. In that context, the Council welcomed the proposal of the Government of India for setting up of National Water Resources Council.² The right to get clean water is universally acknowledged. *“The human right to water is indispensable for leading a life in human dignity”* according to the United Nations General Assembly. The right to an appropriate standard of life, which is guaranteed by various international human rights treaties, notably the ICESCR, is strongly related to the human right to water. By guaranteeing that everyone has access to sufficient and clean water, governments are required to respect, safeguard, and realise the human right to water.

EVOLUTION OF WATER LAWS AND POLICIES IN INDIA

The evolution of water laws in India has been a gradual process, with various laws and policies being enacted at different times to address specific issues related to water resource management. The major reform in the water regulations began with the colonial era. Three main influences resulted from colonisation: the shift from a resource-gathering and food-producing economy to a commodity-oriented economy; a modification of lengthy social structures and traditions as social and community relations and social cohesion declined; and the growth of the market and the emphasis placed on wealth.³

The fundamental component of British colonial water law was the gradual introduction of

² nwmp_monitoring_network.pdf, https://cpcb.nic.in/wqm/nwmp_monitoring_network.pdf (last visited Jan 11, 2023).

³ Gadgil, M., & Guha, R. (1992). *The use and abuse of nature*. New Delhi: Oxford University Press

common law concepts, which focused on landowners' access rights while regulating ownership over and rights to water. Riparian rights give a landowner the authority to take a fair share of a watercourse's flow in the case of surface waters. Landowners enjoyed almost unrestricted access to groundwater beneath their property. The **Indian Easements Act (1882)**, codified common law principles, changed throughout time.⁴ It also provided for the regulation of water rights and the resolution of disputes related to water.

In 1892, the Indian Irrigation Act was enacted, which aimed to regulate the use of water for irrigation and to provide for the construction and maintenance of irrigation works. attempted to regulate how much water was used for irrigation and to provide provisions for the development and management of irrigation systems and to make it easier to build, maintain, and develop irrigation systems.⁵ The Act also established “riparian rights” a system of water rights to control the use of water for irrigation, and a system of “water rates” that users of irrigation water would be required to pay. It gave the government the authority to manage the supply and distribution of water for irrigation, including the authority to build dams, canals, and other water flow-controlling infrastructure. Later statutes and laws have abolished the Act and replaced it.⁶

In 1974, the Water (Prevention and Control of Pollution) Act was passed, which aimed to protect water bodies from pollution and to provide for the establishment of a Central Pollution Control Board. The Water (Prevention and Control of Pollution) Act, 1974 is an Indian law that aims to prevent and control water pollution. The Act was enacted by the Indian Parliament to provide for the prevention, control and abatement of water pollution, and for the maintenance or restoration of wholesomeness of water.⁷

The Act establishes the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) as the main regulatory bodies for implementing the provisions of the Act. The

⁴ Philippe Cullet & Joyeeta Gupta, *India: Evolution of Water Law and Policy*, in *THE EVOLUTION OF THE LAW AND POLITICS OF WATER* 157 (Joseph W. Dellapenna & Joyeeta Gupta eds., 2009), http://link.springer.com/10.1007/978-1-4020-9867-3_10 (last visited Jan 12, 2023).

⁵ RAMASWAMY R. IYER, *WATER AND THE LAWS IN INDIA* (2009). Available at https://books.google.co.in/books?hl=en&lr=&id=059MDwAAQBAJ&oi=fnd&pg=PT8&dq=water++laws+in+India&ots=KJScHK3YIu&sig=c15KPaA98TvAtgGMlk4JahjaEPo&redir_esc=y#v=onepage&q=water%20%20laws%20in%20India&f=false

⁶ *Id.*

⁷ Aidan A. Cronin et al., *Water in India: situation and prospects*, 16 *WATER POLICY* 425 (2014).

CPCB is responsible for laying down standards for the quality of water and for monitoring the compliance of these standards by industries and other polluters. The SPCBs are responsible for enforcing the provisions of the Act within their respective states.⁸ The Act also provides for the establishment of monitoring and analysis of water quality, the identification of polluted areas, the regulation of discharge of pollutants into water bodies and the regulation of the disposal of sewage and sullage. The Act also provides for the establishment of monitoring and analysis of water quality, the identification of polluted areas, the regulation of discharge of pollutants into water bodies and the regulation of the disposal of sewage and sullage.⁹ The Act also empowers the central and state government to take necessary steps to prevent and control water pollution, including the power to prohibit or restrict the discharge of pollutants into any water body or to close any polluting industry or process. The Act has been amended several times since its enactment in 1974, to reflect the changing needs and priorities of the country in terms of water resource management and to address specific issues related to water pollution.¹⁰

National Water Policies

The **National Water Policy was created in 1987** with the intention of establishing a framework for the coordinated management and development of the nation's water resources. In 1987, India's National Water Policy (NWP) was originally created, and it was later updated in 2002 and 2012. The National Water Policy lays out the fundamental principles and rules for the development and management of water resources in the nation and offers a comprehensive approach to water resource management.¹¹

The main objectives of the National Water Policy are:

- To ensure the availability of water in adequate quantity and quality for various sectors including domestic, agriculture, industry and environment.
- To minimize wastage, conservation and augmentation of water resources through integrated water resources development and management.

⁸ IYER, *supra* note 5.

⁹ Mohd Shawahiq Siddiqui, *WATER POLICIES AND LEGAL FRAMEWORK IN INDIA*.

¹⁰ Masood Ahmed & Eduardo Araral, *Water Governance in India: Evidence on Water Law, Policy, and Administration from Eight Indian States*, 11 WATER 2071 (2019).

¹¹ nwp-lectnote6.pdf, <https://cwc.gov.in/sites/default/files/nwauser/nwp-lectnote6.pdf> (last visited Jan 12, 2023).

- To provide for a framework for the equitable distribution of water among different sectors and regions.
- To promote the participation of local communities, users and Panchayats in water resources development and management.
- To strengthen the institutional mechanism for the implementation of the water resources development and management programme.
- To promote the efficient use of water in irrigation and to encourage the use of water-saving technologies.
- To encourage the use of treated waste water for various purposes.
- To ensure the water supply and sanitation needs of the rural and urban areas.
- To protect and conserve the water resources and aquatic ecosystems.

The National Water Policy highlights the importance of an integrated and comprehensive approach to the development and management of water resources, with the active involvement of regional communities, users, and Panchayats. Additionally, it emphasises the necessity of conserving and enhancing water resources as well as the preservation and protection of aquatic ecosystems.¹²

In 2002, the National Water Policy was formulated, which aimed to provide a comprehensive framework for the development and management of water resources in the country. The 2002 National Water Policy expands on the ideas outlined in the prior policy and offers a thorough framework for the integrated and sustainable development and management of water resources in India, with a focus on equitable distribution, conservation, and efficient use of water. Local communities are actively involved in this process.¹³

Some of the key features of the 2002 National Water Policy are:

- Water is recognized as an economic good and pricing of water is encouraged to reflect its economic value and to promote conservation and efficient use.
- Integrated Water Resource Management (IWRM) is adopted as the overarching principle for the development and management of water resources in the country.

¹² India_Water_Compiled.pdf, https://www.uvm.edu/~pbierman/classes/gradsem/2014/India_Water_Compiled.pdf (last visited Jan 11, 2023).

¹³ Philippe Cullet & Joyeeta Gupta, *India: Evolution of Water Law and Policy*, in *THE EVOLUTION OF THE LAW AND POLITICS OF WATER* 157 (Joseph W. Dellapenna & Joyeeta Gupta eds., 2009), http://link.springer.com/10.1007/978-1-4020-9867-3_10 (last visited Jan 12, 2023).

- The policy lays emphasis on the need for decentralized planning, management and participation of local communities, users and Panchayats in water resources development and management.
- The policy recognizes the inter-linkages between water, land and related natural resources and advocates for their integrated management.
- The policy stresses on the need for sustainable water use, conservation and augmentation of water resources and protection and conservation of aquatic ecosystems.
- The policy aims to ensure an equitable distribution of water among different sectors and regions and to provide for the basic water needs of all citizens.
- The policy promotes the use of treated waste water for various purposes and encourages the use of water-saving technologies.
- The policy aims to strengthen the institutional mechanism for the implementation of water resources development and management programs.
- The policy also aims to provide for the water supply and sanitation needs of the rural and urban areas.

In 2012, the updated National Water Policy was introduced, which aimed to provide for the integrated development and management of water resources in the country. India must balance dealing with the global threat posed by climate change with maintaining its rapid economic expansion. India needs a national plan to, first, adapt to climate change and, second, improve the ecological sustainability of India's growth route, while also cooperating with the international community to address this danger¹⁴. In order to address these issues, the Government of India created the National Action Plan on Climate Change (NAPCC). The NAPCC laid out the guiding principles and identified the strategy to be used to address the challenges of the impact of climate change through eight National Missions, one of which was the National Water Mission.¹⁵

- The policy recognizes the integrated and inter-sectoral nature of water management and emphasizes the need for a basin-based approach to water resources management.
- The policy promotes the use of traditional water harvesting and management systems, and encourages the active participation of local communities and Panchayats in the management of water resources.

¹⁴ Eduardo Araral & Shivani Ratra, *Water governance in India and China: comparison of water law, policy and administration*, 18 WATER POLICY 14 (2016).

¹⁵ India_Water_Compiled.pdf, *supra* note 12.

- The policy promotes water conservation, including the recharging of aquifers, and efficient use of water through pricing and other economic instruments.
- The policy recognizes the need for equitable distribution of water among different sectors and regions, and aims to ensure the basic water needs of all citizens.
- The policy stresses the importance of protecting and conserving water resources, including wetlands and other aquatic ecosystems.
- The policy aims to improve the availability and quality of water for irrigation, and promote the use of modern irrigation technologies and practices.
- The policy recognizes the importance of water for the growth of the agriculture sector, and aims to improve the efficiency of irrigation systems and promote the use of rainwater harvesting and other water-saving techniques.
- The policy also aims to ensure the water supply and sanitation needs of the rural and urban areas, and promote the use of treated wastewater for various purposes.

ROLE OF JUDICIARY IN WATER MANAGEMENT

The Indian Easements Act of 1882, the Indian Limitation Act of 1963, and the Indian Water (Prevention and Control of Pollution) Act of 1974 are the main statutes that govern water law in India. Water pollution is governed in part by the 1977 Water (Prevention and Control of Pollution) Cess Act. Additionally, the Directive Principles of State Policy and the Fundamental Rights of India's Constitution also contain clauses relating to water. According to one interpretation of Article 21, everyone has the right to obtain clean, drinkable water. In India, there have been a number of significant court issues involving water legislation. The Supreme Court of India in the case of “*Common Cause v Union of India*”¹⁶ held that the right to life under Article 21 of the Constitution of India includes the right to access to clean and potable water.

In 2017, the Supreme Court in the Cauvery River dispute case directed the central government to constitute a Cauvery Management Board to manage the water distribution of River Cauvery among the states of Tamil Nadu, Karnataka, Kerala, and Puducherry.

¹⁶ *Appeal (civil) 3988-3989 of 2001*

Jurisdiction of Supreme court over Water Disputes

Krishna Water Dispute

In *State of A.P. v. State of Karnataka*¹⁷, respondents raised the objection regarding the jurisdiction of the Supreme Court, it was held that the court is assessing whether the tribunal's award is legal rather than examining into the water issue. Regarding the building of the Almatti dam and the increasing of the height, the court stated that the tribunal's decision is clear and that parties may contact the tribunal for any additional clarifications since it has not been disbanded. The Supreme Court instructed the parties to make an appeal to the tribunal since it can interpret it but cannot decide the case. However, there is no obstacle to the Supreme Court's jurisdiction over the aforementioned matter.¹⁸

Cauvery Water Dispute

The claims are disputed by Tamil Nadu based on two pre-Independent India treaties between the Madras Presidency and the former Kingdom of Mysore.¹⁹ The Cauvery Water Dispute Tribunal was constituted under the Inter-State Water Disputes Act, 1956.²⁰ The dispute of establishing a water dispute tribunal came in the T.N. Cauvery Case²¹. In accordance with Section 3 of the Inter-State Water Disputes Act, 1956, the petitioner requested directions from the Supreme Court by filing a writ petition under Article 32 to establish a water dispute tribunal for the administration of the Cauvery river. Plaintiffs also requested that the State of Karnataka should stop building dams and reservoirs over the aforementioned river or any of its tributaries.²² The State of Karnataka and the Union of India opposed the jurisdiction of the Court on the basis of Section 11 of the Act²³. The Supreme Court provided states with time to reach a negotiated solution.

¹⁷ *State of A.P. v. State of Karnataka* [(2000) 9 SCC 572 : AIR 2001 SC 1560.]

¹⁸ *Water Disputes in India: Constitutional Mechanism and Judicial Control of Disputes on Inter-State Rivers*, (2019) 9 *GJLDP* (October) 199, <https://www-sconline-com.eu1.proxy.openathens.net/Members/SearchResult.aspx> (last visited Jan 12, 2023).

¹⁹ *T.N. Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam v. Union of India*, (1990) 3 SCC 440 : AIR 1990 SC 1316.

²⁰ *S. Guhan, The Cauvery Dispute: Towards Conciliation*, (1993)

²¹ *T.N. Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam v. Union of India* (1990) 3 SCC 440 : AIR 1990 SC 1316.

²² *Girish, Supra note 9.*

²³ Inter-State Water Disputes Act, 1956

According to Section 4²⁴ of the Act, the Central Government must establish a Tribunal for the adjudication of the issue if it believes that the water dispute cannot be resolved by dialogue in Section 3²⁵. The Supreme Court ruled that the Central Government must comply with its legal duties and publish a notice in the official Gazette announcing the formation of a suitable tribunal for the resolution of the Water Dispute within a month.²⁶

EXISTING LEGAL FRAMEWORK

Compared to international water law, national water law is more advanced. India does not, however, have a comprehensive system to control freshwater in all of its forms. The cohabitation of numerous various concepts, norms, and acts established over many decades characterises the current water legal system in India. These include common law concepts, colonial-era irrigation laws, more contemporary water quality control, and the legal acknowledgement of a human right to water. Because there is no overarching national law, various state and central legal actions and other principles may not always agree and may even be at odds in some circumstances.²⁷ India lacks a comprehensive system to control the diverse aspects of water. Currently, there are several legislative rules, common law doctrines, and court rulings that comprise India's water law. This variety of methods has occasionally shown to be incompatible.²⁸

According to Article 21 of the Indian Constitution, the right to drinking water and clean water are a part of the right to life.²⁹ This has been made possible by the Supreme Court's liberal and active interpretation of the fundamental right to life in several instances that have come before them. Courts have increasingly ruled on the most fundamental issues of access to clean water and the right to clean water as a fundamental right after initially discussing the right to water in connection to pollution.³⁰

Water control at the global level, initially, was only focused on navigating global channels. It has advanced to account for issues with the high seas exchange. The water legislation in India is divided into several sections which include federal and state laws, as well as international

²⁴ *Id.*

²⁵ *Id.*

²⁶ Girish, *Supra* note 9

²⁷ Philippe Cullet, *OVERVIEW OF EXISTING FRAMEWORK AND PROPOSED REFORMS*.

²⁸ Kartika Bakshi, *WATER MANAGEMENT AND THE LEGAL DIMENSIONS* (2019).

²⁹ Chameli Singh v. State of UP(1996) 2 SCC 549: AIR 1996 SC 1051

³⁰ Wasim Ahmed Khan v. Govt. of AP, 2002 (5) ALT 526 (D.B.)

contracts. Additionally, it includes a variety of less formal laws, regulations, and policies regarding water and water usage.³¹

A number of pre- and post-independence enactments in many fields are also included in statutory water law.³² Laws have also aided in the prevention of water pollution, conservation, the availability of clean water, fisheries, and other issues. Water legislation in India is mostly depending on the state. The states have been granted the authority to enact legislation in this field and control the provision of water, irrigation, drainage, storage, etc. since the Government of India Act, 1935.³³

Shortcomings with the Existing Legal Framework for Water in India

There are several drawbacks in the existing water laws in India-

- **Lack of coordination and integration between different laws and acts:** The existing water laws in India are often fragmented and lack coordination and integration, making it difficult to implement a comprehensive approach to water management. Despite the presence of several laws and acts, implementation and enforcement of water laws in India remains weak due to a lack of political will and inadequate resources.
- **Limited applicability to ground water:** Most of the existing water laws in India primarily focus on surface water and do not adequately address the management and regulation of ground water.
- **Insufficient participation of local communities and users:** The existing water laws in India do not adequately provide for the participation of local communities and users in the management and regulation of water resources.
- **Lack of efficient dispute resolution mechanism:** The existing legal framework for water in India lacks an efficient dispute resolution mechanism, leading to prolonged disputes and delays in the resolution of water-related conflicts.

³¹ Water laws in India - Indian Law Portal, <https://indianlawportal.co.in/water-laws-in-india/> (last visited Jan 12, 2023).

³² Cullet, *supra* note 27.

³³ Bakshi, *supra* note 28.

- **Overlap in jurisdiction and lack of clear responsibilities:** The existing water laws in India often have overlapping jurisdiction, leading to confusion and lack of clear responsibilities among different agencies and departments.

These drawbacks in the existing water laws in India highlight the need for a comprehensive and integrated approach to water management and the need for proper implementation and enforcement of existing laws to ensure sustainable and equitable use of water resources in the country.

CONCLUSION

India requires a comprehensive legal framework to manage its water resources because it is a critical resource for the socioeconomic growth of the nation. A thorough legislative framework would offer a distinct and uniform set of guidelines for the management and development of water resources, as well as aid in ensuring their effective and long-term usage. A detailed framework will aid in addressing the myriad issues India has with its water resources, such as water scarcity, water pollution, and legal conflicts. A thorough framework would offer a precise and uniform set of guidelines for dealing with these issues and settling conflicts, as well as aid to guarantee that the interests of all parties are safeguarded.

Additionally, a comprehensive legislative framework would support the equitable and open management of water resources with the full involvement of all parties, including the government, local communities, and the corporate sector. This would make it easier to guarantee that water resources are managed sustainably and that everyone enjoys the advantages of water resource management. A specific legal framework for water management in India is necessary for the socioeconomic development of the nation because it would establish a set of rules and regulations for the management and development of water resources, assist in addressing the various problems India faces with regard to its water resources, and guarantee that water resources are managed fairly and openly.

National policy for the development and utilisation of India's water resources should be developed by an apex authority. The management of water is essential for the socioeconomic growth of the nation since it is a precious resource. In addition to creating policies and procedures to guarantee

effective and sustainable use of water resources, an apex organisation would be in charge of coordinating the work of various government departments and agencies involved in water resource management. Such a committee would also be in charge of analysing and monitoring how these regulations are being implemented, as well as taking any required remedial action.

