

VII.A.1. Legal Regime on Water Resources Management: Need to Move Beyond

Vikash N. Pandey

Reader, Tata Institute of Social Sciences, P.B.No. 8313, Sion-Trombay Road, Deonar, Mumbai-400088

The present paper intends to undertake the task of locating existing legal regime on water resources in India. It first discusses the specific provisions regarding water resources as laid down in the constitution of India. This is followed by a detailed analysis of the Central laws such as the Water (Prevention and Control of Pollution) Act, 1974 and Environment (Protection) Act, 1986. After locating these broad legal principles an attempt is made to look into the legal provisions governing the property rights on ground water in India. However, more detailed analysis of the legal regimes on groundwater and its implications for resource management is done regarding water laws in Gujarat Canal Rules, 1962, the Gujarat Water Supply and Sewerage Board Act, 1978; the Gujarat Panchayats Act, 1993, the Indian Penal Code and Bombay Irrigation (Gujarat Amendment) Act 1976 are analyzed. The analysis focuses on the property rights and liabilities under various legislation's.

The paper argues that existing central and state laws combined with ecological and equity concerns make it imperative that the question of rights to the resources have to be settled. There is an urgent need to move beyond the Easement Act, 1882 as it is at odds with the Environment (Protection) Act, 1986 and the contemporary socio- environmental concerns. The current legal status (combining the constitutional provisions with other acts) is such that the right to property is not a fundamental right. State has the right to regulate property rights in water. Similarly, the Environment Regulation Act and the Water Act extend the regulatory mandate and rights over the use and management of water resources.

In addition, a fine tuning of rights/duties of the local bodies (e.g., Panchayats) and the enforcement of group rights not only in terms of resource use but also resource management and monitoring have to be deliberated upon. If it is so, there is a need to make suitable changes in the institutional arrangements for the management of groundwater. More so because of (i) diversity in availability of the resources and need for appropriate local design and strategies; and (ii) fragmentary nature of landholding and local animal husbandry and agricultural practices. At the same time, there is a need for great deal of modifications regarding accountability of these bodies, given the local social and political symmetries. The existing laws fail to develop accountability and liabilities of such bodies and authorities. Recent judicial interventions are also indications of such problems. It is even more necessary to institutionalize the accountability resources. Given socio-economic and political symmetries such steps are necessary so that (i) monopolization by a 'few' is restricted (if not totally eliminated); and (ii) partiality, excesses in the exercise of the authority or even inaction becomes open to public debate and legal actions. In

this regard, a suitable dispute settlement mechanism has to be an integral part of such institutional set-up.