

INDIAN WATER SECTOR : CRITICAL ANALYSIS OF THE PRESENT CRISIS AND THE ROADMAP TOWARDS THE SOLUTION

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ABSTRACT

For last many decades the crisis of water resources has been in global debate but the deliberations hardly encompass the real extent of the crisis. Increasing population and expanding industrialization have been raising the demand of water in geometric proportion which has resulted in to water stressed and water scarce basins. In India, out of 20 major basins 14 are water stressed at present and the situation is worsening fast. Water stress is increasing day by day and inequity in distribution of water amongst various user groups is also increasing which has started taking serious stance in the form of social unrest in many parts of India. However, the age old concepts of water related legislations and administrative setups based on fragmented controls have been prevailing till date in India. Water conflicts as a product of water stress have now gone to the extent of becoming a challenge against the solidarity of the nation which is of prime importance and also a prerequisite for a prosperous India especially when the global systems, before they could prove their worth, have started crumbling. Conflicts of any type have a tendency of attaining gravity very fast if remain unattended and therefore the time for redressing must be an important parameter for the judiciary and administration. But executive machinery being helpless in want of legislative and administrative edge has to witness the sparrow's fall especially in the water sector in India. On the other hand, economic forces have been forcing the commerce related legislations and administrative setups to undergo instant and frequent changes keeping the executive machinery on the toes to meet the needs of the market. Sensitive governance in one sector and callous and lackadaisical governance in a crucial field like water have made a large dent up on the social balance and equity within the nation as a result of which so much tensed a state today which needs immediate and serious attention of the policy makers and introduction of necessary corrections with due honor to the democratic values the Constitution of India has been upholding. The paper encompasses discussion on the present state of the Indian water sector, legislations in effect, genesis of the crisis and the roadmap to the solution with references to some specific historical events and underlines the need of immediate corrections. The objective of the paper is to properly address the present crisis of water along with the root causes so that appropriate and effective governance and management can take place in the water sector in India which contains the potential of becoming the fountainhead of the constructive kind of development which is termed as sustainable development in the modern language and the one the Indian sages have been advocating since thousands of years back.

WORLD AND WATER : BALANCING RIGHT, MIGHT AND FIGHT

On this planet earth (also termed as planet water because of its 3/4th surface coverage) it is ironical that even after centuries of civilization 'Right to Water' is not universally accepted as a fundamental human right. Water management has been increasingly viewed as 'conflict management'. Since humans settled down to cultivate food, rivalries over water have been the source of disputes (By the way "rivalry" comes from the Latin *rivalis*, or "one using the same river as another.") With increasingly felt nexus of water scarcity and sustainable development, water wars and water riots are not distant possibility according to a group of experts that includes Boutros Boutros-Ghali (UN Secretary General, 1991), Ismail Serageldin (World Bank Vice President, 1995) and Kofi Annan (UN Secretary General, 2000).

History is littered with examples of violent water conflicts; just as Californian farmers bombed pipelines moving water from Owens Valley to Los Angeles in the early 1900s, Chinese farmers in Shandong clashed with police in 2000 to protest government plans to divert irrigation water to cities and industries. Most societies have institutions that deal with conflicts - legal systems, democratic or participative procedures, etc. It is when these systems either not are in place or do not work that conflicts can become detrimental for large groups in the affected societies. However, some international treaties have been worked out in course of time and have proven themselves effective in conflict resolution. "Despite the potential problem, history has demonstrated that cooperation, rather than conflict, is likely in shared basins," UNESCO concludes^[1]. Outcomes of specific conflicts have inter-generational, international, and global impacts and at times they are capable of making or breaking future of the society.

INDIAN LEGAL SCENARIO

Constitutional Provisions

Legal recognition of water as human right is missing in Indian constitution, unlike Mexico, South Africa, Switzerland, etc. However, in some judgments of the Indian courts, doctrine of right to life has been interpreted to have innately contained right to water. The Constitution of India is considered as the source of Indian laws^[2]. India being a federal (or a quasi-federal) State, division of responsibilities between the State and Centre (Union) is made in the form of : the Union List (List-I), the State List (List-II) and the Concurrent List (List-III). Article 246 of the Constitution deals with subject matter of laws to be made by the Central Parliament and by Legislature of the States.

Entry 56 under List I of the Seventh Schedule provides that "Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest".

Entry 17 under List II of the Seventh Schedule provides that "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I".

Article 246 provides -

- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
- (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
- (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
- (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

Article 262 provides that in case of disputes relating to waters -

- (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-state river or river valley.
- (2) Notwithstanding anything in this Constitution, Parliament may, by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

According to Article 39, "The State shall direct its policy towards securing that the ownership and control of material resources are so distributed as best to subserve the common good." As per the Directive Principles of State Policy of the Constitution of India laid down under Clause 38(2), "the State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but amongst groups of people residing in different areas or engaged in different vocations".

Article 368 is the general amending power of Parliament. Twenty Fourth Amendment made some changes in Article 368 viz. (i) It made it mandatory on the President to give his assent to an Amendment Bill passed by Parliament (ii) Article 13(2) which prohibited the State from making any law which takes away or abridges the fundamental rights, shall not apply to any amendment of the Constitution under Article 368.

Special Acts

The Central Government is conferred with powers to regulate and develop inter-state rivers under Entry 56 of List I of Seventh Schedule to the extent declared by the Parliament by law to be expedient in the public interest. However, Parliament has not made effective use of Entry 56 to legislate except enacted two special acts, viz., Inter State Water Disputes Act of 1956 and the River Boards Act of 1956. Six Water Dispute Tribunals have been constituted in the country viz. Narmada, Cauvery, Krishna, Godavari, Ravi Beas and New Krishna Water Dispute Tribunals.

The River Boards Act made provisions for setting up of river boards or advisory bodies by the Central Government at the request of the interested parties. These boards were to have two functions:

- They would help to bring about proper and optimum utilization of the water resources of inter-state rivers.
- They would promote and operate schemes for irrigation, water supply, drainage, development of hydroelectric power and flood control.

River Boards like Bhakra Beas Management Board, Brahmaputra Board, Damodar Valley Corporation, Tungabhadra Board, Betwa River Board, Bansagar Control Board, Upper Yamuna River Board (1994) are some examples.

Catches in the Indian Legal Framework and Administrative Mechanism

Article 262 of the Constitution not only empowers the Parliament to make laws for the adjudication of any dispute relating to waters of inter-state river or river valley but also dismembers the Supreme Court.

Groundwater is considered an easement connected to land under land tenure laws and the ‘dominant heritage’ principle implicit in the Transfer of Property Act IV, 1882 and the Land Acquisition Act, 1894. Thus, groundwater is attached to land property and can not be transferred separately from the land to which it is attached.

Water has not been considered as a single undivided subject in the Indian Legal System and hence while dealing with the fragments of the same subject, element of coherence to address larger interests of the community is really lacking. This shortcoming perhaps makes it extremely difficult for the State Governments and the Central Government to sort out water conflicts. Even the Supreme Court feels maimed while taking any stance in such disputes in want of appropriate legislation.

Some states have devised regulations on groundwater extraction in the form of restricting depth of tube wells or limiting numbers of tube wells in specified regions. These provisions are of limited purpose and have not proven so effective because by restricting number of tube wells water market comes in to existence but exploitation of groundwater does not end. Moreover, aquifers do not follow the political boundaries based on which the restrictions are devised and therefore exploitation of groundwater can not be effectively controlled. Adjudication of easement rights is done by collectorate and therefore the administrative control being fragmented, effectiveness in restriction is always under question. Allocation of surface water within state is not metered, nor even monitored by any administrative authority. The same way the irrigation sector is left precariously and there is inaction against water theft and indiscipline in want of legislative powers with the authority which operates it.

India formed its first National Water Policy in 1987 and revised in 2002^[3]. National perspective is given overriding priority for water resources planning and development. For Water Sharing / Distribution amongst the States, this Policy states :

- “21.1 *The water sharing / distribution amongst the states should be guided by a national perspective with due regard to water resources availability and needs within the river basin. Necessary guidelines, including for water short states even outside the basin, need to be evolved for facilitating future agreements amongst the basin states.*
- 21.2 *The Inter-State Water Disputes Act of 1956 may be suitably reviewed and amended for timely adjudication of water disputes referred to the Tribunal.*”

In the majority of situations in India the enabling framework for implementing sound water allocation, planning and management is largely absent^[4]. The policy has been criticized for lacking the thrust to take urgent specific actions for meeting the increasing water crisis^[5]. However, the policy has certainly underlined the importance of basin level planning and distribution of the water resources which in case meticulously done would help identify many problems at basic level which would be solvable by the respective states themselves and would also prevent cascading issues at the national level. National Water Policy is under revision at present and high hopes are lent to it by the experts of water sector.

To implement the National Water Policy, the necessary legislations must be initiated so that the action plan can be prepared. Whatever appropriate points are there in the policy should be tried to be implemented by the Center and the States.

Participatory Irrigation Management Acts are enacted by some states like Gujarat, Maharashtra, Andhra Pradesh, etc. to empower Water Users' Associations so that size of the administration required can be slashed and feeling of belongingness is instilled amongst the farmers but capacity building of them is a prerequisite for success of such legislations. Moreover, these acts have not addressed the issue of limitations of co-operative sector that have come to the surface and, therefore, wheresoever the Participatory Management Act is implemented, desired results are far off. Efficiency of water distribution depends on monitoring and control of physical components of the system and water accounts which are complex enough to bewilder the farmers and in addition to them the social constraints hamper their functioning which are difficult to overcome for localities. The said legislations do not provide for a proper administrative mechanism to resolve these issues as the underlying philosophy is that the social process should be uninterruptedly allowed to take its own course and society would take care of many complex issues at the local level.

Some states have devised legislations to prevent pollution of water on an environmental ground. Treatment of effluent by industries to a threshold quality level has been made mandatory but implementation is not so effective and state level pollution control boards have reduced to an administrative nicety rather than acting as a policing agency to oversee the polluters.

In all, efforts of legislature and administration inevitably lack four important features – practicality, effectiveness, accountability and objectivity. Legislative and administrative framework without them can not yield desired results. Stray developments without interconnections amongst different stakeholders and amongst controlling agencies involved in the water sector have made the scenario very complex. When the stress on water has reached a critical level and development badly needs water, such fragmented controls are likely to create a chaos. This aspect has been a matter of concern for many experts and different authors have tried to point it out time to time. Other related issues like environment, water supply, public health, industrial waste disposal, etc. are also associated with the water sector and are dealt with in isolation which has also added to the present complexity.

INTERSTATE BASINS AND WATER CONFLICTS

An overview of six decades of India's post-independence period reflects spectacular profile in its water resources sector. During this planned development period, commensurate with the four fold increase in the global annual water withdrawal, India, too, has increased its water storage capacity from a meager 15 BCM to more than 200 BCM, by constructing over 4000 dams. Consequently irrigation potential has increased five folds and food grain production by almost four and half times. Many of them are in interstate basins. However, all these projects have not been able to create a sense of belongingness in the people and therefore many disputes in the nation. The disputes can not be attributed only to lawlessness but are a product of exercise of grabbing political power in democratic set up which involves people's collective perception which is always subjected to some conditioning process. This process is sometime in the context of sensitive issues and may figure out some point as the question of existence for a region which eventually become an interstate conflict. Especially when development myth has captured a special place in public life, fight for resources at individual and political levels is obvious. Water being the most basic resource for life, it becomes a valid point for conflict on the political stage, and, therefore, in many interstate basins conflicts have erupted. A few disputes if understood properly, they would provide an idea as to how they come in to existence and how they gain momentum and what kind of complexities they pose before the nation.

The Cauvery Issue

The essence of the Cauvery dispute is a conflict of interests between a downstream state (Tamil Nadu) and an upstream state (Karnataka) in South India. Karnataka and Tamil Nadu both, depend heavily on the Cauvery River for irrigation and water supply of major cities. The dispute started in the second half of the 19th century when the (then colonial) Madras Presidency (today Tamil Nadu) and the then princely (independent) state of Mysore (today Karnataka) had their first negotiations over the sharing of the Cauvery's water. Several agreements, the most important ones from 1892 and 1924, tried to find solutions how the two states can share a scarce resource.

In its present form the Cauvery River Dispute has become a serious issue since 1974 when the 50-year-old agreement between the Madras Presidency and Mysore state ended. The dispute relating to sharing of Cauvery water among states of Karnataka, Kerala, Tamil Nadu and Pondicherry was referred to the Cauvery Water Disputes Tribunal (CWDT) constituted on June 2, 1990. An interim Order was passed in June, 1991 directing

the state of Karnataka for releasing water from its reservoirs so as to ensure 205 Thousand Million Cubic Ft. (TMC) of water in Mettur reservoir of Tamil Nadu in a water year, in fixed monthly and weekly pattern. CWDT was the country's first water tribunal to give an interim order. The Central Government has in 1991 published the order of the Tribunal under Section 6 of the Inter-State Water Disputes (ISWD) Act, 1956; thus, making the order final and binding to the parties in dispute. Further, under the Provisions of Section 6A of the ISWD Act, 1956, the Central Government notified a Scheme called Cauvery Water (Implementation of the Order of 1991 and all subsequent Related Orders of the Tribunal) Scheme, 1998, consisting of Cauvery River Authority and Monitoring Committee.

Before the Supreme Court Bench headed by the Chief Justice on the deliberate non-compliance of its order by Karnataka Chief Minister, he had to tender an 'unconditional apology'. Similarly in November 2002, following strong objection by the Supreme Court against her remarks about the Cauvery River Authority and the Prime Minister terming as 'insinuations', Chief Minister of Tamilnadu had to withdraw her letter containing such remarks. Very simply, the squabble between the two states has raised questions that have cast the entire federal concept into doubt^[6].

The Ravi-Beas-Satluj Dispute

Six years after the Indus Waters Treaty (1960) signed with Pakistan, which reserved the waters of the Ravi, the Beas and the Satluj exclusively for India, the State of Punjab was reorganized, and the new State of Haryana claimed a share of the waters. In 1976, the Union government announced that both the states would receive 3.5 million acre-feet (MAF) of water from the available annual flow of 15.2 MAF. Although Punjab had begun the construction of the Satluj-Yamuna Link canal in 1978 to facilitate this, it felt short-changed, and moved the Supreme Court. Haryana also went to court demanding implementation of the Union notification. Five years later, Chief Ministers of Punjab and Haryana arrived at a fresh agreement. This time the new flow data that were used pegged the water availability at 17.17 MAF. This gain enabled a generous redistribution to all the States, with Punjab getting 4.22 MAF, Haryana 3.50 MAF, Rajasthan 8 MAF and Jammu and Kashmir and Delhi 0.20 MAF each.

Punjab rivers as such are not inter-state rivers and hence this water sharing does not fall in the purview of Inter State Water Dispute Act. Pursuant to the Punjab accord, the Parliament inserted a new Section (Section 14) in the Inter State Water Disputes Act, 1956 to broaden its base to include dispute over Ravi-Beas and Satluj rivers, validity of which is also questioned by legal experts who found it in violation of Article 262 of the Constitution^[7]. The accord also stated that the SYL canal would be completed by August 15, 1986, allowing Haryana and other downstream users to utilize whatever share of water the tribunal would eventually allot them. Tribunal discovered that the use of Ravi-Beas water by farmers in the three States totaled 9.711 MAF, of which Haryana accounted for 1.620 MAF and Rajasthan for 4.985 MAF, while Punjab took up 3.106 MAF, including the 0.352 MAF that Rajasthan could not utilize. Against the quantity thus left unutilized (6.6 MAF), Tribunal made an interim order, giving Punjab 5.00 MAF and Haryana 3.83 MAF. The difference between the 6.6 MAF actually available, and the 8.83 MAF that Tribunal allocated was based on the water below the rim stations of the Ravi and the Beas, the lowest points at which flow data were recorded which was opposed by Punjab.

Having completed its portion of the SYL canal in 1980, Haryana sought the intervention of apex Court under Article 131 of the Constitution saying that if balance of federalism is upset by a recalcitrant state and the Union remains a mute spectator, then the Supreme Court should step in to preserve the basic feature of federalism. On January 15, 2002, Supreme Court passed a decree of mandatory injunction compelling Punjab to complete the construction of the SYL canal within the next 12 months as also to make it usable. In June, 2004 the Supreme Court directed the Centre to take over the construction of the Punjab portion of the canal after noting the State Government's continued reluctance to do it. Thereafter, under Article 143 of the Constitution and following the precedence of 1991 Karnataka Ordinance against the Interim Order of Cauvery Tribunal, the President of India referred the Punjab Act to the Supreme Court on July 22, 2004 for its opinion about the constitutional validity of this Act. Commenting on this an eminent journalist has said, "President (has been) used as a postman to refer the dispute to the Supreme Court^[8]." By then claiming that Punjab had no surplus water to give to any neighboring state, Chief Minister of Punjab demanded setting up a new water dispute tribunal which was opposed by the Haryana Government.

"The court has no reason for existence if it merely reflects the pressures of the day. Our system is built on the faith that men set apart for this special function, freed from the influences of immediacy and from the deflections of worldly ambitions, will become able to take a view of longer range than the period of responsibility entrusted to Congress and legislature" - a quote from Felix Frankfurter ^[9].

IMPACT OF WATER CONFLICTS

Conflicts at large are detrimental to the social peace but water conflicts have posed many threats against the nation. Disturbed law and order in the states which have entered conflict have taken toll of many lives. The monetary cost to each party state is inestimable due to delayed implementation or part implementation of the projects, rehabilitation related issues, legal expense, etc. At the time of elections, social tension rises and it vitiates diplomatic relations with the neighboring states which has a long run impact and sectarianism replaces nationalism eventually and infightings amongst the people on linguistic ground and regional biases rule over the societies which finally penetrate to the lower working level like industrial labor and private entrepreneurship. State solidarity when overrides the national solidarity, regional chopping of the states starts. All these make a dent up on the functional oneness of the nation which is the basis of our Constitution and also of the existence of the nation as we have still many challenges to face at the international level.

PARADIGM SHIFT IN LEGAL FRAMEWORK IN COMMERCIAL DOMAIN

Commerce and industry are the fields closer to economy as the monitoring of economy is done with the measuring yards based on their performance. Therefore, the state of commerce always remains under the crosshair and as soon as there is some negative sign, people at the helm become alert and respond immediately. Amendments in the Patent Law of India provide sufficient evidence of responsive attitude at the highest level. Originally, the Patent Law was based on process patent philosophy. After downfall of the USSR in the late eighties of the twentieth century, the world perceived that communism could not lead to development and capitalism remained the only ideology left for paving the path to development. The air was surcharged with high pitched talks of globalization and Dunkel Draft that eventually became General Agreement on Trade and Tariff (GATT) was in front of all the countries of the world. Signing up on it required many legislative reforms of earthshaking nature for many countries like India. For any democratic country it was difficult to sign the agreement because the legislative reforms were subject to nod of the parliament and the process was likely to be a dangerous move for the ruling party. A small but rudimentary part of it was the Trade Related Intellectual Property Rights (TRIPS) which necessitated product patent as the underlying philosophy as against the then prevalent patent law based on process patent philosophy in India. Amongst many difficulties, India did not lose much time as it wanted globalization as its agenda. Economic reforms and legal reforms went together and the world could see what India could be in no time. Fast reforms in patent regime India has made can be seen from the fact that the Act of 1972 was amended in 1999 and then subsequent reforms in 2002 and 2005. Many such examples wherein India has expeditiously reformed its legal framework as per need of the hour can be cited. Thus, on economic front there is no allowance left by India in the recent past.

REFORMS IN WATER SECTOR : A FRESH THINKING

Legal Provisions and Institutional Mechanism

What was possible for the economic domain may not be easy to do with the water sector and also not the same kind of pace, passion and priority be expected due to ignorance of the subject at different levels; nor the same methodology be expected to work well. However, some move has become inevitable to avoid larger crisis.

“Water” is required to be viewed in wholistic manner and the fact that precipitation, surface water, groundwater, etc. need to be dealt with as a single subject so far as legislations and administrative mechanisms are concerned. Because sporadic efforts have been made to address different issues related to water at different points of time, inconsistent legislations and fragmented controls have come in to existence which is the main cause of the crisis in the present situation. Patchwork kind of solutions may not be of much help but regalanization is the need of the hour which would not only sort out the long pending issues of the water sector but also lay down the foundation for a healthy and sustainable progress the nation needs to attain in future.

Considering the fact that ours is a quasi-federal Constitution with balanced sharing of power between the Center and the States, yet having a provision of interaction between the two and if need arises, of intervention of the Center; a conscientious consideration of taking “water” in the Union List to ensure that no state is allowed to play with justice is an earthshaking proposal the nation should debate up on. A word of caution - *prima facie* this might look as an offense on the spirit of the Constitution and a step to imbalance the equilibrium between the Center and the States; and the States may not be willing since the political scenario has been increasingly coming under the control of regional parties whose existence is based on parochial matters. Even the National Water Policy that has national interests in its center is being criticized as an effort to nationalize and centralize water resources which is tantamount to be dis-empowerment of the user groups and the states. But India being a

democratic country, such skepticism or open debate or criticism can not and should not be brought to end without logically convincing the irked ones. Therefore, some points that clear the air are – such legislative reforms are aimed at making room for timely intervention of the Center on critical issues replacing inaction and silence and are not an effort to swallow the liberty of the states which can be testified from the fact that “Water Rights” are explicitly to be announced for each citizen; such reforms would provide a proper mix of powers and duties at the Center and the State levels having sufficient space for user groups to play their role at local level so far as distribution is concerned; empowerment of user groups is possible only when the atmosphere is conducive to let them exercise their powers; legal remedies in case of infringement of rights of individuals and user groups are available and above all, the faith of the people which is the key to success is possible to be won only through efficacy and effectiveness of the governing bodies at different levels; and, peoples’ empowerment does not mean thrusting up on them the powers or rights but enabling them to perform. Therefore, there is no issue like nationalization or centralization of water resources. Contrarily, if nothing is done, the market would capture the water resources sidelining all the idealistic concepts like common good, social responsibility, people’s empowerment, etc. Beyond all debates and dialogues and skepticism, the most important aspect here is that the “balance in federal structure” should not be allowed to undo what Late Sardar Patel did in 1947 and 1948. In India, the current scenario reflects ‘hydro solidarity’ at least at the state levels; in future, with the increasing water scarcity, intra-state conflicts (e.g. upstream versus downstream conflicts) may also increase necessitating able laws to deal with the situation. Considering the crisis and future risks on large perspective, the aforesaid paradigm shift is a *sine qua none*. Moreover, water does not follow the boundaries made on the earth to form villages, districts and states and therefore there is no conscionable reason to design the sharing of powers to govern water only as per territorial limits. Albeit, in the hierarchical fashion when the governance model is designed, the territorial units should not be made bereft of their legitimate privileges of due share in the governance as a policy. Upholding the spirit of the Constitution and yet making necessary amendments to provide the aforesaid change is if made somehow, so many bones of contentions would be possible to be buried in course of time without bullying the people; and with the help of judiciary and executive machinery, many developmental activities would be possible to be taken back to their ways.

The aforesaid amendment should be followed by a series of amendments in all obsolete laws like those related to revenue, land and transfer of property, etc. Article 262 would also be required to be radically changed. These would enable the governance to be effective with the concept of water as a single unified subject and would also enable the courts to deliver sensible and meaningful judgments.

Administrative and institutional mechanisms appropriately designed to implement the law in letter and spirit should be of top-bottom nature, sharing of privileges should be devised properly and delegation and control should be made judiciously. The concepts of governance and allocation must be well stated so as to avoid confusions, conflicts and shuttle-cocking and the roadmap must be prepared to attain the stage where “Right to Water” is enjoyed by the citizens in the right spirit. Regulatory authorities working in the electricity sector are tried to be mimicked in some states in the water sector with some good aspects and some limitations. Institutional mechanisms in whatever form should provide for inclusive growth as the objective and should also be equipped with executive power to prevent the water theft and indiscipline in the water sector. This is the way to allow the law to work in an objective fashion which is the very basis of right use of resources. Such administrative setup is likely to be resisted in the initial stage as the society is not prepared to act with discipline but it can be attained through initial stage imposition and oversee in the later stage. Resource data acquisition, monitoring and control should be the three essential functions of the setup. Pricing mechanism should address the anti-polar issues like affordability and cost recovery and work out the balance.

Attainment of right kind of legislations and administrative mechanism for proper implementation of them are enough to ensure the way to sustainable development as against a sprint model of development the northern hemisphere has fallen prey to. Consistency amongst the efforts of legislature, administration and judiciary can enable the nation to wade through all sorts of troubles. During economic reforms, India has gone through so many difficulties with determination and with the same kind of determination that reforms in the water sector are possible and required to be ushered in.

Judicial Activism

Once equipped with proper legislations, the judiciary may take up the further process of establishment of equity and justness in the water sector. So long as there is a judiciary marked by rugged independence, the citizens’ civil liberties are safe even in the absence of any cast-iron guarantees in the Constitution. Quite sometimes the line of demarcation between judicial independence and judicial activism is very thin but both are needed to serve the end of justice in special situations.

Water sector being very large and having linkages with many other domains, many references arising out of water disputes are bound to be dealt with by the courts. Upholding democratic values by protecting rights of all the sections of the society is the primary responsibility of the judiciary and this function of it should be viewed positively. If this kind of functioning is possible for the judiciary, ensuring the spirit of justice to prevail unhindered and flawless would be possible.

CONCLUSION

Water sector is the key element of development and existence of the society as a whole and looking to its highest importance it should be paid the required heed. In India, development has taken place at a very fast pace thanks to expeditious economic reforms. But now a situation has come wherein dismembered state of water sector has become a bottleneck on many fronts. Inter-state conflicts have put the national unity under threat. Immediate response in the direction of legislative and administrative reforms is the only way to effectively address the present crisis and provide newer opportunities for the sustainable development. Reforms in water sector are required in the context of development with humane face which is the one in line with the value system India has inherited from its ancient sages that teaches the rulers to ensure that benefits pervade all sections of the society without any discrimination. The reforms must found themselves on our ancient values and present ruling system, both, so as to be non-ephemeral and practicable as well. In democratic setup like India, synergic reforms in on all the three fronts of the rule – legislature, administration and judiciary can make tangible positive changes.

DISCLAIMER

Views expressed in this paper are the individual views of the author and not necessarily of the organization he works for.

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CERTIFICATE

The author certifies that the paper titled "INDIAN WATER SECTOR : CRITICAL ANALYSIS OF THE PRESENT CRISIS AND ROADMAP TOWARDS THE SOLUTION" and submitted for consideration for

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