

WATER FOR ALL
Constitutional and Legal
Imperatives

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INTRODUCTION

- India accounts for approximately 2.45% of the total land area and 4% of the water resources of the world.
- Water is a scarce natural resource and its demand is increasing on account of growing population.
- **Consumption:** Around 92% is used in agriculture, 3% is used by industries and 5% is used for domestic purposes.

CONSTITUTIONAL FRAMEWORK

- **LIST II- ENTRY 17- STATE LIST –**

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.

- **LIST I – ENTRY 56- UNION LIST**

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

INTER STATE WATER DISPUTES

- Article 262- Adjudication of disputes relating to use of waters of inter- State rivers or river valleys
- Parliament has been authorised to enact a law to provide for adjudication of any dispute or complaint with respect to use, distribution or control of the waters of an inter state river or river valley.
- Inter State Water Disputes Act, 1956 is a legislation enacted under Article 262 of the Constitution.
- Act provides for setting up of a tribunal to adjudicate upon water disputes.

- A water dispute means, inter-alia, a dispute or difference between two or more State Governments with respect to:
 - use, distribution or control of waters of or in an inter-state river or river valley;or
 - interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement
- Only a State government can request the Central Government to refer the dispute to Tribunal for adjudication.
- Tribunal has the power to make schemes to implement the decisions of the Tribunal e.g. establishment of an authority for implementation of the decision of the Tribunal.
- Scheme is required to be placed before each house of Parliament which can make modifications to the scheme.
- Jurisdiction of the Supreme court and other courts is barred

- **In the matter of Cauvery Water Disputes Tribunal (1991)** the Supreme Court has held that the subject of adjudication of the dispute under Article 262 is excluded from the field covered by Entry 56 List I and Entry 17 List II.
- Narmada water dispute between Maharashtra, Gujarat, Madhya Pradesh and Rajasthan.
- Ravi- Beas water dispute between Punjab, Haryana, Rajasthan and Himachal Pradesh.
- Cauvery water dispute between Karnataka, Tamil Nadu, Kerala and Pondicherry.
- Krishna water dispute between Andhra Pradesh, Karnataka and Maharashtra.
- Godavari water dispute between Maharashtra, A.P, Orissa and M.P and Karnataka.

- **Fundamental Rights- Article 21-** Right to life includes right to enjoyment of pollution free water.

Subhash Kumar v State of Bihar (1991)- The right under Article 21 includes the right to enjoyment of pollution free water

- **Directive Principles of State Policy-**

Article 48 A – Protection and improvement of environment and safeguarding of forests and wildlife.

- **Fundamental Duties- Article 51A(g)**

It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

- The 73rd Amendment to the Constitution requires the State Governments to enact appropriate Panchayati Raj legislations.
- **Article 243G-** The legislature of a State can make a law to empower the Panchayat to prepare plans ‘ for economic development and social justice’ apart from other matters specified in the Eleventh Schedule to the Constitution. The topics in the Eleventh Schedule include minor irrigation, water management and watershed development (Entry 3), fisheries (Entry 5) and Drinking water (Entry 11).
- One such instance of exercise of power by the Panchayat under Article 243G was in the year 2000 when the Perumatty Gram Panchayat in Palakkad District of Kerala, granted a licence to Coca Cola to set up its bottling plant at village Plachimada on a total area of 35 acres.

STATUTES

- **The Easements Act, 1882** – An easement is a right which an owner or occupier has for the beneficial enjoyment of the land.

The following have been held to be easements:-

- Right to pollution free water.
- Right to flow of a natural stream.
- Right of a riparian owner to use water on his land.

Easement rights can be enforced by courts in India by granting declarations, injunctions and damages by way of compensation.

Environment/Pollution

(i) **The Environment (Protection) Act, 1986** has been enacted for the protection and improvement of the environment. The definition of “environment” includes water.

Punishment for contravention of the Act is imprisonment which may extend to five years or fine of Rs. 1 lakh or both.

The Environmental (Protection) Rules, 1986 lay down the standards for emission and preventing and abating environmental pollution. The Rules lay down the primary water quality criteria for different classes of use of water such as salt pans, fishing, bathing, commercial fishing, industrial cooling, navigation, etc.

Notifications under the Environment Protection Act, 1986

- (b) Coastal Regulation Zone (CRZ) notifications have been issued which restrict establishment of industries within the notified area.
- (c) A Central Ground Water Authority (CGWA) was constituted by the Ministry of Environment and Forest under the Environment (Protection) Act as per the direction of the Supreme Court and was subsequently declared as a permanent body through Gazette Notification of the Ministry of Environment and Forest dated 6.12.2000. CGWA regulates indiscriminating boring and over exploitation of ground water in the country.

- **The Water (Prevention and Control of Pollution) Act, 1974** was enacted with the object of preventing and controlling water pollution. It provides for setting up of State and Central Pollution Control Boards, inter-alia, to promote cleanliness of streams and wells. Streams include rivers, water courses, inland waters, subterranean waters and sea or tidal waters.
Penalties include imprisonment and fines.
- (iii) **The Water (Prevention and Control of Pollution) Cess Act, 1977** provides for the levy and collection of cess on water consumed by persons carrying on certain industries and by local authorities.
- (iv) **The River Boards Act, 1956**-though enacted has remained largely inoperational due to river boards not being set up by the government.

- **The Brahmaputra Board Act, 1980** established the Brahmaputra River Board for the planning and integrated implementation of measures for the control of floods and bank erosion in the Brahmaputra valley.
- **The Damodar Valley Corporation Act, 1948** provides for establishment of a corporation for development of Damodar valley in States of Bihar and West Bengal.
- **The Merchant Shipping Act, 1970** has provisions for prevention of pollution of the sea by oil and for containment of accidental pollution.

State Legislations

Various States have enacted laws dealing with canals, irrigation, sewage, drainage , etc.

- (i) The Northern India Canal and Drainage Act, 1873
- (iv) The Bombay Irrigation Act, 1879
- (v) Karnataka Irrigation Act, 1965
- (vi) Rajasthan Irrigation and Drainage Act, 1954
- (vii) The Kumaon and Garhwal Water (Collection, Retention and Distribution Act), 1975

- (i) Madras Metropolitan Area Ground Water (Regulation) Act, 1987
- (ii) Kerala Ground Water (Control and Regulation) Act, 2002
- (iii) Karnataka Ground Water (Protection and Regulation for Drinking Water) Act, 2003
- (iv) Uttar Pradesh Water Supply and Sewerage Act, 1975

SUPREME COURT DECISIONS

- **Vellore Citizens Welfare Forum v UOI (1996)** :-The Supreme Court issued directions for setting up of an authority under the Environment Protection Act,1986 to check the pollution caused by discharge of untreated effluent by tanneries and other industries in Tamil Naidu. The court evolved the ‘Polluter Pays principle’ and the ‘Precautionary principle’ which are the essential features of Sustainable Development.
- **M.C Mehta v Kamal Nath (1996)** :- The Supreme Court evolved the “Public Trust Doctrine” which rests on the principle that certain resources like air, sea, water and forests are of great importance to people as a whole and that it would be unjust to make them a subject of private ownership.

- **Hinch Lal Tiwari v Kamala Devi (2001)**- The Supreme Court held that the material resources like forests, tanks, ponds, hillocks and mountains are nature's bounty. They need to be protected for a proper and healthy environment which enables people to enjoy a quality of life which is the essence guaranteed under Article 21 of the Constitution.
- **M.C Mehta v UOI – (Calcutta Tanneries case)(1997)**- The Supreme Court held that operation of tanneries in Calcutta discharging untreated noxious and poisonous effluents into Ganges river was violative of the mandatory provisions of the Water Act and the Environment Protection Act and issued directions for closure of tanneries.

- **T.N. Godavarman Thirumulpad v UOI(2006)- (Kolleru lake in Krishna Godavri Delta)** Notification seeking to regulate activities such as aquaculture, pisciculture, prawn culture etc. in the wildlife sanctuary to preserve the identity of lake which would otherwise become extinct in twelve years was upheld by the Supreme Court.

FDI POLICY, 2006

- There are no restrictions under the FDI Policy 2006 for foreign investments in projects relating to water supply or storage of water

PRIVATE PUBLIC INITIATIVE

- **Meaning:** A Public private partnership (PPP) is a partnership between the public sector and the private sector for the purpose of delivering a project or service which is traditionally provided by the public sector.

ADVANTAGES OF PPP

Technical Expertise available

Management Expertise available

Efficiency improved

Mobilization of Financial resources and benefits from private sector to meet the ever growing demand for infrastructure services.

- **National Water Policy, 2002**- provides that private sector participation should be encouraged in planning, development and management of water resources projects for uses, wherever feasible. Private sector participation may help in introducing innovative ideas, generating financial resources and introducing corporate management and improving service efficiency and accountability to users. Depending upon the specific situations, various combinations of private sector participation in building, owning, operating, leasing and transferring of water resources facilities may be considered.

TYPICAL PPP STRUCTURES

- **Service Contracts** – Service is provided by the private sector using the finances and specifications of the public sector.
- **Management Contracts** – Arrangements where the private operator is engaged in operation and management (O&M) of the service but does not undertake any investment obligations.

- **Concession Contracts** – Long term contracts running over 10 to 30 years which pass on the responsibility for operation and management to the private sector. Also provides for sharing of revenues and hand back of facilities after a predefined period.
- **Divestiture** – Sale of a public asset to the private sector. Actual selling procedure can take different forms – public offering of shares, private sales of assets or management buyouts. Private operator has full responsibility for operation, management and investment.

- **Hybrid Arrangements**
 - (ii) Build, Operate and Transfer(BOT)
 - (iii) Build, Transfer and Operate (BTO)
 - (iv) Build-Own and Operate and Transfer(BOOT)
 - (v) Rehabilitate, Operate and Maintain (ROM)

- Tirupur project in Tamil Naidu was successfully implemented on BOOT basis

CONCLUSION

- Right to clean, pollution free water should be made an independent Fundamental Right.
- PPP projects should be encouraged in order to improve efficiencies.
- Legislative changes are required particularly in local laws of municipal authorities and other developmental authorities for successful implementation of PPP projects.
- Active participation of private sector by way of disinvestments and concessions to be encouraged.

THANK YOU_