Constitution of India and Environmental Governance:

Administrative and Adjudicatory Process

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Lecture 40

Water Policy and Law: Indian Legal Framework

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We move on to the Indian position. How is the Indian law with regard to water? Let us quickly look to the fundamental law of the land. What does Indian Constitution provide for as far as water is concerned. Do we have a fundamental right to water? Actually, if you study the Constitution and go deep into it, there is no direct reference to any fundamental right to water.

All that has happened is, the higher Judiciary in India has ruled it as an aspect of fundamental right to life. So, I and you having a fundamental right to life under the Constitution as an adjoint effect for my quality of life. I need water to survive, sustain and flourish and for that we have a fundamental right to water as a derivative right of right to life. So, no direct right to water.

I have given reference to a couple of cases. I would very much urge the students to study this. There is one case, one of the earliest cases from Kerala, the case of Attakoya Thangal versus

Union of India and another one M.C. Mehta versus Union of India case, which deals with Bhatkal and Surajkund lakes and there are quite a few other cases also I have mentioned here. The point that you would notice from this is that the constitution does not assure me and you any kind of a fundamental right to water but it is only through court's intervention, some kind of ancillary right to life.

This is right to water is being considered but not actualized not even articulated in any policy or a law in India till date. One of the specific features of this is as the court have intervened, they have made it very clear that if I have a water body and my piece of land, if I have a value on my piece of land, I have a complete right over that. No authority of the state through an administrative order can either prevent, restrict or limit use of the water that is there on my property and for that you must have an act of the state, a legislature should come and that only can restrict and regulate my right.

Then if I do not have a positive right to a fundamental right to water, is there a negative obligation on the part of the others like the state? Is there an obligation of the state not to subject any citizen on grounds only of religion race, caste, sex and place of birth to any disability, liability, restriction or condition with regard to use of wells, tanks, bathing ghats, maintained wholly or partly out of state funds or is a street property or which is meant for general public? The answer is yes.

All these are available to everyone. There shall not be any discrimination. So that kind of access to a public resource and water which is in the public domain is available for all without any single exception on these grounds. That is the only saving grace that you have.

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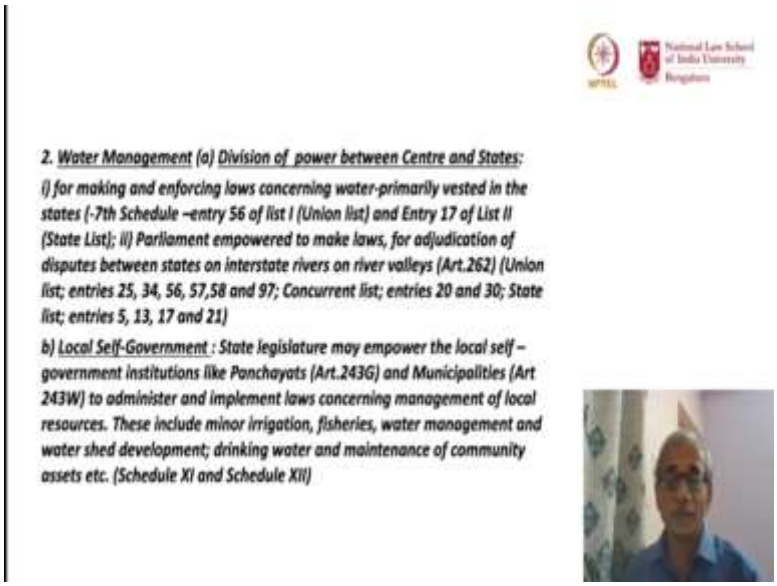

Then how is water managed, which is gained in the public domain. We already know water that there in my private property is mine, state cannot intervene. but what about water that is managed in the public domain? Who does that? How it is being done? This is being done under the Constitution scheme by the division of power between the centre and the states. The Central government and the state government alone can make law on water, but even in making law on water, for making and enforcing laws concerning water, which is very much within the territory of a single state, it is primarily vested in the states only.

You have entries under the Constitution as you could see on the slide. The scope for the Centre or the Parliament to make a law concerning water is only confined to 2 areas. In case of the interstate rivers where there is a dispute, then in relation to that to resolve the disputes a law can be made by the Centre or a shared river amongst 2 or more states in regulating activities in relation to the river valleys, the Centre can make a law. So, the sum and substance of it is, any inter-state water body or riverine system comes within the purview of the Centre to make a law.

Any water body or river within a particular state is the exclusive lookout of that particular state to make a law. One shall not be transgressed upon by the other in making a law, creating institutions of enforcement and putting it into application. So where does the local self-government exist in the whole scheme of things? We know very well under the Constitution system, we have the Centre, the state and the local government as the 3 layers of governance. We

know that centre and states can make law. We also know that the locals and governments cannot make a law but what is their status.

The status is, the state legislature after having made the law it may cover the local self-government institutions like panchayat, municipalities and municipal corporations to administer and implement laws concerning the management of local resources and what are these local resources. Minor irrigation, fisheries, water management, watershed development, drinking water, maintenance of community assets, etc all relating to water can be administered by the local government if the state government gives them that power.

That means state government has all the power. It has to transfer that. After the 73rd and 74th Amendments to the Constitution, it becomes a duty and responsibility of the state government to transfer the administrative power with regard to these local resources and subjects, as I just mentioned, to the local self-government institutions. So, as and when they transfer, these subjects are going to be handled only for administration locally by the local self-government institutions. That is about law making and enforcement in general.

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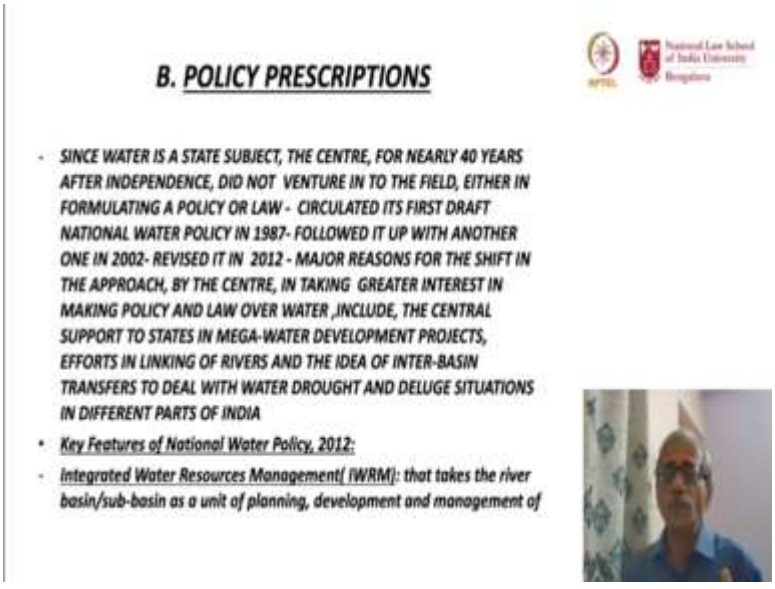

Let us get very specific to water and as you know, is there any clear policy as the driver, as the pole star, as the guide, as the steering wheel to advise the law maker as to in which direction the

laws to be made and enforced. What are the basic tenets of governance and that comes through policies? We know that state is the one which makes laws concerning water, generally and since water is by large a state subject, ever since our independence I think for well over 4 decades, the Centre did not venture into this field of policymaking concerning water. Even making a law concerning water, the Centre director get into because as you know that there will be a clash between the centre and the states.

The states would argue that, look this is an exclusive area in which we could legislate upon you are unnecessarily interfering the Centre state relations could get eroded. Please allow our autonomy, our independence, our ability to make a law and enforce it. Why should you interfere? So, in order to not to get into any kind of a clash with the states, renter tactically refrained itself from either coming up with a policy or a law but you know, the Centre over a period of time realized that there are certain problems although with regard to water in a particular state, which is very much within the territorial jurisdiction of a particular state.

The kind of problems that are there in relation to that water may spill into the neighbouring states either on environmental account or on account of the use of resources and the depletion of that and the detrimental effect of the neighbouring lands, which is there in the neighbouring state or for whatever reason, the Centre thought that it is better instead of interference they will just come up with some draft policy topics.
More for guidance as models for the states to draw inspiration from, enable it and translate it into application at their various levels. So, it is more like an elder brother giving an advice to the younger one and in 1987, the government of India circulated its first draft of National Water Policy and later it became a little bold.

From a draft, they came with, draft, you know, draft is something which is later to be transformed into the policy, but draft remained a draft for 15 long years, but by the year 2002, the central government got a little bit more confidence. There are so many things so many issues over which the states will have to come to us for guidance support, resource support, technical support or anything like that and we will use that and to use that we will try to tell the states that look we have come up with a policy.

It is useful to you and if you are going to adopt this, you will have central funds coming your way and no state would refuse then central assistance would come their way to actualize and implement what the Centre prescribes to them. So, by the year 2002, the Centre realised its power and it although under the Constitution only the states would make it, the Centre started foraying into the state subject and came up with a clear policy pronouncement on water in the year 2002 which is actually a little bit of an elaboration or expansion of the draft policy document of 1987.

It revised it in the year 2012 and the major reason as to why the Centre got into it is of the increasing dependence of the part of the states for central assistance or various issues. There are international arrangements in which the national government is a party and if those international arrangements are internalized within India, then technical and financial support would come over way and the Centre may share the same with the states.

There are mega projects to be organized and conducted for which a lot of resources required and the states by themselves will not be able to raise those resources and so they look up to the Centre for assistance and so the centre started coming up with its own policy. Look, this is our water policy, you adopt it, then we will support you. That kind of a thing it is almost like a give and take.

This is our prescription, you adhere to that, this is our assistance. Then the 2002 Policy got revised in 2012 and there are a number of reasons as to why this change came about, why the policy document was revised and for that a number of reasons exist and one is the Centre taking greater interest in making policy and law on water because as I did mention mega water development projects started getting international systems and Centre had a lot of funds to make available the help, aids, support and hand over the states.

And so, the increasing demand for the central intervention became very necessary and by 2012 the government of India started thinking big about as a nation transitioning into a developing, from a developing country to a developed country and with economy improving the need to

make investment in major developmental activities and one such was about linking of rivers.

Why linking of rivers? Well, the demand was that there are some states which have plenty of water in them. So, many rivers pass through them, perennial rivers and there are states which are parched who either have rivers but seasonal rivers, and so if you link rivers across the nation, it is quite possible that there would be water availability at all times. The great idea, the idea of inter-basin transfers to deal with water drought and deluge situations in different parts of India did lead to a further recasting and reworking of the policy document.

I place before you a key feature of the National Water Policy that was evolved in the year 2012 and this, I will contrast it with the 1987 draft policy document and the 2002 policy document in a limited way primarily highlighting what actually emerged in 2012 and incidentally, I may make a mention of what actually were the priorities in 1987 and 2002 incidentally. The key features of the National Water policy 2012. The first and foremost feature is to envision an Integrated Water Resources Management IWRM. What does that mean? It actually takes river basin or the sub-basin as a unit of planning, development and management of water resource.

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It is a process that promotes the coordinated development and management of water, land and related resources to maximize the resultant economic and social welfare in an equitable manner without compromising on sustainability of vital ecosystems. In short, it is a holistic approach, not

to consider a bit of a water stream running through a particular area within a state but to consider the entire ecosystem as a whole and to think of it a coordinated development of the entire aspect of management of water, land and related resources.

So, that economically and socially and in an equitable way the entire development of the area, the people and the resource would happen the eco system would be conserved, the well-being of the people taken care of because you are looking into the pros and cons of different kinds of uses and application of each of these resources in an integrated way; IWRM.

The second feature is an insistence that it is very desirable that while you have different uses of water, especially in the case of the river, you can use the riverine water for a number of purposes, but make sure that when you are thinking of the river it is a living entity and it should remain alive and for that purpose you need to ensure that there is a minimum flow, is also called as environmental flow in rivers should be ensured. That means you have to maintain the minimum flow of a portion of the river to meet the technological needs. Do not drain it completely. If you drain it completely it is not just river. It is not just water.

Water that is there in the river is related to the entire ecosystem that it feeds into so many life and life forms that are dependent on it and if you drain it those life and life forms, which are dependent on it, which have enriched the neighbouring ecosystem would be lost and to that extent the quality of life would get affected and the ultimate resulting consequence is that the water drained, once it completely drains, the river resuming its own status of recharging the aquifers on either side of the riverine system would be to that extent rust and so you may have many dead rivers if you completely drain it. Maintain a minimum flow.

The third one. Inter-basin transfers. To meet basic human needs and achieve equity and social justice, inter-basin transfers of water need to be considered on the basis of merit of each case after evaluating the environmental, economic and social impact of such transfers. As I did mention to you earlier, the idea comes from this but there are some states which are water surplus states and some states are which are water-scarce states. And so, if water has to flow from one state to another, it is not just water flowing from one state to another but there are so

many other attended aspects that need have to be consider. What are the environmental impacts of such a flow? What are the kinds of economic impacts?

What kind of social impacts it would take place and on balance if you find that all these are not going to be affected adversely then, you may go ahead with inter basin transfers because the idea may be good, but in terms of operationalization, if it leads to destruction, if it leads to something which is undesirable then it is not proper to proceed further with that so use the data that is available, use all the scientific knowledge that are available on that and then do an assessment to that and on balance, if you find that it is beneficial then you may go ahead. When you think of inter-basin transfers a lot of expenses are involved in it whether these expenses are worth it, you need have to look to, a lot of impact would be there on the environment. Is it something that is manageable, repairable, recoverable? Look to that. The claims and entitlements of the people in upstream to that extent may get reduced. Will it affect their quality of life? Consider that, based upon which you take a call. Then the other important feature of this policy document is with regard to the ground water management.

The concern is about declining groundwater levels in over exploited areas. The urgent need is to arrest the trend. And how do you arrest that? by introduction of improved technologies, water use, incentivize efficient use and encourage community-based management of aquifers. If you bring in more people to share both rights and responsibilities, there will be a lot of rational, just, proper equitous and better utilization of water in an optimum way and to that extent overexploitation maybe contained and controlled.

Groundwater is something which cannot be replenished easily because it goes through a particular natural cycle and refilling, reclaiming and recharging is a very tough task. It takes over a long period of time. Hundreds of years it could take. In fact, many of the waters that we are digging wells into and drawing it from them are actually something that has been stored sometime around 1300 AD, 700 years back, as you go deeper into it and so this is something which is a very rich resource, which can be used in adverse time and not to be spent like someone who has excess of it. There is no excess water available, manage it very, very carefully.

Groundwater management requires a far more scientific, technological application and use and that is something that is stressed. The other interesting feature is, for the first time there is a paradigm shift. From 2012 onwards that water in its normal form is not something that can be used. It requires a lot of treatment to be given to that and for which some kind of expenditure is to be incurred and the one who is rendering that service of cleaning up and making it available. You have to pay for the service cost and water is not something, since it is not freely available and easily available, it is an economic good. The complete change in the approach.

The earlier approach was water is natural, a national asset, is something that should be shared with everyone is now pricing of water for the services that somebody does for you to make it available for you, to make it available for you in a better shape and form than what it was in a usable form for which these services do not come free.

They would have to pay it and pay for it as water is an economic good, the idea is to really encourage people to make efficient use of water, not to consider it as a free for all. To conserve water, if you say that it is priced, people will think twice before spending money. So, it promotes conservation. It helps efficient use and this paradigm shift is essentially to help and enable the service provider to get incentivized and to facilitate better service and, in a way, the private entities who had the expertise and ability to deliver those kinds of services were also encouraged to make investments in this field.

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The urgent need for managing floods. Every effort be directed towards averting water related disasters like floods and droughts through structural and non-structural measures and preparedness for flood or drought with coping mechanisms as an option and on rehabilitation of the natural drainage system should be an integral part of such efforts.

So, precaution, preparation and action without wasting time is one of the excellent means made to manage floods and for that their policy document clearly elucidates the methods and manners of dealing with floods. Water use efficiency. The project and the basin water use efficiencies require improvement through continuous water balance and water accounting studies. How do you ensure efficiency of water use? We have many projects with regard to water management.

We have basin management of water, but the key to that is efficient use of it and for that you need to ensure certain level of water be available all the time and you should account for the use of water for different purposes how much you have used, why you have used, whether it was necessary. A kind of accounting and auditing and for that you need information, you need collateral information, you need consolidation of information, you need dissemination of information and working it and come up with mechanisms or putting those information to use and for that an institutional arrangement at the national level was contemplated to be established for promotion, regulation and evolving mechanisms for efficient use of water or basin or at the sub-basin level.

As you could see very ideal things are put forward. Most of these appear like home troops, common sensical but something that you do see in scarcity is that common sense of use of water and since this is rooted in common sense, it may appeal to everyone there is a thinking on the part of the policy maker and you know very well that policy is not for law, but policy actually gives a direction in which the governments needed to be steered and for that purpose, policy is important and for which you make laws and you enforce and you guide the administration and this policy in the last 7 years of its working has come under review now. Why should it be reviewed? It is just 8 years back you made it. Well, there are so many developments.

The policy needed to be dynamic to absorb and accommodate these developments and what are they. There is challenges of climate change, which we did not experience earlier and increasingly the state is withdrawing from making investment in this public sector because it needs a huge huge investments and state does not have that much of money, that much of resources and here are private parties who get attracted to make investment in water because now investment in water is also going to be a paying proposition because for the services you render you get paid.

You know as a fact, globally water business is perhaps the second most flourishing trade in the world, second most flourishing trade in the world is water business. Which is the first one? Of course, arms and emanations are the first trade. Very lucrative and water trade is the next one and so naturally where there is money and where there is a demand there will be business and so the businessmen would be interested in making an investment in it because they can get good returns but till now it has been primarily a state managed, state-administered, state regulated and state facilitated process, private engagement has been kept to a minimum and now the state is finding that there are takers.

There are those who would bring in fresh ideas, newer, better technologies, have monies is available with them, have resources to invest and so to facilitate that, we needed to rework our policies. That is another reason. Climate change is one problem. The need for accommodating private investment in terms of resources and expertise in management and bringing in changes in the regulatory mechanism and regulatory mechanism that we have is violations, punishment that

kind of thing.

That will not do anymore. What you need them to do is have a big bandwidth of facilitation, incentivizing, good deeds, incentivizing services rendered and then if there are clear violations which are unmanageable, which are objectionable, which are something which is going to be detrimental punish them.

So, in a graded way, you are going about water resource management and this requires a new kind of regulatory frame and for that policy changes are required. Revitalization of rivers. India is supposed to have 15 major rivers of the world. If there are 100 major rivers in the world, 15 of them are in India and these 15 rivers in India without a single exception, international statistics convey to us are the grubbiest rivers in the world and the moment water is polluted in a riverine system, the river gets choked, river dies.

Need for revitalization of rivers is the need of the day and there is a need for setting up of a National Bureau of Water User Efficiency and for all that, we need to really think afresh about water policy. So, the emphasis would be on hydrological boundaries rather than administrative or political boundaries of states. So, we will consider water as of national importance and so the Centre needed to be the guide, need have to really show the way in all these aspects which have freshly emerged and then help the states to evolve their own policies and governance structures in effect creating and effectively implementing them. It is in review and it is still on the angle. That is about policy.

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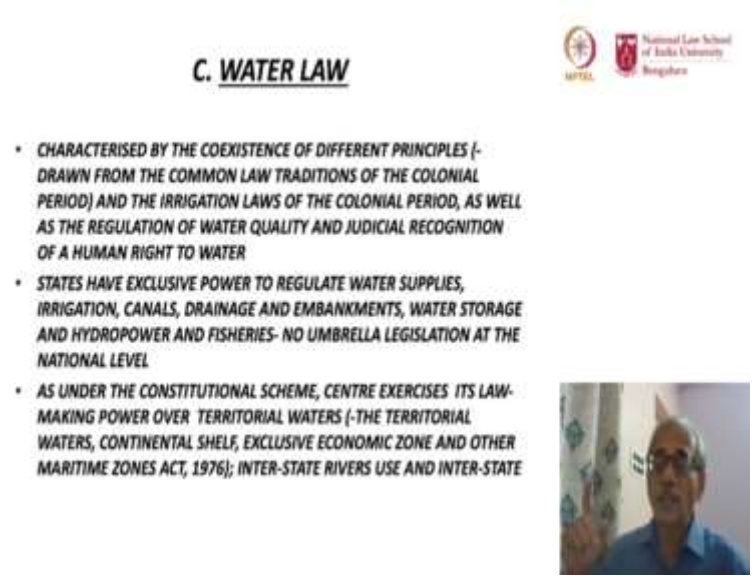

These are ideals, these are directions but the real action commences is only when you have an enforcement mechanism to put that in application. What is the legal regime that we have? Statutory law. If you just take a panoramic view of the entire legal landscape concerning water or legal waterscape, it is characterized by the coexistence of different principles drawn from the common law traditions of the colonial period as I did mention, the owner of the land owns everything in relation to water. That is one principal and then the common thing that we have and the most prominent that we have in the irrigation law. Irrigation law prevalent all over India in all the states and these were actually initiated during the colonial period when the Britishers were ruling us and in addition to that, some of the judicial pronouncements in relation to water.

I did mention about water rights, human right to water. All these actually shape, craft and work the law in relation to water. We know that states have exclusive power to regulate water supplies, irrigation, canals, drainage, embankments, water storage, hydropower and fisheries, and so obviously there is no umbrella legislation on this at the national level. Quite understandable because that is the separation of powers, division of powers between the states and the Centre and we also know with the knowledge that we have of the Constitution, the Centre exercises its law-making power only on the following issues.

Territorial waters, under the law of the sea, there is a law called as The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act made in the year

1976 and amended from time to time. This is a central law because this has an international aspect to it and that which is not within the confines of a single state it is for the national government and that is how the national government comes into the picture. Then the second one is rivers and water bodies which are interstate in nature.

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So, interstate rivers use and interstate water disputes and it is only there you have the central law coming into existence and the only other circumstance when the Centre gets into the picture of making a law on a state subject is only, a good number of states come together, make a combined plea to the centre to make a law to be enforced in the state level. It has happened earlier. In the law concerning pollution control we have already seen that there is that Water Prevention and Control of Pollution Act. This was a central law although it was a street subject.

For the obvious reason that the centre made this law because more than half of the states in India made a submission to the Centre, please make a uniform law for all of us and the Centre will oblige and this we have already discussed so I do not need have to go back to the details of that. Now, I did say that when there are disputes with regard to sharing of waters, and management of shared waters between the states. There is Interstate Water Disputes Act made by the government of India in the year 1956.

So, this is to settle dispute among states. What does it do? It establishes a tribunal to adjudicate

upon disputes that have remained unresolved even with are a number of negotiations between the states. Very interestingly as you may notice, that tribunal, look at the status of the tribunal, whatever decision it gives, it is final and binding. There is no scope for an appeal from the decision of the tribunal, even the Supreme Court has no jurisdiction.

This is written in the Constitution and so for interstate, the tribunal has the final word. There is no appeal. This law has an application. It has been applied in a number of interstate disputes. We have Kaveri Krishna disputes, but as a matter of fact, the results are very mixed. Mainly because of the fact that the conflicts are long drawn out and the procedures that are developed for the tribunal to function and adjudicate upon are very loosely crafted and when the law is loosely crafted there is a scope for any numbers of interpretations and there is a scope for many escape routes of delaying things and that is precisely is affecting the Interstate Water Disputes Act to deliver what it promises. The other one is the River Boards Act of 1956. It provides for the establishment of river boards for regulation and development of river valleys and the rivers themselves. This has hardly been put into application.

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Then if you just go back in history, what you do see is that there was a River Conservancy Act made in the year 1884 by the British. It stipulated regulation for the development of floodplains. Look at the visionary thinking. Floodplains, how they have to be regulated and developed, there

is a template available in the 1884 law and this was an application in Tamil Nadu and Andhra Pradesh states.

What did it do? It prohibited any construction or plantations within the riverbank. After Independence, this has not been put into much use or application. In the year 1975, the Central Water Commission, the Central Ministry on behalf of the Ministry, it had circulated a model bill for floodplain zoning on the same lines of the River Conservancy Act of 1884. Unfortunately, the states have not positively responded to this initiative of the Central Government. You know the reason? The reason is obvious.

Each and every state wants to develop wherever it is possible, wherever there are public lands and on those the plains which are inundated during the rainy season, when floods occur, the rest of the year it is dry and it is in these areas so many activities have come. A license is given, encouraged to set up plants, just forget about plantations, even industries have come in floodplains.

Housing societies have sprung up. All these have happened because the state governments have allowed that and the usual arguments that they come up with is that there is increasing population. There is an increasing demand for housing. There is an increasing demand for development, there is an increasing demand for employment.

We have to look for those areas that are available and these are the areas available and you know what happens. During the rainy season as we are experiencing year after year, have cosmic floods. The loss of life, limb and property being huge, irreparable. It is happening every year mainly because of the states not acting well in advance. There is already a template available. The Centre is still trying to negotiate with the states.

Sometime in 1975 it came up with, these are not happening and unless there is a consensus among states and an agreement to the centre to come up with such a kind of a law, this will never see the light of the day. We had a lesson. Devastating floods in Uttarakhand in 2013, Kashmir and Pune in 2014 and very closer to Bengaluru in Kodagu the devastation was of such dimension

in Kodagu and Kerala, so much of havoc caused a couple of years back. These were the triggers for the Ministry of Environment Forest and Climate Change to come up with a draft notification on river regulation zone notification under the Environment Protection Act in the year 2016.

So, it came with a draft. The draft is to how to manage these floods and for that a River Regulation Zone was attempted to be proposed. The idea is to regulate River Regulation Zone as you could see here under this Act, it is to regulate industrial activities on the banks of river stretches having floodplains. Once again, the required positive response from the states is not forthcoming. It has been 4 years since this draft is in circulation by the centre.

The states have not positively responded to that. The Centre is still optimistic. I think as late as last year in the Parliament, the concerned ministry had conveyed that a large number of states have shown some interest but still negotiations are going on with the other states as well. And till consensus is obtained, we cannot come up with any law banning the application.

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Then there is another bill that is in circulation. National River Ganga Rejuvenation Conservation and Management Bill 2018. Yet another effort of the Centre in protecting, conserving, adding sustainably managing interstate rivers and other major rivers in India. This is a fairly recent one as late as 2018. It actually comes up with a set of do's and don'ts of human activity. The

beautiful template. It bans any detrimental activity that would affect the integrity of the river sand mining, prohibition of that.

It lists out a number of activities as unauthorized and imposes stiff penalty for violations. Like all those previous good exercises the responses in the states is still awake. There is another bill in circulation. The Groundwater Sustainable Management Bill of 2017. It is issued by the Ministry of Water Resources. An excellent template for states to adopt, to address the growing ground water crisis and it follows the earlier model which the Centre itself drafted way back in the year 1970 and updated several times over till the year 2005 and now you have the latest version of it.

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If I can elaborate it a little bit because this is something which would be very useful for the states. It proposes a different regulatory framework from the century old, outdated, inequitable and environmentally unsustainable and unfriendly legal regime. What was the position earlier? Private owner, private property. Groundwater, state subject. So exclusively private or state. Never the centre would get in, with the result that it used to be a situation where somebody who had riches of water did not have an obligation to share it with others and even within a state, if it was the communitarian property, communities were not made part of it and the state's management was much left to be desired.

Now, you have a clear recognition, that water is an indivisible home. A recognition of the unitary nature of water. The need for a decentralized control over groundwater and the necessity to protect it at aquifer level, recognizing water as a public trust and groundwater as a common pool resources and exercise of precaution in accessing, using, managing, allocating and sharing such a water and also taking care of the developmental activity in its neighbourhood as not to reduce, limit or eliminate the availability of groundwater sources is something which was absent in the current water law regime is being put forth Centre stage under this new bill. Actually, part of these ideas is already incorporated in the laws that have been enacted from time to time in the last 10 - 15 years by a number of states, but not all these ideas and this is in circulation now and there may be changes in these laws by the states taking the cue from the central bill, which is

actually the intent of the central bill to act as a model bill for the states to emulate.

Luckily, most of the states are trying to at least borrow a few of these ideas and affecting changes in their respective laws to align with this model. Then finally irrigation law constitutes historically the most developed part of the water law. The Northern India Canal and Drainage Act of 1973. Actually, it is 1873.

For instance, because this was done during the British time so it is 1873 law. It regulated irrigation, navigation and drainage in north India. As a state subject now, each state has the power to use and control for public purposes the waters of all rivers and streams flowing in natural channels within its jurisdiction and as you know that irrigation law is an exclusive law-making power of the states and they have made the law accordingly, and these are the only laws that are invoked at an application in every state. There is an irrigation department, major irrigation and minor irrigation departments, ministries and departments are created in relation to that and they are ones who by and large are regulating all activities in relation to water in each and every state.

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That is primarily the legal regime concerning water but that discourse on water will never ever be complete without at least some passing mention of 2 other very significant aspects in the entire system and scheme of water management, which is actually outside the law but which

should inspire policy and law making, which should actually guide, help and enable and empower the water law regime and enrich its content and what are they.

Number 1 is something which the courts of law have done and number 2, something which has been there with the communities of people. Let me start with the first one, very quickly refer to that. Right of the river. It is recognized for the first time by the Uttarakhand High Court, Rajeev Sharma and Alok Singh, their Lordships in that High Court they declared Ganga and Yamuna rivers and their tributaries as legal and living entities having the status of a legal person with all corresponding rights, duties and liabilities.

They even appointed 3 officials directing the state government and making such an appointment who would act as legal custodians responsible for conserving and protecting them and order for the establishment of a management board within 3 months' time. Unfortunately, the decision that came a couple of years back has been challenged. You know, why?

If you give that status then a lot of claims will be made if water body or the water stream like the river Ganga and Yamuna as human, like human beings becomes a legal entity, they will be subject to rights and duties. So, flooding would actually make them liable for the loss of life and property and if they become liable, as the guardians, the state government would become liable and huge expenses will have to be incurred by the state and the state cannot manage that and so the states of gone and appealed over this decision and the Supreme Court has given a stay, has given a state to the decision and its implementation and it is still not lifted.

Anyway, the idea of a river having a right, a new concept in Indian sense, which was not there earlier. Actually, this is borrowed from what happened in New Zealand a few years back where, a particular river was given a legal status. Borrowing from that here also, the same idea has been put forward. How far it is going to be made applicable, time only can tell because the final position has not been articulated as it but a new idea has come into existence.

The second one is a bit of a reflection about the water traditions of India. This is something in common. Something that I think every one of us know or if any of us do not know, we should

look for the simple reason that India has a very rich tradition of conservation of water.

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Where the elements of ownership and responsibility vested in communities of people and if you look into the position of women as conservators, we have instances and we have folklore, we have historical records, we have documentary evidences to show large water bodies built by women and what are these water bodies.

They include step-wells, tanks and even ponds. There is a water heritage site called Queens Step-Well Rani ki Vav in a place called Patan in Gujarat and there is also another place where there is Rani and Padam Sagar in Jodhpur built by queens and we have umpteen number of examples of Devadasi building water body in the tank for the benefit of the public in Yagati, Hoskote, Nagamangala and a number of places in the state of Karnataka, conserving water and knowing the importance of water and making it available for others is part of the tradition of communities of people and women have been in the forefront is an illustrative example.

The other example is with regard to water traditions of conservation and its maintenance. There has been a pre-monsoon ritual in Rajasthan. I am quite sure rituals have been there either immediately after harvesting or before the onset of monsoons in all the other states in India, but I am just giving you an example of pre-monsoon ritual in Rajasthan.

It is called as the Lasipa, in which the entire village gathers, cleans, mends and desilts all water

bodies. By the same token, during the fertility festivals of Gangaur and Akkha Teej, woman come together in northern India to clean lakes and tanks. A tradition, a time-tested and a time-honoured tradition teaching us the basic ethics of conservation and maintenance of water bodies. There is this agricultural system of Apatani tribal groups in Arunachal Pradesh. There is a valley in Arunachal Pradesh called Ziro Valley, it is a plateau.

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Here the water plains, irrigate the paddy fields in the entire valley through your network of irrigation canals and channels done by these people. The women are the ones who usually manage these fields. The water used in the paddy field flows to more fields in a valley downstream. Keep in mind that this river is a very small river, water availability is very limited and the system they have worked out is such that the water is recycled.

That means once used, it becomes polluted and a process worked out in a network of irrigation canals and channels of purifying them and reusing them and the water used in the paddy field flows to more fields in the valley downstream. These merge back to small streams which flows back to the river at the last.

So, look at the water cycle here. In this way, there is a perennial source of water in the valley adopted, adhered to, practiced since time immemorial by this tribal community. They have

imposed very strict regulations and one of those regulations is not to construct modern structures in the vicinity of these paddy fields as they would disrupt the ecosystem.

Now, we are talking about command area and area where water gets connected and then flows into a valley, into a riverine stream and how these needed to be conserved and protected. The tribals have been practicing it since time immemorial. These traditional wisdoms need help to be mainstreamed and be made part of our policy and law and for that reason I have placed this before you. There is a community in India, a group of people who have been engaged and are called as neeruganti in the state of Karnataka.

This is the gentleman who traditionally controlled and managed and distributed water in irrigation for cultivation and for all such activities and this is the one who was the regulator, manager, controller and the one who would decide on allocation. A traditional practice, not a government official.

To put it in a nutshell, if you look at water law and governance in India, it presents a contrast of colonial approach of state control and management on one side and wonderful, traditional, highly idealistic practices of communitarian ownership and management to contrast and the 2 have operated on parallel tracks. Even when they are operating on parallel tracks.

Even when they are operating on parallel tracks, there has been an overwhelming, domineering influence of the state control and management so much so that this has actually relegated the traditional practices of community ownership and management to the background, to the margins and they are on the verge of extinction. It is time that these are to be mainstreamed and the idea is essentially to highlight these major features for your consideration and study. That completes and concludes our examination and analysis of water law policy and governance, international and domestic perspectives.