

Book review

Water and the laws in India

Ramaswamy R Iyer (ed.), Sage Publications, 2009

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The book presents a critical review of legal issues pertaining to water management in India. It is a rigorous exposition of how the current legal framework for management of water vitiates its efficient, equitable, and sustainable use. It deals with a wide range of issues—ranging from decentralized governance, gender, interstate water disputes, drinking water supply, water pollution, rehabilitation and displacement, and groundwater legislation to reform the legal framework.

As the editor—a retired civil servant renowned for his articulation of legal and institutional issues related to water management in the country—puts it succinctly in the introduction, the book is titled ‘Water and the Laws in India’, and not ‘Water Laws in India’. In other words, it is not a treatise on water laws, but deals with legal issues related to water management. Thus, the approach to law is from an interpretivist perspective, rather than the positivist one seen in a conventional book on water law.

A conceptual lens of legal pluralism surfaces in many of the writings that examines law not from the viewpoint of state law alone, but its interface with other legal and normative systems. The social meaning that people attach to water laws, multiple meanings of rights and entitlement, and the social and power relationships that mediate access to this resource are also studied. Aligning the legal framework with ecological considerations is another theme that surfaces in

many of the chapters, including the one written by T N Narasimhan.

The papers by Sankaran, Nariman, and D’Souza highlight challenges arising out of India’s federal structure. This aspect has a major role to play in matters such as interstate water disputes. Moreover, India’s federal structure often lends the Centre little power in developing laws and policies for water management that are adjudicated by the states. This is, in fact, an important reason behind the underdeveloped policy space in several areas of water management such as groundwater regulation. The oft-debated question of shifting water to the concurrent list is revisited, and so is the debate regarding ‘nationalization’ of the resource. However, the authors have issued a word of caution against excessive centralization and emphasize the need for greater space for institutions of civil society participation. Though efforts at securing some common approaches to water management have been initiated through the National Water Policy statements of 1987 and 2002, these have remained little more than wishlists—a set of prescriptions that few have sought to translate at the state level.

Though community-managed water systems have existed in India for long, the subject of decentralized and participatory governance has shot up the policy agenda only in recent years, especially after the 73rd and 74th Amendments to the Constitution of India, and efforts at

various levels to promote participatory irrigation management. An important message in this context, articulated in the paper by M S Vani, is that the current legal framework does not promote participatory systems of governance. In the pre-colonial era, customary systems of governance emphasized on greater primacy to direct control and authority of the community over natural resources. However, the scenario changed under colonial rule, a fact noted in the chapter by Videh Upadhyay. The new regime tried to assert supremacy of the state in terms of control over water resources. Indigenous technologies and systems of water management were thus relegated forever to the category of 'minor systems' in terms of garnering attention of public policy. Thus, though the so-called 'minor systems' have a crucial role to play in the current regime of water scarcity, they fail to catch the attention of policy-makers. The need to revive some of these systems is also highlighted by the Dhan Foundation in a chapter in the book.

Scholars of groundwater management have persistently noted that the legal framework for groundwater management does not promote its equitable and sustainable use. This point is reinforced in the second chapter of the book contributed by Vani. It states that the Model Groundwater Bills, doing the rounds for about three decades, have done little to arrest the problem of groundwater depletion. Groundwater needs to be managed under the public trust doctrine, which although envisaged in the National Environment Policy of 2004, still needs to be operationalized.

Though water law reforms have made some progress, their impact has tended to promote inequity, as pointed out by Cullet and Madhav.

Donor-led programmes have not succeeded in garnering support among the affected, and have, instead, got mired in controversies. Several papers, such as the one by Sivaramakrishnan, note the failure of state institutions to recognize drinking water supply as a legal right. In fact, various state laws have consciously sought to dilute the right to water as a legal right, and treat it instead as a contractual obligation. Upendra Baxi takes this issue a step further, presenting a cogent case for a constitutional human right to water.

Access to water, however, is not equitable and is shaped by social and power relations. For example, in the eyes of the law, men and women enjoy differential status. While specifying the various ways in which the legal system deprives women access to water, Kuntala Lahiri-Dutt notes that much of women's appropriation of water may take place outside the 'formal domain'—through widespread informal means. She draws attention to the 'rhetoric' of gender mainstreaming and urges that women 'need to be seen as more than just passive recipients.'

One of the strengths of this well-written, thought-provoking, and insightful book is that the authors—drawn across various streams such as the government, academics, researchers, policy-makers, and NGOs—have articulated various perspectives of the issue at hand. The book is as much an essential guide for those who wish to understand the legal framework of water management; as it is for a seasoned scholar of water governance, who wishes to learn about the most-recent legal debates in the management of a resource whose usage is as complex as it is politically contested.