



Water Governance in India: An Analysis of the Provisions of National Water Framework BILL 2016

Sarada Prasanna Das*

In India water resource management has been traditionally unsystematic and resource planning were based on narrow vision. The current legal framework pertaining to water in India is spread across a variety of instruments. There is a strong feeling among various section of the academia, bureaucracy and policy makers that we need a set of fundamental principles that would guide water governance throughout the country irrespective of divergence in approach. In this context this paper analyses the provisions of the proposed National Water Framework Bill 2016.

The growing demand for water as a result of population growth, urbanization and economic growth has resulted in tremendous pressure on water resources making India water stressed country by international standards. India sustains nearly 17 per cent of the world's population but is endowed with just four per cent of global water resources. Leakage and inefficiencies in the water supply system waste nearly 50 per cent of usable water. The ground water level is declining at the rate of 10 cm per year. Over 70 per cent of surface water and ground water resources are contaminated. All this is leading towards a water scarce situation in

many parts of the country. With the per capita availability of water continuing to decline, the nation hurtles towards water scarcity. Climate change, which might bring in its wake, increased temporal and spatial variation in availability of water is likely to exacerbate the water situation further. Apart from that extreme events like floods and droughts could occur more frequently affecting livelihood and food security. According to an estimate, by 2030, 60 per cent of world population will be left with fresh water supply and areas like South Asia might experience water stress and the region could experience water related conflicts.

Water Governance Issues in India

In India water resource management has been traditionally unsystematic and resource planning were based on narrow vision. The current legal framework pertaining to water in India is spread across a variety of instruments, legislation, legal principles and a number of judicial precedents. These are not necessarily in harmony with each other. Under the Constitution of India, water is a State subject and the Centre regulates the inter-state water issues and disputes. Therefore, it is widely felt that Indian water sector needs a unified national perspective. Although we have national water policy (1987, 2002, 2012) but we do not have a legal framework applicable throughout the country. Therefore, there was a debate at that point of time about the need of a national legal framework for water, which could be adopted by all the states according to their need. There were couple of arguments in favor of the legal framework; firstly, the national legal framework would strengthen the national water policy. Secondly, it is necessary to achieve water security and sustainability keeping the future generations in view. Apart from this there were arguments that in India there are two sets of legal principles working in the water sector (ground water-surface water). These legal principles governing this sector have not been updated from a long time and separation of ground water and

surface water is not possible. In addition, recognition of the fundamental rights to water has been an issue from a long time and there were judicial precedents since 1990s. Further it has been argued that due to lack of a strong legal framework, there is a rise of conflicts on the use and allocation of the resources between different stakeholders that are unnecessarily adjudicated by the court.

The law in the making

In this context, there is a strong feeling among various section of the academia, bureaucracy and policy makers that we need a set of fundamental principles that would guide water governance throughout the country irrespective of divergence in approach. In the year 2011 the first discussion about a framework law on water was discussed during the consultation meetings for evolving National Water Policy (2012) with various stakeholders. Thereafter during the formulation of twelfth plan a sub-group (as part of Working Group on Water Governance, under the chairmanship of former secretary, Water Resources, Prof. Ramaswamy R. Iyer) was tasked with reviewing national and international experience on reforms in the governance of water; suggesting a blueprint for reforms in India so that we arrive at an institutional framework that facilitates setting up of diverse regulatory bodies for water governance. The sub-group evolved a draft called National

Water Framework Law (NWFL), which was deliberated and appreciated during the third meeting of the steering Committee on Water Resources and Sanitation for Twelfth Five Year Plan. However, later Ministry of Water Resources opined that there is need of wider consultation with all the stakeholder, particularly the State Governments to evolve the law. In this view the Ministry constituted (3rd July 2012) a drafting committee headed by Dr. Y. K. Alagh for the preparation of Water Framework Act. The committee submitted its report in May, 2013 it was placed before different stakeholders for wider consultation. In the preparation of National Water Framework Bill 2013 the committee reviewed three major documents:

1. Recommendations of the National Commission for Integrated Water Resources Development (NCIWRD)
2. Draft National Water Framework Law prepared by the Sub-Group (as part of the Working Group on Water Governance) set up under the former Secretary, Water Resources, Prof. Ramaswamy R. Iyer.
3. The Twelfth Five Year Plan Document approved by the National Development Council.

The Bill had eight chapters and it was framed keeping with the spirit of the National Water Policy, 2012. The drafting committee report

pointed out that the Bill 2013 clarified that the proposed national water law was not intended to centralize water management or to change the Centre-State relations in any way. It proposed a framework law, i.e., an umbrella statement of general principles governing the exercise of legislative and/or executive (or devolved) powers by the Centre, the States and the local governance institutions which was not clear in the NWFL draft prepared by Sub-group headed by Prof. Iyer. However, Forum for Policy Dialogue on Water Conflicts in India, which is a network of civil society organizations and individuals working on different areas in the water sector of the country, criticized the Alagh draft for creating a law that essentially maintains and supports the status quo, and helps maintain the current principles and ways of managing the water sector and not recognize water as a scarce resource but as a sustainer of life and ecology. It was also criticized for its managerial understanding of water (economic good rather social good) and not taking into account social (inequalities in access to water and participation for water management etc), environmental (protection issues), legal (constitutional bases etc) issues that were the main part of the Iyer draft. The Alagh draft was also criticized for limited elaboration of Right to Water and propagating the model pushed by World Bank as part of water sector reform, which is a focus on tariff setting. The 2013 draft was

also criticized and created some kind of doubt among the State Government's about future of the existing water laws. Further the Centre was unable to persuade the State governments to accept the idea of the national water framework law. People like Prof. Iyar mentioned that the manner in which the Centre has put forward the idea, created atmosphere distrust among the States. This was one of the major setbacks for this initiative as some States expressed reservations in the matter.

Further, for the review of the draft National Water Framework Law a Committee was constituted in December 2015 under the Chairmanship of Dr. Mihir Shah to suggest modifications in Bill taking into account the emerging challenges in the water sector. After incorporating the suggestions of the committee, on June 2016 Ministry of Water Resources, River Development and Ganga Rejuvenation put the Draft National Water Framework Bill 2016 (NWF B) in public domain for comments and suggestions, which replaced the existing draft law of 2013.

Issues pertaining to the NWF bill 2016

Unfortunately, till now the bill has not raised that public debate that they are supposed to evoke, when the world/India is witnessing the emergence of a new paradigm in water management based on holistic science based on engineering and

ecological concern. Overall this bill is a major improvement over the 2013 draft in many respects. The definition of 'Water for life' has broadened and it is a positive step towards realizing the right to water. The present bill recognized water as a common heritage and talks about people centered water management as public trust doctrine, which was not clear in 2013 draft. As far as equity issues are concerned, this draft recognizes both efficiency and intra-generational and inter-generational equity in water whereas 2013 draft focused maximizing efficiency in water use. About the water quality the 2013 Alagh Committee draft was more specific but appears that have been diluted in this version. It is unclear that which agency of union or the state ensures that drinking water that supply agencies are complying with the drinking water standard. The 2016 draft has included a separate section on data sharing which was lacking in the previous draft. This would be one step forward to the access and transparency of water data. This would also lead to more research development in the water sector to make the management more sustainable. However, the draft has not mentioned which agency of the government (state/centre) will put all the water data in the public domain. This might fall into an inter-agency conflict and proper data may not be available to public as mentioned in the draft law.

Some critics have also pointed out that it only talks about river basin authority and role of the central and state governments clearly stated. However, the composition and role of Water Regulatory Authority is not clearly defined in the present draft. It is not clear how such an authority will operate: Is it under the aegis of the river basin authority? Or should it exist as a separate structure? The present draft is also silent on the coordination and policy support mechanism that was proposed earlier which would have benefited for the sustainable development of water resources and preparing reports on issues like water footprints, efficiency benchmarks, water pricing as well provide support to different water authorities for effective decision making. Although climate change is recognized as an emerging threat, it has been poorly integrated into the Framework Bill. Finally, enforcement agencies and

mechanisms have not been clarified properly. The existing laws and agencies with overlapping jurisdictions might create delay in enforcement of the law in the ground.

Concluding Remark

The Bill has come at a point when the world is shifting towards a new paradigm of water management. However, water policy and governance in India has largely been disconnected from the global trend and scientific knowledge, and is increasingly driven by populist politics. But this cannot go much further. While the success of the proposed Bills, will depend on adoption and support from the states, the Centre needs to consolidate and align the agencies and policies. It must set coherent policy signals, with an interdisciplinary perspective and integrated approach to all kinds of water resources.

Further Reading:

- Central Water Commission. (2008) Integrated Water Resources Development. *Water Resources Day-2008, Theme Paper*. New Delhi: Central Water Commission.
- Central Water Commission. (2013) Water and Related Statistics. New Delhi: Central Water Commission.
- Central Water Commission. (2013-14) Annual Report. New Delhi: Ministry of Water Resources, River Development & Ganga Rejuvenation, Government of India.
- Central Water Commission. (2015) Water and Related Statistics. New Delhi: Central Water Commission.
- KPMG. (2010) Water Sector in India: Overview and Focus areas for the future. kpmg.com/in: KPMG.
- Kumar R, Singh RD and Sharma KD. (2005) Water resources of India. *Current Science* 89: 794-811.

Planning Commission. (2011) Report of the Working Group on Water Database Development and Management for the 12th Five Year Plan. New Delhi: Planning Commission.

Water Resources Information System of India. (2011) *India's Water Wealth*. Available at: [http://www.india-wris.nrsc.gov.in/wrpinfo/index.php?title=India%27s Water Wealth](http://www.india-wris.nrsc.gov.in/wrpinfo/index.php?title=India%27s%20Water%20Wealth).

Working Group on Water Resources for the XI Five year Plan. (2006) Report of the Working Group on Water Resources for the XI Five year Plan (2007-2012). New Delhi: Planning Commission, Government of India.

Web Links:

<http://www.thehindu.com/opinion/lead/why-a-national-water-framework-law/article4280263.ece>, accessed on 2nd September 2016

http://www.business-standard.com/article/news-cm/ministry-of-water-resources-shortly-expecting-a-final-draft-on-national-water-framework-law-from-mihir-shah-committee-116051101026_1.html, accessed on 2nd September 2016

<http://indianexpress.com/article/india/india-news-india/save-water-water-resource-ministry-draft-water-bill-proposes-water-for-life-for-all-2831551/>, accessed on 5th September 2016

<http://www.jagranjosh.com/current-affairs/draft-national-water-framework-bill-2016-released-1465288508-1>, accessed on 2nd September 2016

<http://www.indiawaterportal.org/articles/national-water-framework-law-explanatory-note-developed-sub-group-planning-commissions>, accessed on 5th September 2016

<http://thewire.in/57767/cwc-restructuring/>, accessed on 5th September 2016

<http://indianexpress.com/article/india/india-news-india/cwc-staff-slam-mihir-shah-panel-report-on-water-reforms-2996427/>, accessed on 5th September 2016

<http://decipherias.com/currentaffairs/draft-national-water-framework-bill-2016/>, accessed on 5th September 2016

<http://www.indiaenvironmentportal.org.in/content/429782/draft-national-water-framework-bill-2016/>, accessed on 5th September 2016

<http://www.orfonline.org/expert-speaks/draft-water-bills-address-gaps-through-comprehensive-research-agenda/>, accessed on 5th September 2016

http://www.panipost.in/2016/06/experts-comments-on-draft-national_80.html, accessed on 5th September 2016

***Dr. Sarada Prasanna Das works as a Research Fellow at the IGPP.**

The views expressed herein are those of the authors and do not necessarily reflect the views or positions of the Institute for Governance, Policies & Politics (IGPP).

Published by:
Institute for Governance, Policies & Politics
&
Vivek Manthana Foundation

10, Institutional Area, R. K. Puram, Sector-IV, New Delhi-110022
Telephone-91-11-26182108, Email: office@igpp.in, website: www.igpp.in

Material published by the IGPP may be reproduced free of charge in any format or medium provided it is reproduced faithfully, not used in a misleading context and properly attributed to the IGPP and the author.