**Comparing and Contrasting the Two Drafts of the**

**National Water Framework Law**

This note attempts to compare the two drafts of the National Water Framework Law. Apart from comparison, it also makes a few general overall observations. The two drafts are the one prepared by the working group set up by the Planning Commission, headed by Prof. Ramaswamy Iyer (Iyer draft) and the one prepared by the committee set up by the MoWR headed by Dr. Y.K. Alagh (Alagh draft).

**Basic Rationale of the Law**

The basic rationale for the proposed Law, and what should be its fundamental objectives is captured by very first paragraph of the Order issued by the MoWR for the Alagh Committee, which also reflects the country’s new water policy adopted in Dec 2012 (Sec 2.1 and 2.2). It states:

Even while it is recognized that States have the right to frame suitable policies, laws and regulations on water, there is a felt need to evolve a broad over-arching national legal framework of general principles on water to lead the way for essential legislation on water governance in every State of the Union and devolution of necessary authority to the lower tiers of government to deal with the local water situation. Such a framework law must recognize water not only as a scarce resource but also as a sustainer of life and ecology. Therefore, water needs to be managed as a community resource held, by the state, under public trust doctrine to achieve food security, livelihood, and equitable and sustainable development for all.

Unfortunately, the Alagh draft fails to meet these basic objectives or expectations. On the other hand, the Iyer committee does capture these well.

**Water as a Sustainer of Life and Ecology**

The Alagh draft does not capture the nature of water as “sustainer of life and ecology.”

The Iyer draft begin the main part of the Law (after the definitions) with a section titled *Water: Heritage, Ecology, Equity*, and the subsections in this section capture the nature of the water as common heritage of humanity, recognise that all water bodies are ecosystems by themselves and also parts of the larger ecology, and draw out the primary implications of this for water management, namely – the need to protect and conserve them, the need for minimum interference in the flows, and the need to reverse the adverse impacts of the interventions made till now.

Many other key aspects are elaborated in the sections that follow.

This sets the direction and approach of the whole Law and defines how it looks at water resources use and management.

The Alagh draft, on the other hand, starts with the section on the *Basic Principles* *of Water Management* with the clause “1) The planning and management of water resources shall be integrated appropriately with the management of all resources and shall take into account in an integral manner the local, regional, State and national needs.” Thus, the focus is on human needs. The clauses following these do articulate the principles of ecology, equity, ecological flows etc. but the formulations are much weaker.

The fact that the Alagh draft starts its main part with the section on Water Management highlights that it bypasses the need to emphasise the nature of water as a sustainer of life and ecology, and that the main preoccupation of the Law is water management for human needs.

This is also reflected in the preamble of the Alagh draft which avoids mentioning the nature of water as a life and ecology sustainer. Indeed the preamble also does not mention the key issues like food security and livelihood, mentioned by the Order of MoWR.

**Other Fundamental Principles and Objectives**

In general, the Iyer draft has laid out in fair elaboration, in a nuanced manner and with great attention to details, all the fundamental principles and perspectives that need to guide the water sector. These include the nature of water as sustainer of life and ecology, water as an integral element of ecology, the need to maintain and sustain water not just as an asset but primarily as a living element of the ecology, placing human needs in perspective with needs of other living beings, emphasising equity, sustainability and the principles of precaution and minimum interference.

The Iyer draft has also dealt at length and in detail issues of institutional arrangements. It has also brought out how many aspects like floods, droughts, climate change etc. should be dealt with in light of the basic principles laid out by it.

Lastly, in talking about certain measures like Water Regulatory Authorities, Privatisation, Water Markets pushed in the recent years by multilateral financial institutions, the Iyer draft has raised questions regarding the utility of these, particularly in the format advocated currently and have suggested caution and also certain conditions if these are to be adopted.

On the other hand, the Alagh committee has not dealt with the basic principles emanating from the nature of water as a central element of ecology, or from the issues of equity, sustainability in any holistic or comprehensive manner. It has mentioned various aspects of these in parts, spread over various sections. Moreover, they don’t seem to mould the approach of planning and management of the sector. Alagh draft does not see any significant issues with privatisation (though it rightly emphasises that responsibility of the state as a public trustee remains in spite of privatisation) or adopting the Water Regulatory Authorities in the current format.

Due to all of this, it runs the risk of creating a law that essentially maintains and supports the status quo, and helps maintain the current principles and ways of managing the water sector.

**Right to Water**

The need to have a Right to Water is recognised by the Alagh draft, but its elaboration is very limited. The Right is recognised only for potable water, not even for water for other domestic uses. Though it does mention the purpose of this potable water to include health and hygiene, its minimum quantity mentioned (25 lits per person per day) falls short of meeting any needs except that of drinking and cooking. The issue of quality is also not mentioned as an integral part of the Right to Water

The Iyer draft has a much broader notion of Right to Water. First of all, it talks about the Right to Water for the “requirement of water for life”. Thus, we can assume that this includes water for all domestic needs.

The right includes right to the “sufficient” (quantity) and “safe” (quality) water. Further, this right is not restricted to human beings but is also extended to livestock and any domestic animal or bird, and protects the access of other wildlife to water from any human action.

The Iyer draft also provides that this right includes right of access to “water sources including rivers, streams, lakes, springs, and others” for tribal and other communities dependent on them.

However, one drawback common to both the drafts is that that neither considers water for livelihoods as a part of the basic right to water.

**Water Regulatory Authority**

The Alagh draft seems to be propagating the same model of Water Regulatory Authority (WRA) as pushed by the agencies like the World Bank as a part of water sector reforms. In this, the WRA is seen primarily as a tariff setting agency that protects the interest of (private) water suppliers.

While the Alagh draft also mentions that the purpose of the WRA includes “ensuring equitable access to water to all” (apart from setting the prices), the inclusion of the WRA in the section on Water Pricing clearly indicates how Alagh draft sees these Authorities. It may be mentioned that the only such authority with some years of experience in the country is in Maharashtra and this has failed abjectly.

The Iyer draft refers to the WRA as a part of the larger Institutional Arrangements, mentioning it as one component of a broader system, and suggests that its need be first examined, unlike the Alagh draft which unambiguously requires the setting up of such an WRA in each state. The Iyer draft also call for the “nature of the regulation that is envisaged” to be “carefully reviewed” (in the light of sub-sections (1) to (4) of that section) and suggests several cautions “if such an institution is found necessary”.

**Participation**

The Alagh draft is weak on the recommendations for participation of the people in the planning and management of water resources. For example, the entire section 7 on *Integrated River Basin Development & Management* that includes the need to make River Basin Master plans, does not mention any participation by the people. Similar thing is seen in the case of floods, or in the issue of reservoir operations. (Sec 9).

Section 10 on *Project Planning and Management* does mention participation, but its formulation is very weak and betrays a limited understanding of what participation should mean. Section 10(6) says:

(6) Local authorities, like Panchayats, Municipalities, Corporations, and Water Users Associations, wherever applicable, shall be empowered and involved in planning and management of the projects.

Similarly, Sec 15 on *Participatory Water Management* seems to mainly talk of Water Users Associations, an important, but only limited part of participation.

**River Basin Master Plan**

Among the important recommendations of the Alagh draft is the need to have, for all rivers, basins, sub-basins, a River Basin Status Report and subsequently a River Basin Master Plan. The latter is to include the environmental protection plan including cumulative impact assessment. (Section 7). An important part of this structure is that all water resource projects would have to conform to the Master Plan. (Section 10(2)).

Of course, since participation is not emphasised in the making of this Master Plan, there is a danger that it can end up being a technocratic-bureaucratic exercise. Moreover, since the fundamental principles of water as a sustainer of ecology and life have not been laid down so clearly, the Master Plans may not reflect these critical principles.

**Water Footprints**

Another important recommendation in the Alagh draft is that of preparing nationally standardised water footprints for all activities and products, and that demand for various uses shall be assessed based on these standardised footprints and these demand assessments will guide water allocation in the River Basin Master Plans. (Sec 3(14))

**Need to sharpen various provisions and principles**

One of the most important issues with both the drafts is that there is a need to sharpen various provisions and principles. By definition, the Framework Law is a “broad over-arching national legal framework of general principles on water” and hence it will essentially have principles, perspectives and approaches laid down. These are by nature broad. At the same time, if this is a law, it necessarily has to be justiciable in a court of law. (In fact, this has been presented as one of the reasons behind the need for such a *law*, as against a policy).That means that the principles must be so articulated as to enable proper (judicial) interpretation. This is necessary not only for a judicial interpretation in case of contestation or challenge, but also to ensure easy and proper implementation and to ensure consistent implementation by different states and different agencies.

This should be the next step or next task in taking the Framework Law forward.

**Next Steps / Way Forward**

The Ministry of Water Resources and the Planning Commission now need to initiate wide-spread consultations on the Framework Law. While the draft by the Alagh committee would be a useful input to these consultations, given its inherent weaknesses, a more appropriate process would be to make the Iyer working group draft as the basis of discussion, and the aim to arrive at better and more specific and clear-cut articulations of the principles and provisions so that they are justiciable.

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