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Sujith Koonan

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# **Conflicts around Domestic Water and Sanitation in India**

## **Cases, Issues and Prospects**

*Edited by*

**K. J. Joy, Suhas Paranjape, Sarita Bhagat**



Forum for Policy Dialogue on Water Conflicts in India

# Competing Uses, Users and Legal Responses: Plachimada and Rajsamand Lake

Sujith Koonan

## ABSTRACT

*Multiple uses of a single source of water often result in competition between uses and such competition may eventually lead to confrontation between users. The parties to this competition and confrontation may be different according to the predominant use of water in each area. For example, in Plachimada (Kerala), the conflict is between commercial use of water by the Coca Cola company, and domestic and agricultural use. In Rajsamand (Rajasthan), the conflict is primarily between agricultural use and urban drinking water use from the Rajsamand Lake. The confrontation between users/uses interacts with the law at various levels. Where confrontation takes the shape of organised movements, it may interact with criminal law quite often in the form of criminal cases against individuals in the movement. The interaction also happens when parties use legal mechanisms such as administrative bodies for remedies (e.g. the Pollution Control Board). In some cases, the confrontation leads to litigation in court, as is the case of Plachimada and the Rajsamand Lake. In both these cases, the parties to the conflict have utilised the legal mechanisms including the judiciary for solutions.*

*The role of the law is not limited to addressing the issue when it poses risks to law and order, or when it manifests into a legal dispute. The role of law also includes prevention of such conflicts by establishing norms and building institutions to ensure equitable allocation of water among different users. This case study examines water use conflicts in the context of their interaction with law at various levels. The legal dispute related to the exploitation of groundwater in Plachimada and the use of Rajsamand Lake are examined in detail to explain some of the common reasons for water conflicts and various levels of interaction between water conflicts and the law. The role and potential of the legal framework to settle water disputes peacefully, and the role of the law in preventing water conflicts, are also examined.*

## INTRODUCTION

Competition between uses and confrontation between users of water are not uncommon in India. Water conflicts in India show a dangerous upward trend, and some conflicts lead to physical violence and even death. Over 1,000 water-related violent conflicts have been reported since 2008 (Chauhan, 2012). While much has been said and written on inter-state water disputes, other dimensions

such as inter-sectoral and urban-rural water conflicts have received little attention from policy makers, practitioners and researchers.

Law plays critical roles vis-a-vis water conflicts. It provides a third party neutral platform through tribunals and courts for resolution of water disputes. It also provides a set of norms and principles to be followed by all stakeholders in using or allocating water so that conflicts can be prevented, as well as institutions at various levels to ensure equitable allocation of water among different users.

Legal responses to water conflicts so far have concerned inter-state water conflicts. The Inter-State River Water Disputes Act, 1956 provides the basic legal framework within which inter-state river water disputes are to be settled.<sup>1</sup> This law envisages the establishment of tribunals for the settlement of inter-state river water disputes. A few tribunals have been constituted since the adoption of the Act.<sup>2</sup> Beyond this engagement, legal responses to water conflicts, particularly inter-sectoral water conflicts, are minimal or nil.<sup>3</sup>

This study examines inter-sectoral water conflicts from a legal point of view. The legal dispute related to the use of Rajsamand Lake and the dispute regarding the exploitation of groundwater in Plachimada are examined to explain some common reasons for water conflicts and various levels of interaction between water conflicts and the law. The study also examines the potential of the laws to settle water disputes peacefully, as well as the role of law in preventing water conflicts.

## BACKGROUND OF THE PLACHIMADA AND RAJSAMAND WATER CONFLICTS

### PLACHIMADA DISPUTE

Today, the name Plachimada, a village in the State of Kerala, is synonymous with water conflict. The conflict around water in Plachimada emerged after the Hindustan Coca-Cola Beverages Private Limited (hereafter Coca Cola Company) started a plant in Plachimada in the year 2000 (Bijoy, 2006). The conflict began when the local people found that their drinking water sources were being depleted, and that the quality of water in their locality was deteriorating. They attributed these developments to the over-exploitation of groundwater and the improper disposal of wastes by the Coca Cola Company.

Public resistance by the local people against the Coca Cola Company began within one year of the setting up of the plant. In the beginning, the civil society movement demanded the closure of the Coca Cola Company. Later, it also began to demand compensation for the damages caused by the company to people's lives and the environment. In 2004, the first objective was achieved when the Kerala Pollution Control Board (KPCB) ordered the closure of the Coca Cola Company until it set up a proper effluent treatment plant as per the provisions of the Hazardous Waste (Management and Handling) Rules, 1989. It should be noted that the closure of the Coca Cola Company is temporary because the Company can re-open the plant after establishing the effluent treatment facility as required under the existing environmental laws.

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For a better account on inter-state water disputes in India, see D'Souza, Radha, 2006, *Inter-State Disputes over Krishna Waters: Law, Science, Imperialism*, New Delhi: Orient Longman; Iyer, Ramaswamy, 2002, 'Inter-State Water Disputes Act, 1956: Difficulties and Solutions', 37/28 *Economic and Political Weekly* 2907 and Nariman, F.S., 'Inter-State Water Disputes: A Nightmare!', in Iyer, Ramaswamy (ed.), 2009, *Water and the Laws in India*, New Delhi: Sage, at p. 54; Richards, A. and N. Singh, 2002, 'Inter-State Water Disputes in India: Institutions and Policies', 18/4 *International Journal of Water Resources Development* 611. On water conflicts in general, see Joy, K.J. et al. (eds.), 2007, *Water Conflicts in India: A Million Revolts in the Making*, New Delhi: Routledge.

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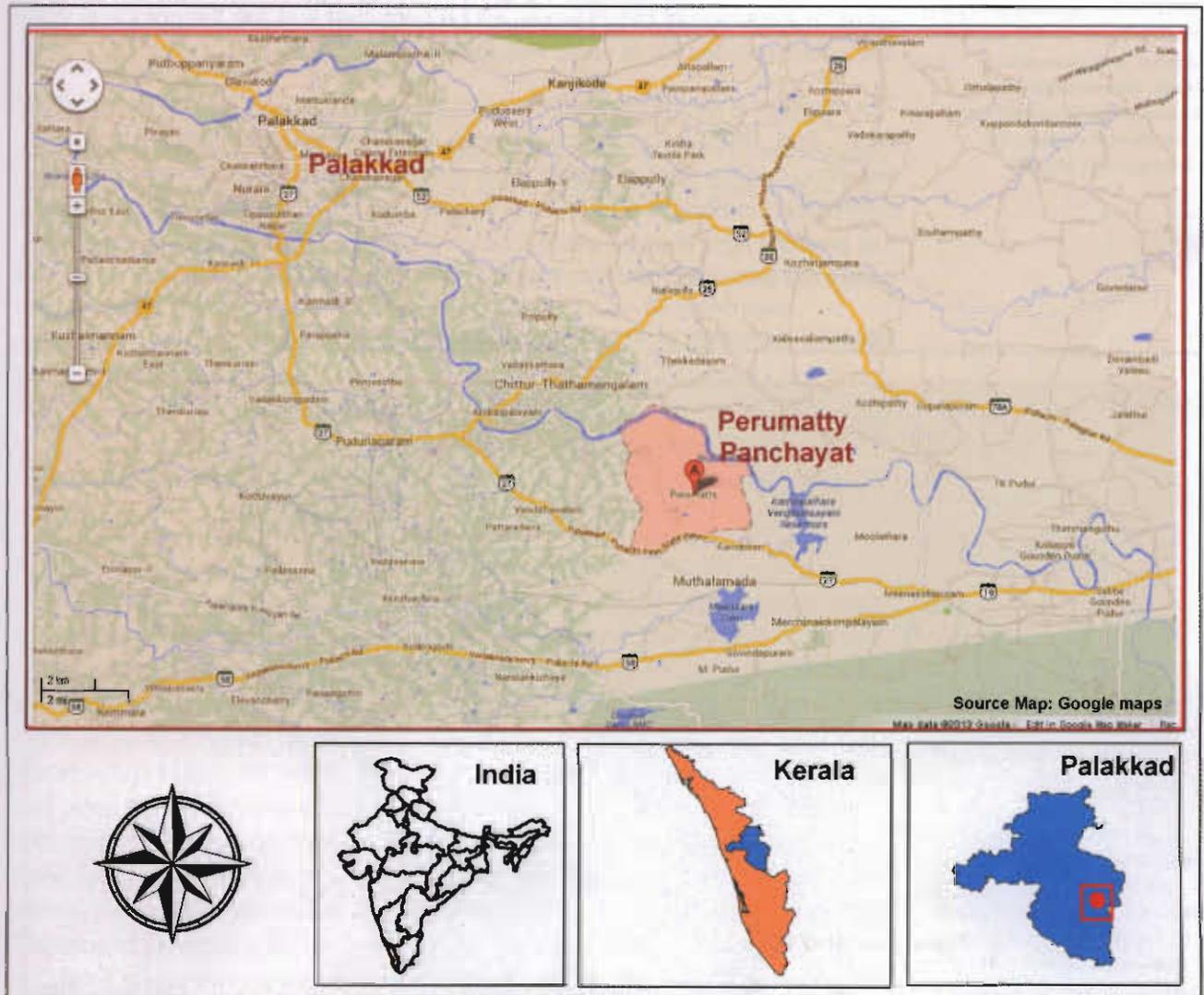
See, e.g. Cauvery Water Disputes Tribunal, Krishna River Water Dispute Tribunal and Narmada Water Disputes Tribunal. For the latter, see Final Order and Decision of the Tribunal, 12 December 1979. Available at [www.jelrc.org/content/c7901.pdf](http://www.jelrc.org/content/c7901.pdf) (Last accessed on 18 July 2013).

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It needs to be noted that some states have enacted laws to establish a state level water regulatory authority, and that inter-sectoral allocation is one of the major functions of this authority. However, these laws do not go beyond establishing a water regulatory authority at the state level. Proper institutional mechanisms at the local level to address water conflicts are missing in the existing legal framework. For an analysis of water regulatory authority laws in India, see Koonan, Sujith and Lovleen Bhullar, 2012, *Water Regulatory Authorities in India: The Way Forward*, New Delhi: Environmental Law Research Society.

A specific step has been taken by the Kerala Government to respond to the issue of compensation. On 24 February 2011, the Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill, 2011 (hereafter the Bill) was passed by the Kerala legislative assembly. The Bill provides for the establishment of a special tribunal to settle compensation claims by people in Plachimada against the Coca Cola Company. The Bill has been reserved for the assent of the President of India whose decision is still awaited.<sup>4</sup> The delay in bringing this law into force has invited severe criticism and protest from the activists and civil society movement associated with the Plachimada conflict.<sup>5</sup>

Figure 1: Location of the Plachimada, Kerala



<sup>4</sup> As per Article 200 of the Constitution of India, when a Bill has been passed by the state legislature, it shall be presented to the Governor for his assent. The Governor can either give his assent or withhold it or reserve the bill for the assent of the President of India. For a detailed analysis of the Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill, 2011, see Koonan, Sujith, 2011, 'Constitutionality of the Plachimada Tribunal Bill, 2011: An Assessment', *7/2 Law, Environment and Development Journal* 151.

<sup>5</sup> See, e.g., Staff Reporter, Dharna for Assent to Plachimada Bill, *THE HINDU*, 27 June 2012, <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/article3575222.ece>. Special Correspondent, Centre Doing Injustice to People of Plachimada, Says Environmentalist, *THE HINDU*, 30 September 2012 (Last accessed on 23 January 2013).

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*Perumatty Grama Panchayat v. State of Kerala*, 2004 (1) *Kerala Law Times* 31, Para. 12. Available at [www.jelrc.org/content/e0328.pdf](http://www.jelrc.org/content/e0328.pdf) (Last accessed on 18 July 2013).

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*Perumatty Grama Panchayat v. State of Kerala*, High Court of Kerala, 2005 (2) *Kerala Law Times* 554.

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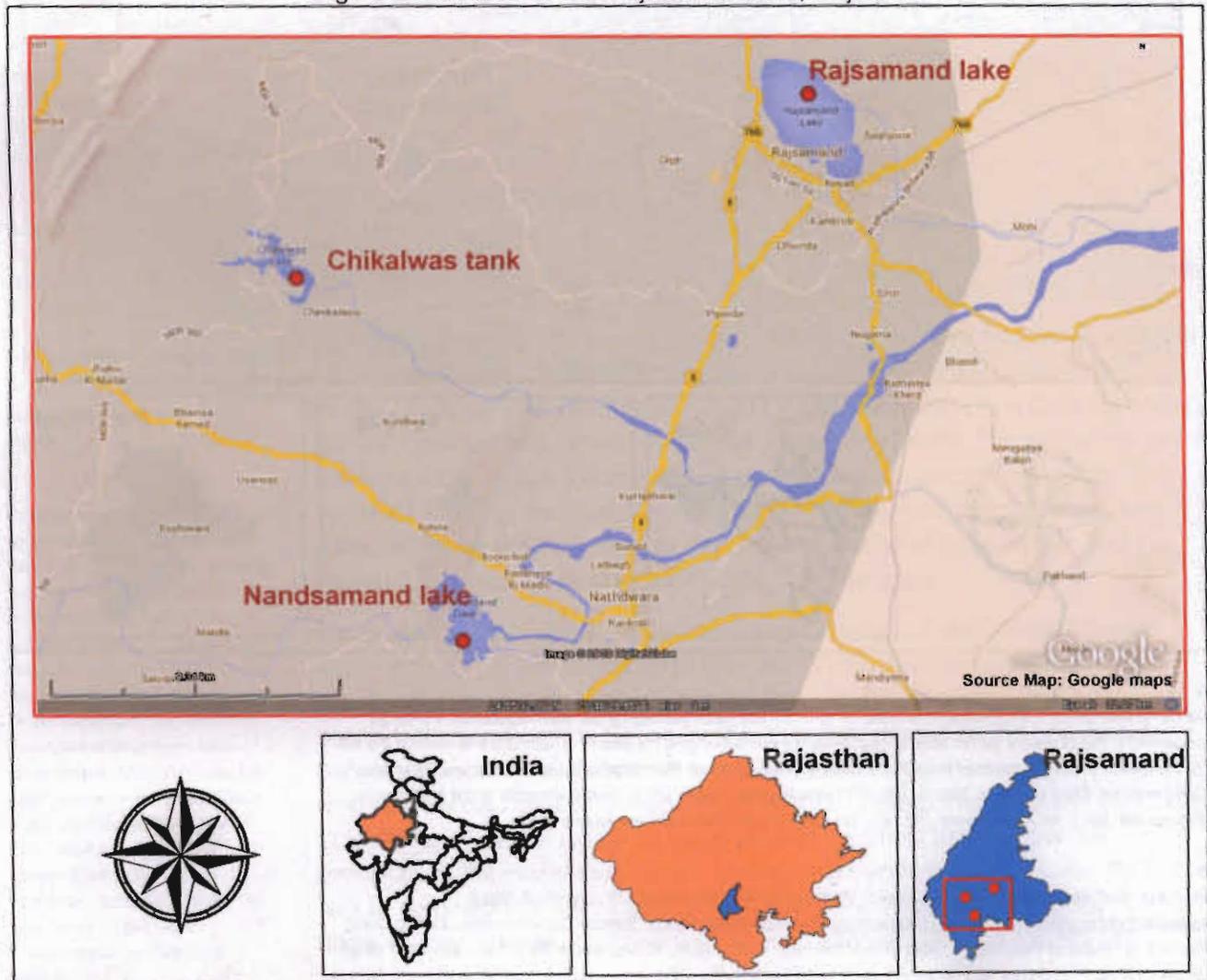
For details on the Plachimada dispute, see Koonan, Sujith, 2010, 'Groundwater: Legal Aspects of the Plachimada Dispute', in Cullet, P. et al. (eds.), *Water Governance in Motion: Towards Socially and Environmentally Sustainable Water Laws*, New Delhi: Cambridge University Press, at p. 159.

The legal dispute began when the Panchayat refused to renew the license of the Company and ordered its closure based on the fact that groundwater extraction by the Company resulted in drinking water scarcity in the area. The dispute eventually reached the High Court of Kerala. The major question before the High Court of Kerala was the power of the Village Panchayat to regulate the use of groundwater in its jurisdiction.

A Single Judge of the High Court held that the Panchayat has no authority to issue a closure order on the grounds of excessive extraction of groundwater. At the same time, the Single Bench upheld the power of the Panchayat to restrict or prohibit the use of groundwater within its jurisdiction. The decision of the Single Bench clarified the legal position and held that 'the Panchayat can at best, say, no more extraction of groundwater will be permitted and ask the company to find alternative sources for its water requirements'.<sup>6</sup>

The decision of the Single Judge was challenged before a Division Bench of the High Court. The Division Bench reversed the Single Judge's decision by asserting that the right to extract groundwater is a part of the private property right of the land owner. The Division Bench further held that any restriction on this property right shall be made through legislation.<sup>7</sup> The case is now pending before the Supreme Court of India.<sup>8</sup>

Figure 2: Location of the Rajsamand Lake, Rajasthan



## RAJSAMAND LAKE DISPUTE

Rajsamand Lake is one of the five popular lakes in the State of Rajasthan. It is the second biggest artificial lake in Asia. The lake is 4 miles long, 1.75 miles wide and approximately 60 feet deep. As per a writ petition filed by *Lok Adhikar Manch*, the lake was constructed in 1676 by Maharana Rajsingh on the Gomati river with the main objectives of conserving water and protecting wildlife. It was also meant to provide employment to the people residing in the region who were suffering from famine for almost five years. Thus, it has been argued in the petition that the lake was constructed 'to safeguard the interest of the local residents and to provide them adequate drinking water and to enhance the groundwater level.' It has also been argued that there was no outlet when the lake was constructed which reveals the original purpose (fulfilling drinking water and ecological needs).<sup>9</sup>

The catchment area of the lake largely depends on the Gomati river. Other sources of water are the Nandsamand Dam and Chikalwas Dam constructed in 1957 and 1997 respectively. These dams diverted water to the Rajsamand Lake, though this was not their primary purpose.

The water level in the lake has been very low for the past several years except for the year 2006 when there was sufficient rainfall which filled the lake reasonably well. The lake dried up completely in the year 2000 and continued in this state till 2006. The water crisis even led to a call for 'Rajsamand bandh' on 23 August 2004, which reportedly received wide support from the general public and various organisations.<sup>10</sup> A *Rajsamand Jheel Bharo Abhiyan* (fill the Rajsamand Lake Campaign) was also initiated by the *Lok Adhikar Manch*, a non-governmental organisation based in Rajsamand, during this period.

In 2006, due to good rainfall, the lake received water up to 19 feet which prompted the government to chalk out a new water distribution plan particularly for farmers. The dispute began when the District Water Distribution Committee, on 26 October 2006, decided to release water for irrigation up to five feet, which the residents felt would impinge on their drinking water needs. On 28-29 October 2006, a *bandh* was called in Rajsamand by the *Rajsamand Jheel Jal Samrakshan Manch* protesting against the Distribution Committee's decision. It has been argued that water below five feet cannot be used because of slurry and mud. The residents of Rajnagar town feared that evaporation losses alone were two metres per year, and that the water level would fall below the silt level, so that they would not receive water for their basic needs. The water crisis in the Rajsamand town area is such that they receive water once in 72 hours. The residents allege that they receive better water supply, i.e. once in 48 hours, even when the lake has water. This made the residents even more anxious, and they feared that more supply of water from the lake for irrigation purposes would exacerbate the water crisis.

Meanwhile, *Lok Adhikar Manch* filed a petition in the High Court of Rajasthan challenging the Distribution Committee's decision. The stated objective of the petition was 'to prevent and conserve the Rajsamand Lake and to make an effort to make available regular water in the lake for the purpose of which the Lake was constructed nearly 356 years back'.

On 10 November 2006, the High Court gave an interim order that water must be

<sup>9</sup> *N.A.A. Upbhokta Sanrakshan Sansthan v. State of Rajasthan*, High Court of Rajasthan, Civil Writ (PIL) Petition No. 6250 of 2006. (A copy of the petition is on file with the author). It should be noted that the farmers in the catchment of the irrigation canals believe that the lake was built for irrigation, and therefore farmers should be given a priority right over the waters in the lake. (Source: interview with farmers during a field trip conducted on 19-21 May 2013).

<sup>10</sup> *N.A.A. Upbhokta Sanrakshan Sansthan v. State of Rajasthan*, Para 11 (on file with the author).

released for irrigation till the water level in the lake is about three metres. Water was to be used only for drinking after that level. This led to huge protests by farmers, who entered the town and even forced the sluice gates open (Singh, 2006).

The petition makes the following suggestions to revive the lake:

- i) Release of water from Nandsamand Dam and Chikalwas Dam
- ii) Removal of obstructions in the Gomati river

The writ petition thus sought the following directions from the High Court:

- i) Regulation of inflow to the lake by transferring water from Chikalwas Dam and Nandsamand Dam
- ii) Maintenance of a minimum pool level in the lake
- iii) Regulation of use of water for agricultural or commercial use

It was argued that farmers in 42 villages made arrangements for cultivation because they believed the decision of the Water Distribution Committee. Further, they highlighted the fact that the drought during the past several years affected agriculture in the area seriously.

The government of Rajasthan presented its view in the following words:

*"...decision has been taken after considering the technical feasibility and economic viability as well as augment of the agriculture releasing the water for irrigation purposes after reserving sufficient water for drinking purpose...Thus, there is a priority of timely supply of water to save the crop and to serve the interest of the 12000 families depending upon agriculture."<sup>11</sup>*

The Government of Rajasthan further justified the decision of the Water Distribution Committee by arguing that:

*"...water for drinking purpose up to September 2008 has been reserved as 495 MCFT/5 Ft. and rest of the water is proposed to be given for irrigation purpose covering 10660 acres of land of command area. Thus, the committee has rightly decided the optimum and best use of available water keeping in view the priority to drinking water."<sup>12</sup>*

On 10 November 2006, the High Court issued an order to maintain the water level at 9 feet for the purpose of drinking water supply till the commencement of the next monsoon. It ordered that water be supplied for irrigation only if water is available above 9 feet. Additionally, the government was directed to take measures to revive the life of the lake by taking steps to divert a sufficient quantity of water from the Nandsamand Dam and Chikalwas Dam to facilitate drinking water and irrigation.

The Order dated 10 November 2006 was later modified to specify the minimum water level to be maintained as 7 feet. This decision was challenged before the Supreme Court by the Government of Rajasthan. On 28 September 2012, the matter was redirected to the High Court by the Supreme Court.<sup>13</sup> The dispute is now pending before the High Court.

11  
*Ibid.*

12  
*Ibid.*

13  
N.A.A. Upbhokta Sanrakshan  
Sansthan v. State of Rajasthan,  
Special Leave to Appeal (Civil) No.  
832/2012.

## GENESIS OF WATER CONFLICTS

An examination of the Plachimada and Rajsamand disputes reveals that the following factors contributed to the genesis of the water conflicts.

### FLAWED PRIORITISATION

Improper allocation of available water is a major reason for the Rajsamand Lake dispute. While the Rajsamand district was suffering from famine continuously for five years, the district administration was keen to supply water regularly from the Rajsamand Lake to M/s J.K. Industries, Kankroli. The water was allegedly supplied to M/s J.K. Industries even by boring the dried lake.<sup>14</sup>

This happened despite the priority of drinking water and irrigation over industrial use. The Rajasthan State Water Policy, 1999 states that drinking water and irrigation are to be the first two uses in water allocation priorities.<sup>15</sup> The new water policy adopted in 2010 also recognises the priority of drinking water and provides for the 'judicious and economically sound allocation of water resources to different sectors, with drinking water supply as a first priority.'<sup>16</sup> The National Water Policy, 2012 also recognises the priority of water for drinking, sanitation and food production.<sup>17</sup>

It is clear that industrial use comes after drinking water and irrigation in inter-sectoral water allocation. However, since the water policy is not binding, a binding order was issued on 4 September 2009 by the Water Resources Department of the Government of Rajasthan prohibiting the use of water in tanks, dams and *anicuts* for irrigation, due to the failure of the monsoon and consequent scarcity of water for drinking.<sup>18</sup> The Order prescribes that except for a few tanks that received sufficient inflows, 'water in all the other dams, tanks and *anicuts* is hereby reserved for drinking purposes'. If water is available for irrigation, the Order requires that the concerned Water Distribution Committee pass a resolution to that effect and obtain prior clearance from the State Government. While this can be considered as an appropriate response to the water crisis, the prioritisation of drinking water on an adhoc basis through an executive order is not an alternative for a proper prioritisation as a key principle of the law and policy framework concerning water.

The new agreement came into force on 21 March 2006 with the needs of M/s J.K. Industries needs to be assessed in this context.<sup>19</sup> The Agreement binds the government to supply a maximum of 41 MCFT water per annum (i.e., seven lakh gallon per day) to M/s J.K. Industries regularly for 20 years. The agreement also provides that J.K. Industries is allowed to lift water from the dead storage when the live storage capacity is not available. However, this right of J.K. Industries is subject to the condition that sufficient water should be reserved for meeting drinking water needs.

The Lok Adhikar Manch in their petition (Civil Writ Petition No. 6250/2006, High Court of Rajasthan) points out that the new agreement is 'absolutely identical' to the earlier agreement made on 19 July 1978. This reveals the fact that the emerging problems in the locality such as the deterioration of the lake and water scarcity as well as policies endorsing priority to domestic water needs and agriculture over industrial needs have been neglected while entering into the agreement. How the government could ignore the policy of prioritisation of

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*N.A.A. Upbhokta Sanrakshan Sansthan v. State of Rajasthan*, High Court of Rajasthan, Civil Writ (PIL) Petition No. 6250 of 2006. (A copy of the petition is on file with the author).

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See Rajasthan Water Policy, 1999. Available at [www.ielrc.org/content/e9903.pdf](http://www.ielrc.org/content/e9903.pdf) (Last accessed on 18 July 2013).

16

See Rajasthan State Water Policy, 2010. Available at [www.ielrc.org/content/e1007.pdf](http://www.ielrc.org/content/e1007.pdf) (Last accessed on 18 July 2013).

17

See National Water Policy, 2012. Available at [www.ielrc.org/content/e1207.pdf](http://www.ielrc.org/content/e1207.pdf) (Last accessed on 18 July 2013).

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A copy of the Order can be accessed at [www.ielrc.org/content/c0901.pdf](http://www.ielrc.org/content/c0901.pdf) (Last accessed on 18 July 2013).

19

Agreement between Government of Rajasthan and J.K. Industries, 21 March 2006. Available at [www.ielrc.org/content/c0614.pdf](http://www.ielrc.org/content/c0614.pdf) (Last accessed on 18 July 2013).

drinking and other domestic needs as reflected in water policies needs to be questioned. Further, such agreements need to be examined in the context of the fundamental right to water which demands priority for drinking water needs.<sup>20</sup>

The priority accorded to J.K. Industries is justified by the Government on economic and development grounds. First, it has been justified that the State Government receives revenue due to the sale of water as well as from the sale of tyres. Second, it was highlighted that around 4000 people depend on J.K. Industries for their livelihood. Further, the core committee constituted by the Government of Rajasthan was of the opinion that 'J.K. Tyre Industries at their own cost spray acilol compound in the Rajsamand Lake which reduce evaporation losses. J.K. Tyre Kankroli is also taking interest in development of Kankroli town. Therefore, it is not justified to stop the water given to J.K. Tyre'.<sup>21</sup>

Similarly, in the Plachimada dispute, the village panchayat argued for the power to regulate groundwater extraction in its jurisdiction to protect drinking water needs on the basis of the Kerala Panchayati Raj Act, 1994. However, the Coca Cola Company argued on the basis of the existing groundwater law which recognises the uncontrolled right of a landowner to extract groundwater from his land. This demonstrates the need for a mandatory prioritisation principle. Existing water rights should stand modified accordingly. In other words, the legal water laws should be modified in such a way that no other claims over water shall be entertained when the basic human right to water is in peril. Further, the government agencies concerning water resources shall be bound by such principles in the allocation of water for various uses.<sup>22</sup>

## BULK WATER TRANSFER: A PROBLEMATIC SOLUTION

The Rajsamand Lake dispute shows that there are times when the solutions designed by the government themselves trigger or exacerbate water conflicts. The idea of water transport from far away sources has exacerbated the nature of the conflict in case of the Rajsamand Lake dispute. Though, the conflict began between the residents in Rajsamand town and farmers in the Rajsamand Lake catchment, eventually the stakeholders of Nandsamand Dam and Chikalwas Dam also became involved in the Rajsamand Lake conflict.

It has been presented before the Court that the diversion of water from the Nandsamand Dam and Chikalwas Dam is possible only in the rainy season, because the water stored in these reservoirs is the main source of water for irrigation in the command area, and the Nandsamand dam is also the main source of drinking water to Nathdwara town. It has been warned that any attempt to divert water from these reservoirs to the Rajsamand Lake will affect existing usage, and 'may lead to public unrest'. Also, it has been presented before the Court that transit loss undermines the effectiveness of long distance water transfer to the lake. For instance, the application to the High Court of Rajasthan filed by two residents of Nathdwara *Tehsil* to implead them in the Petition filed by *Lok Adhikar Manch* pointed out that out of 84 MCFT water to be diverted to the Rajsamand Lake from the Chikalwas Dam, only 20 MCFT will reach the lake, and the rest will be lost in transit.<sup>23</sup>

Transportation of water from far away sources may lead to a series of further water conflicts. Such 'solutions' are likely to create more problems instead. This is true in the case of Rajsamand Lake. The idea of diverting water from the

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The right to water is a part of the right to life under Article 21 of the Constitution of India. See *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420, *Hamid Khan v. State of Madhya Pradesh*, AIR 1997 MP 191 and *Vishala Kochi Kudivella Samarkshana Samithi v. State of Kerala*, 2006 (1) Kerala Law Times 919.

21

A copy of the report of the Core Committee is on file with the author.

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It is to be noted that the existing groundwater laws adopted by various states give priority to drinking water in a restricted way by prohibiting sinking of wells near public drinking water sources (See, e.g., Section 10 of the Andhra Pradesh Water, Land and Trees Act, 2002). However, this cannot be considered as an alternative to a legal provision explicitly according priority to drinking water.

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A copy of the impleading petition dated 12 December 2006 is on file with the author.

Nandsamand and Chikalwas dams has been opposed by the water users in the command area of these reservoirs. This is clear from the impleading petition mentioned above which points out that 'whole averments did not disclose anything about the interests of the district as a whole. The only interest established in the PIL is regarding the supply of drinking water to the metropolis of Rajsamand.'<sup>24</sup>

## ABSENCE OF CONFLICT RESOLUTION AVENUES AT THE LOCAL LEVEL

One important feature to be noted from the dispute is the role played by the local governing bodies to resolve the conflict at the local level. In the case of Plachimada, the Plachimada village panchayat took cognizance of the conflict and refused to renew the license of the Coca Cola Company.

The issue was not simple in the case of Rajsamand Lake. At least from 2004 onwards, a number of representations were submitted to the local authorities, particularly the District Collector, who is also the chairperson of the District Water Distribution Committee. The need for proper actions to bring sufficient water to the lake was brought to the notice of the District Collector. Later on, representations were also submitted to the District Collector demanding measures to maintain the minimum water level in the lake and also not release water to J.K. Industries in times of scarcity. The attempt by the petitioner organisation to persuade the authority to review its 26 October 2006 decision failed. Having approached almost all administrative agencies, the petitioner organisation approached the High Court for a remedy.

The avenues for dispute resolution at the local level are mainly political in nature without any established norms and principles to be followed for the settlement of disputes. In such cases, political pressure and lobbying may become determining factors. For instance, huge public protests in Plachimada appear to have pressurised the Village Panchayat to prohibit the Coca Cola Company from extracting groundwater from their land. A major weakness in this approach was the absence of proper scientific proof to justify the action of the panchayat.

While the settlement of disputes at the local level is not problematic *per se*, the political methods adopted are contested most of the times and the 'losing party' tends to view the decision as arbitrary (in some cases it may be arbitrary). This essentially takes the matter to court, which is what happened in the case of both the Plachimada dispute and the Rajsamand Lake dispute. Disputes are unlikely to be completely resolved when decisions are taken in response to political pressures. This also demonstrates the problem of the absence of a legal and institutional framework based on principles so that decisions are not made arbitrarily or only on the basis of practical or political exigencies.

## IMPLICATIONS OF MARBLE MINING

At the outset, the Rajsamand Lake dispute is about the inter-sectoral allocation of available water in the lake. An important issue which has not received adequate attention in this dispute is the conservation of the lake. Marble mining activities which have contributed to the deterioration of the lake have not been investigated properly.

<sup>24</sup> A copy of the petition dated 11 December 2006 on file with author

Rajsamand is regarded as the 'marble capital' of the State of Rajasthan. Marble mining has created a lot of environmental problems in the area. In the context of the lake, it has been alleged that the increasing marble mining activities in the catchment area obstruct inflow of water to the lake. An estimate made by a committee appointed as per the order of the High Court identified 421 mines in the catchment area of the Gomati River obstructing the water flow. Thus, the High Court observed that:

*"... heavy production of marble wastes arising out of marble cutting and processing, which is commonly known as slurry is being drained in the Gomati River and as a natural consequence thereof not only the depth of the river is being reduced but the water flow is being stultified and as such it has greatly affected the inflow of water in the Lake."*<sup>25</sup>

Further, a Committee constituted by the Government of Rajasthan reported that mining activities are a significant source of revenue for the state and contribute to the welfare of the people, most importantly by providing employment to a large number of individuals. This explains why the implications of marble mining on the environment in general and on Rajsamand Lake in particular have not been investigated.

## CONFLICTING PARTIES AND LEGAL STRATEGIES

There are different ways in which conflicting parties engage with the law or make better use of the law. Some of these strategies used by conflicting parties in case of the disputes examined in this study are highlighted here.

## UTILISING LEGAL METHODS AND TOOLS

The proper use of legal methods is advantageous in legal disputes. For instance, the petitioner organisation in the Rajsamand lake case exhausted almost all available venues and methods before approaching the High Court. Therefore, the case was considered genuine and admitted by the High Court. A number of complaints and memorandums were submitted to the district authorities and various relevant government departments. In fact, the movement could show that they managed to get assurances from the government more than once, all of which were not fulfilled, which left the petitioner organisation with no option but to approach the High Court. This is an important step for other movements to follow when they plan to approach the court.

It can be seen that a scientific approach is very critical in making a legal case. For instance, the petitioner organisation in the Rajsamand lake case has used a lot of scientific data collected through RTI applications from government departments such as the Irrigation Department and Water Resource Department to support their case. They have also adopted a novel technique by using a retired executive engineer of the Public Health Engineering Department (PHED) to submit a report in the High Court endorsing the need for maintaining a minimum water level in the lake at 9 feet to preserve the life of the lake as well as satisfy the basic needs of the residents of Rajsamand town.

In fact, the report submitted by the retired executive engineer of the PHED influenced the Court significantly. This is evident from the reasoning adopted by the High Court in fixing 9 feet as the minimum level of water to be maintained in the lake till monsoon. The order of the High Court dated 10 November 2006 replicated the language and was in line with the reasoning of the submission by the retired executive engineer of the PHED. For instance, the submission stated that the withdrawal of water below Sill level from Rajsamand Lake is detrimental to the filter system and public health. Thus, the submission 'strongly recommended not to fetch water from below sill level' and further recommended to 'keep the gauge of Rajsamand Lake 9 feet till the commencement of next monsoon.'<sup>26</sup> The High Court accepted this submission in its entirety.

The public movement in the Plachimada dispute also used a number of scientific reports to support their case. The Central Pollution Control Board and the KPCB conducted studies and reported that the disposal of waste by the Coca Cola Company was beyond suggested norms.<sup>27</sup> These findings were later supported by the Supreme Court Monitoring Committee. In 2004, these efforts culminated into a closure order against the Company by the KPCB. It could be seen that while the action taken by the village panchayat in an apparently political way was easily challenged by the Coca Cola Company, the action taken by the KPCB under an unambiguous legal authority with solid support from a scientific study was not challenged. This shows the general acceptability of such legal methods.

## PREVIOUS ORDERS OF THE COURT

The identification and use of similar cases is a strong strategy that can affect the outcome of a case. This requires extensive research by the parties, and it is their duty to bring it to the notice of the Court. This was the strategy successfully used in the Rajsamand lake dispute.

The petitioner organisation used a previous decision of the Rajasthan High Court in *Abdul Rehman v. State of Rajasthan*.<sup>28</sup> A Division Bench of the High Court of Rajasthan had directed the dismantling of *anicuts* of more than two meters height. The Court, in this case, also directed that encroachments and illegal constructions in the catchment areas of the Rajsamand Lake be removed. The State Government was also directed to come out with a plan to remove encroachments and for development of the area.

The petitioner organisation used the *Abdul Rehman* order to support its case and argued that had the State Government complied with the order effectively, the Rajsamand Lake would not have dried up. It has been argued in the petition that despite the *Abdul Rehman* order, *anicuts* of more than two meters continue in the Gomati river and are a major reason for obstructing the flow of water to the Rajsamand Lake.

The petitioner's reliance upon the *Abdul Rehman* case was helpful for their case, as the High Court recently relied upon this case (*Abdul Rehman*) heavily in a *Suo Motu* case<sup>29</sup> regarding the pathetic stage of the Ramgarh Dam in Jaipur district. The Court, after perusal of a report submitted by the government, found illegal allotment of land and encroachments on revenue land as well as in the forest areas to be the major reasons for the condition of the dam. The excessive

<sup>26</sup> Submission dated 22 October 2006 made by Chandra Shekhar Sanadhya, Retired Executive Engineer, PHED (a copy is on file with the author).

<sup>27</sup> See Central Pollution Control Board, Report on Heavy Metals and Pesticides in Beverages Industries (Delhi: Central Pollution Control Board, November 2003) and The KPCB's direction to the Hindustan Coca-Cola Beverages Private Limited, vide order No. PCB/HOM&R/485/R4 dated 23 August 2004 (copies of both these documents are on file with the author).

<sup>28</sup> D.B. Civil Writ Petition No. 1536 of 2003, Decided on 2 August 2004, Reported in 2004 (4) WLC (Raj.) 435

<sup>29</sup> See *Suo Motu v. State of Rajasthan*, S.B. Civil Writ Petition No. 11153/2011, Decided on 29 May 2012, MANU/RH10357/2012.

construction of *anicuts* was also identified as a reason for obstructing water flow to the Ramgarh Dam. Thus, the Court directed that 'anicuts should not be constructed without complete survey of rainfall to ensure that public money on construction of anicuts may not go waste for want of water to anicuts.' It is to be noted that the direction in this case is not just applicable to the Ramgarh Dam, but was made applicable to all reservoirs in the state. The Court held that 'The facts narrated above more or less pertain to Ramgarh dam but story of other reservoirs in the State of Rajasthan is not different thus it was made clear that cognizance of issue taken by the Court is not restricted to Ramgarh dam only but will apply to entire State of Rajasthan.'<sup>30</sup>

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*Ibid*, Para. 17. The Court issued detailed directions. Some of the important directions are: The State Government should plan for a drive to remove encroachments in catchment areas of water bodies in the State of Rajasthan; Anicuts may not be constructed with a height of more than 2 meters other than in exceptional cases but in those cases also it should be with the permission of the Water Resources Department; Construction of anicuts should not be permitted unless a proper survey is made to assess rainfall in the area indicating sufficiency of water for the anicuts; The State Government had agreed to constitute district level committees to monitor compliance of the directions issued in the judgment with a centralised body at the State level for taking policy decision on the issue or for any action for implementation of the directions given; The State Government shall issue directions to all the local bodies namely; Municipal Corporations, Municipal Councils, Municipalities, Panchayat Samities, Gram Panchayats etc. not to allow development of residential colonies in the catchment area of any water reservoirs in the State.

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AIR 1991 SC 420

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2006 (1) KLT 919

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*N.A.A. Upphokta Sanrakshan Sansthan v. State of Rajasthan*, High Court of Rajasthan at Jodhpur, Civil Writ (PIL) Petition No. 6250 of 2006, Order dated 10 November 2006. Available at <http://eirc.org/content/g1003.pdf> (Last accessed on 18 July 2013).

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*ibid*.

## TOWARDS PREVENTION AND BETTER RESOLUTION OF WATER CONFLICTS

### PRIORITISING HUMAN RIGHTS ASPECTS

The Indian legal system recognises the human right to water. Though there are no statutes or constitutional provisions enumerating and guaranteeing the right to water to everyone, there are a number of cases wherein the higher judiciary reads the human right to water as a part of the right to life under Article 21 of the Constitution of India. For instance, the Supreme Court in *Subhash Kumar v. State of Bihar* held that 'the right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.'<sup>31</sup> See *Suo Motu v. State of Rajasthan*, S.B. Civil Writ Petition No. 11153/2011, Decided on 29 May 2012, MANU/RH/0357/2012.

This has been elaborated by the Kerala High Court in *Vishala Kochi Kudivella Samarkshana Samithi v. State of Kerala* wherein the Court held that:

*"We have no hesitation to hold that failure of the State to provide safe drinking water to the citizens in adequate quantities would amount to a violation of the fundamental right to life enshrined in Article 21 of the Constitution of India and would be a violation of human rights. Therefore, every Government, which has it priorities right, should give foremost importance to providing safe drinking water even at the cost of other development programmes. Nothing shall stand in its way whether it is lack of funds or other infrastructure."*<sup>32</sup>

A similar framing has been used by the High Court of Rajasthan in the Rajsamand lake case. The Court recognised the obligation of the state 'to provide adequate drinking water facility for the entire population both in urban and rural areas. The need for drinking water has always a first charge on any available water.'<sup>33</sup> The High Court further expressed its concern on water quality in the following words:

*"We have repeatedly expressed our displeasure on utilizing the dead storage water for the purpose of drinking. The withdrawal of water below sill level for drinking of (sic) water supply is detrimental to public health as well as filter system. The water storage below sill level is known to be muddy, turbid and contaminated."*<sup>34</sup>

Prioritisation of basic human needs such as drinking and domestic purposes is an inherent aspect of the fundamental right to water. The concept of human right to water puts the primary responsibility upon the government to implement the

fundamental right to water.<sup>35</sup> This essentially includes a duty to ensure that basic human needs get priority in the allocation of water. This does not fall within the discretion of the implementation agencies. Instead, it is a mandatory obligation of all implementing agencies emanating from the fundamental right to water.<sup>36</sup>

## DISPUTE RESOLUTION AT THE LOCAL LEVEL

An institutional framework at the local level may provide a better forum for settlement of water conflicts. At the minimum, this may provide a platform to prevent aggravation of conflicts. The effectiveness of such a local level dispute resolution mechanism essentially depends upon the existence of a legal framework prescribing key principles and norms such as prioritisation and the human right to water. This will help to bring more consistency and build trust among various competing users. It will also help to avoid subjective considerations and arbitrariness.

A model in this regard could be seen in the new Model Groundwater Bill, 2011 drafted under the auspices of the Planning Commission of India. The Model Groundwater Bill envisages dispute resolution at the local level and provides for Groundwater Grievance Redressal Officers with the power of a civil court at the Block/Municipal level assisted by a *Nyay Mitra*, a legal professional. The Model Bill further allows a party or parties, aggrieved by a decision of the Groundwater Redressal Officer, to appeal before the Gram Nyayalaya constituted under the Gram Nyayalaya Act, 2008<sup>37</sup> in rural areas and before the sub-court in urban areas.<sup>38</sup>

At a general level, the idea of dispute resolution at the local level has received legislative attention through the Gram Nyayalaya Act, 2008. The State Government has the power to establish a Gram Nyayalaya for every panchayat or for a group of contiguous panchayat at the intermediate level. The jurisdiction of the Gram Nyayalaya, both criminal and civil jurisdiction, is limited to offences and laws mentioned in the schedule of the Act which include 'water channels', 'right to draw water from a well or tube well' and 'regulation and timing of taking water from irrigation channel'.<sup>39</sup> In addition to these specified water related issues, the State Government is empowered to notify other disputes as it may deem appropriate.

The Nyaya Panchayats Bill, 2009 drafted by the Ministry of Panchayati Raj is another model where this idea has been reflected.<sup>40</sup> The Nyaya Panchayat is envisaged as a forum for every Village Panchayat area or a group of Village Panchayat areas depending on the population and area for resolution of disputes with peoples' participation directed to providing a system of fair and speedy resolution of disputes arising in rural area. This kind of mechanism can be considered for the resolution of water conflicts.

## GOING BEYOND WATER LAWS: ROLE OF OTHER REGULATORY FRAMEWORKS

A number of administrative authorities and statutory bodies play critical roles in the prevention of water conflicts. This is because sometimes the root cause of water conflicts may be in the domain of another government agency or the

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*Hamid Khan v. State of Madhya Pradesh*, AIR 1997 MP 191.

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For key international and national documents and case laws on the fundamental right to water, see Cullet, Philippe and Sujith Koonan (eds.), 2011, *Water Law in India: An Introduction to Legal Instruments*, New Delhi: Oxford University Press.

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Gram Nyayalayas Act, 2008, Available at <http://doj.gov.in/sites/default/files/gramnyayalayas.pdf> (Last accessed on 18 July 2013).

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Draft Model Bill for the Conservation, Protection and Regulation of Groundwater, 2011, Available at [http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wr/wg\\_model\\_bill.pdf](http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wr/wg_model_bill.pdf) (Last accessed on 18 July 2013).

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Gram Nyayalaya Act, 2008, Second Schedule.

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The Nyaya Panchayats Bill, 2009, Available at <http://www.prsindia.org/uploads/media/draft/Nyaya%20Panchayats%20Bill,%202009.pdf> (Last accessed on 18 July 2013).

problem could be better addressed by other agencies. Strategically, the intervention by such agencies can change the nature of certain conflicts and even make a significant difference in the way the conflicting parties look at the conflict. For instance, the intervention by the KPCB appears to have settled the matter easily, albeit temporarily, in the Plachimada dispute. It is unlikely that the conflicting parties would indulge in political protests against a decision of the Pollution Control Board, which is based on independent scientific investigation and sound legal reasoning. Such decisions can be challenged only on the basis of equally sound scientific and legal reasons and before the appropriate forum.

The timely intervention by administrative/statutory authorities takes the matter or conflict to a different level where the parties follow a systematic procedure and methods as opposed to confrontational measures which can even turn violent. For instance, in Rajasthan, a conflict erupted in the Tonk district where farmers demanded that water from the Bisalpur Dam be reserved for them and not be diverted to neighbouring cities. In the Karauli district too, farmers protested against water supply from the Panchana Dam to the Keoladeo National Park in Bharatpur district. The police action on the protesters in these cases claimed people's lives (Rajalakshmi, 2005; Shiva, 2005).

In the specific context of the Rajsamand Lake dispute, the regulatory framework on marble mining can contribute significantly towards prevention of water conflicts in Rajsamand. The Marble Policy, 2002 made under the Rajasthan Minor Mineral Concession Rules, 1986, provides that regulation of mining in the critical zones is essential. The existing mining regulation requires a prospective license with certain conditions. The power to grant a prospecting license is broad enough giving the license issuing authority (Department of Mines and Geology) the power to include certain conditions in the license. The Marble Mining Regulation provides a mandatory list of conditions to be placed in the prospecting license. Environmental concerns are reflected in this regulation in a limited way. For instance, the licensee is required to take 'immediate measures for planting in the same area or any other area selected by the State Government or the Director not less than twice the number of trees felled as a result of any prospecting operations'.<sup>41</sup> The licensee is further required to obtain previous written permission from the District Collector to carry out prospecting operations at or to any points within a distance of 50 metres from any reservoir or canal. Environmental concerns or water related concerns can be addressed at this level by including instructions, restrictions and conditions in the permission.<sup>42</sup> Thus, a better implementation of this regulatory framework can enhance the health of the lake and contribute towards prevention of water conflicts.

## CONCLUSION

Legal responses to water conflicts have been very limited in India. Except for inter-state river water disputes, there is no legal and institutional framework to prevent water conflicts from arising, or to settle them peacefully. The Constitution gives the power to enact laws on water to the State Government except on issues relating to inter-state rivers. The issue of inter-sectoral water conflicts has not been addressed properly by state governments so far.

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Notification by the Mines (Gr. II)  
Department, Government of  
Rajasthan, Jaipur, 1 March 2002.

42  
*Ibid.*

A legal and institutional framework built on legal principles and fundamental norms of water law such as prioritisation principles and the human right to water has the potential to avoid conflicts to a great extent. In the absence of such legal principles, claims of the parties to the conflicts are governed by politically motivated and sometimes unrealistic demands. This can only lead to a scenario of unending water conflicts. This is very clear from both the cases examined in this study where the absence of a binding prioritisation principle was the major reason for the escalation of the claims of both parties, who seemed to believe that they could assert such claims.

The case studies examined here reveal that the success or failure of the parties to a conflict is not completely dependent on the strength or genuine nature of the claim. Instead, the extent to which legal methods and strategies have been used by the parties plays critical roles. This means that the mere existence of a genuine claim is not enough to assert a claim before a legal forum. Such claims should be supported by adequate documents admissible before the court. For instance, the strategy used by the *Lok Adhikar Manch* of producing a report prepared by an engineer retired from the PHED to support their argument helped their case significantly. In fact, the High Court followed the observation of the engineer.

The disputes examined in this study show that the use of law and legal methods could enhance the effectiveness of public movements significantly, in addition to political methods such as peaceful public protests. The case studies examined here point to some of the benefits of using laws and legal strategies so that *confrontational methods and their* undesired consequences can be avoided. For example, in the case of Plachimada, the public movement utilised the institutions such as the local body, pollution control board and the court. Similarly, the *Lok Adhikar Manch* and the farmers' organisations, in the case of Rajsamand Lake, also resorted to legal methods.

## REFERENCES

- Bijoy, C.R., 2006, Kerala's Plachimada Struggle: A Narrative on Water and Governance Right, 41/41 *Economic and Political Weekly* 4333.
- Chauhan, C., 2012, Water: New Weapon of Mass Conflict, HINDUSTAN TIMES, 27 March 2012. Available at <http://www.hindustantimes.com/India-news/NewDelhi/Water-New-weapon-of-mass-conflict/Article1-831287.aspx> (Last accessed on 18 July 2013)
- Cullet, P. and S. Koonan (ed.), 2011, *Water Law in India: An Introduction to Legal Instruments*, New Delhi: Oxford University Press.
- D'Souza, R., 2006, *Inter-State Disputes over Krishna Waters: Law, Science, Imperialism*, New Delhi: Orient Longman.
- Iyer, R., 2002, 'Inter-State Water Disputes Act, 1956: Difficulties and Solutions', 37/28 *Economic and Political Weekly* 2907.
- Joy, K.J. et al. (eds.), 2007, *Water Conflicts in India: A Million Revolts in the Making*, New Delhi: Routledge.
- Koonan, S. and L. Bhullar, 2012, *Water Regulatory Authorities in India: The Way Forward*, New Delhi: Environmental Law Research Society.
- Koonan, S., 2010, Groundwater: Legal Aspects of the Plachimada Dispute, in Cullet, P., et al. (eds.), *Water Governance in Motion: Towards Socially and Environmentally Sustain-*

*able Water Laws*, New Delhi: Cambridge University Press, at p. 159.

Koonan, S., 2011, Constitutionality of the Plachimada Tribunal Bill, 2011: An Assessment, *7/2 Law, Environment and Development Journal* 151.

Nariman, F.S., 2009, Inter-State Water Disputes: A Nightmare!' in Iyer, Ramaswamy (ed.), *Water and the Laws in India*, New Delhi: Sage, at p. 54.

Rajalakshmi, T.K., 2005, Dying for Water, FRONTLINE, 2-15 July 2005, Available at [www.fionnet.com/fl2214/stories/20050715002204600.htm](http://www.fionnet.com/fl2214/stories/20050715002204600.htm) (Last accessed on 18 July 2013).

Richards, A. and N. Singh, 2002, Inter-State Water Disputes in India: Institutions and Policies, 18/4 *International Journal of Water Resources Development* 611.

Shiva, V., 2005, Privatization of Water in India Ignites Water Wars, 14 July 2005. Available at [www.organicconsumers.org/Politics/water071805.cfm](http://www.organicconsumers.org/Politics/water071805.cfm) (Last accessed on 18 July 2013)

Special Correspondent, 2012, Centre Doing Injustice to People of Plachimada, Says Environmentalist, THE HINDU, 30 September 2012.

Staff Reporter, 2012, Dharna for Assent to Plachimada Bill, THE HINDU, 27 June 2012. Available at <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/article3575222.ece> (Last accessed on 18 July 2013)