

so that mechanisms can be devised to arrest deterioration of the resource. In this paper the nature of accountability in the working of various mechanisms having direct bearing on the legal control of the resource will be examined.

II. ACCOUNTABILITY: CONCEPT AND FUNCTIONS.

Accountability, responsibility and authenticity are essential features that should govern the activities of a democratic state. However, accountability as a concept has not been defined in law but when one talks of accountability a situation can be envisaged wherein there is a duty to perform an act and coupled with it is liability for non performance. Accountability is never mentioned in black letter law though its presence can be deduced from the way in which duties are cast and liabilities prescribed in the Act. There are many laws existing today which have grown on the ethical and moral edifice. The whole realm of tort laws, contract laws and administrative laws are living examples of this. It is nowhere written in any statute that promises are to be kept or that there is a duty to take care. Similarly the standard of the reasonable man in the law of negligence and natural justice principles in administrative law have also developed because the standards of justice mandated so. Accountability is also an ethical notion responding to justice. It is difficult to quantify the amount of accountability expected in every action because

It varies from situation to situation. Therefore what we term as accountable is what is reasonable and just and what is expected to be done in the ordinary course of things. In the area of water resources management, in order to avoid the crisis we are facing today, one can say that in any action relating to water management, accountability should be to such an extent so as to ensure the sustainable and equitable development and distribution of the resource.

When we talk of accountability of the state machinery, the presence or absence of it in our Constitution is of much consequence. When we examine the Constitution which is the backbone of our state, we find that there is not only a fundamental duty cast upon the state to 'protect and improve the environment' but a similar duty is placed on the citizens also.³ This makes it clear that in the protection of environment the state as well as the people have specific roles to perform. Similarly when we talk about water resources management in India, it implies management by both the managers and the beneficiaries. No development programme can thus succeed without active peoples involvement and participation.⁴ However the duty of the state to protect and improve the environment is a directive principle and this is expressly not made justiciable though it shall be the duty of the state to legislatively implement these directives. Jurisprudentially speaking, such a provision imposes only an imperfect,

non justiciable positive duty on the state. There is not even a justiciable fundamental right to good environment for the citizen though the courts have read such a right in Art 21 dealing with the fundamental right to ^{life and} personal liberty. There is also no mention of how the fundamental right to the citizen is to be enforced.

In India, in many cases, the Constitution has been interpreted by the judiciary in such a way so as to protect the rights of the citizens. In a recent case L.K.Koolwal v. State of Rajasthan,⁵ it has been laid down that a right cannot exist without a duty and it is the duty of the citizen to see that the rights which he has acquired under the Constitution as a citizen are fulfilled. This was a case regarding the duty of the municipality to perform its fundamental duties and its liability in not performing the task of maintaining good sanitation which was a fundamental duty. The court further laid down that Art 51A⁶ of the Constitution is ordinarily interpreted as being a duty of the citizen but in fact it is the right of the citizens to move the court for the enforcement of the duty cast on the state, its instrumentalities, agencies, departments, local bodies and statutory bodies created under the law of the state. This case is discussed here because of the serious implications it raises. Article 51A(g) which is actually dealing with the duty of every citizen of India to protect and improve the

environment has been interpreted as giving a right to such citizens to see to it that environment is protected. There have been many cases under Article 48A which casts a similar duty on the states and also there have been cases under various other statutes wherein the citizen could, especially through a writ of mandamus take legal action against similar bodies for non implementation of statutory duty. In the memorable Ratlam decision⁷, public nuisance arising from pollution was stated to be a challenge to social justice

and the supreme court felt that there is enough right vested on any affected party to compel the public functionaries, who have jurisdiction in this respect, to act.

However, as already observed, accountability should not only mean accountability of the beneficiaries but the beneficiaries to the resource also. The latter has been taken care of through various statutes by which the use and misuse of water and water based resources has been regulated by the state. The adequacy of the method of regulation will be examined in this paper while dealing with specific areas of water use and management.

The environmental aspects of planning include several key elements: resources monitoring, quality management, regulatory requirements of permitting and impact assessment.⁸

In none of these strategies is law and its processes understood as resources for planned development.⁹ None of the plans reflect a study of the legal issues involved in all these strategies for e.g. the nature of legal rights of the people to the particular resource which is the subject of planning, the control exercised by law and the potential of law as an instrument for change.

The strategies laid down by planning would be of no consequence unless it is implemented and implemented on time. To take just one example, in the fifth, sixth and seventh five year plans, in the review of the previous years performances of irrigation projects, we find that almost the same findings are reiterated like a refrain that is: "Against a target of ___ million ha of additional potential envisaged in the previous plan, there is a slippage of ___ percent. The shortfall is mainly due to inadequate ~~xx~~ funding owing to overall constraint of resources, increase in cost of some projects resulting in delay in fulfilment of benefits, problems of land acquisition and forest clearance and the spreading of available resources on a number of projects". The main objective of almost all the plans regarding irrigation is the completion of the previous years projects. Accountability in planning cannot be ensured if the time dimension is not given serious thought. Development, if this can be termed so, delayed is definitely development denied.

The method by which priorities set up in the plan can be challenged by the addressee through the usual legal process is very cumbersome. In case of wrong policy decisions which affect the individual like damage done by construction for irrigation, hydro-electricity and so on, it is not easy for the common man to extract substantial compensation or preventive reliefs from the state as from any other private individual. A better remedy would be to get policy decisions reversed by collective movements.¹⁰

Even when sound policy decisions are taken and planning geared to achieve these results, the purpose would be defeated if the laws made to control the use and misuse of the resource are ineffective. The making of the laws should be a wholistic exercise involving specialists of every connected discipline, the beneficiaries or groups representing them and law persons which include not just the draftsmen but members of the bar and academe. Law should be made only if there is confidence that given that particular set of conditions, law can be used to better the situation because law shares both 'repressive' as well as 'liberational' potential.¹¹ Therefore, in the making of the law, the legislators should be accountable to the people by ensuring that the laws made are legally, technically, financially and socially sound. Even after the laws are made, accountability

vests with the executive to see to it that it is implemented without delay and is well nurtured both economic and infrastructure wise.

It is for the judiciary to ensure that laws are made in conformity with the Constitution and are also adhered to. In keeping with the demands of justice, the courts have played an activist role in safeguarding constitutional ideals. They have evolved various principles of law for this purpose like estoppel, duty to take care, negligence and so on to protect constitutional rights. The whole range of BAL cases are witnesses to the fact of how the courts have played an important role in the democratic set up.¹² However, even such reforms often die with a whimper when it comes to getting them implemented. Contempt of court cases threaten reformation. So does delay and intricate technicalities. Delay can jeopardise the situation most in environmental cases because the degradation of the environment will continue till the court takes a decision to stop it.

In the Shriram case¹³ the Supreme Court for the first time placed absolute liability on the environment pollutor engaged in a hazardous activity and so did away with technicalities of proving guilt and dragging the case. Secondly, the court issued a stay order to stop the hazardous activity which the industry was performing until certain conditions relating to safety were adhered

to. However there are still cases wherein the aspect of continuing pollution is not given serious thought.

In a case filed by Francisco Barreto in the district court of Goa against the water and air pollution boards, and the fertilizer company M/s Zuari Agro Chemicals,¹⁴ an injunction was sought against the company restraining it from polluting the water. The company had been discharging untreated effluents into the sea through pipes which had eroded over the years. These effluents had seeped into the sub soil polluting the subsoil water. Despite many reports and findings indicting the company, the court did not grant a temporary injunction because Barreto had accepted compensation. The fact that the company was committing a continuing offence was not considered by the court. Similarly the high court and supreme court refused to interfere in the matter because of yet another technical reason; the order was an interlocutory one. The district civil court finally dismissed the main suit on the ground of lack of jurisdiction. This case is a standing example of intricate technicalities which delay and complicate the delivery of justice. It is due to this reason that in many states special courts for trying pollution cases have been proposed and many will soon start functioning.¹⁵

In SAL cases, the courts have recognized that where a public wrong or injury has been caused by the state, any member of the public acting in good faith can maintain an action for redress. Therefore lack of access to the court on account of poverty, disability, social or economic disadvantage or any other reason has been remedied by widening the scope of locus standi in civil petitions.

The courts have evolved various principles to ensure that the rule of law is maintained and secured. For e.g. by the notion of estoppel government bodies can be held liable for non-performance of their duties because tacit promises can be taken to be existing as valid contracts. Although there have not been any case in water law decided on this ground, it is a notion which has been developed and used in other areas and which has potential to be used in water law too.¹⁶ There have been many cases relating to municipalities Acts and few irrigation and fishing Acts wherein the court has fixed liability on the wrong doer on the basis of tort principles.¹⁷

III. ACCOUNTABILITY IN THE LEGAL FRAMEWORK

Till now the notion of accountability, its relevance for ensuring better management and its use and potential for use were discussed in general. Law is one way in which direct control can be exercised over water or water based resources whether it be exploitation or distribution. Whenever the resource has been scarce and