

1. Concept of Dispute/Conflict

Humans are a social species banded in groups of individuals. A dispute/conflict is nothing more than a form of social relationship.¹ According to Max Weber 'conflict cannot be excluded from social life.'² Social life is always an admixture of conflict and peace. Conflict is defined as a struggle among groups or individuals over the possession or control of scarce resources which are either directly or indirectly necessary for the social existence or survival of such groups or individual.³ Disputes are framed in terms of positive rights challenged. Once initiated 'settlement' or 'resolution' must be the ultimate outcome. In the last few decades, the introduction of some new factors like Land Laws, Irrigation Water etc.etc. have deeply affected the traditional structure of rural communities.

Independence and several social legislations which followed it have brought about certain radical and revolutionary changes in our social structure. The concept and value of equality has been extended to all spheres of social life. Conflict regulating mechanisms like the practice of keeping social distance between different castes----- etc.etc. have been abolished. There are now institutionalised arrangements for the resolution of conflicts. It has been recognised as a duty of the welfare

state to ensure equitable distribution of scarce resources at least from the resources controlled by the government, and to provide for the formal adjudication of resource of disputes.

2. Water Disputes

Water is an essential input in human life. Until weather modifications began there was no need for any law relating to natural water. Once the technology developed, changes in this resource base led to difference in using and controlling it, thereby creating legal issues and a complex set of rules. There are now more legal controls over it because there are more competing claims. Any claim to universality is subject to challenge. Sustainability of the resource requires a proper management of the resource for obtaining maximum efficiency in the use of scarce resource and to guarantee the social needs of the future society. Water quality is controlled by enacting legislations like Water Pollution Act and the Environment (Protection) Act; taking animals from a river is regulated by requiring a licence or closing a stream to fishing; access to the stream may be limited by the legal system to ensure equitable access to the constrained resource etc. etc. The kind of political or legal action that can be taken is controlled by the existing processes and structures providing for hierarchy of administrative centres and/or hierarchy of conflict resolving machinery. There is

Diversity of legal remedies our legal system provides to resolve this resource conflicts. Measures are being taken to ensure that industrialization does not destroy more than it must. In Ganga Pollution Case,⁴ while directing closure of some tanneries, Supreme Court of India has emphatically held 'We are conscious of the fact that closure of tanneries may bring unemployment, loss of revenue, but life, health, and ecology have greater importance for the people.' This shows a concern for preservation of wholesomeness of ecology.

The unique nature of water rights causes a number of procedural problems when it is forced into forms of action. Water Disputes include claims involving rights in the commons as well as water drainage and so forth. Such disputes are important and frequent, since water flow, floods, accretion etc. tend to change the situation in ways that may generate controversy between the whole village or district and often touch the interest politically as well as economically.⁵ Water disputes, clearly have both a collective and an individual dimension. ~~These may arise amongst the beneficiaries and/or between individual~~ dimension. These may arise amongst the beneficiaries and/or between individuals and the government, about such issues as entitlement to certain social benefits because of the supreme value placed on water by the human kind.

Such complicated problems can be best understood on the local level as such cases are dependent upon local

customs well known to the farmers. Particularly in respect of disputes arising in rural and semi urban areas, there is much conciliatory practice to resolve the matter.

Conciliation/seems to have had more merit in water cases as it takes the problem from social, political & legal aspects. However, highly developed system of adjudication has rather completely displaced conciliation as a method of dispute resolution, except where specifically provided for. Laws in this area determine what belongs to everyone, and who constitutes everyone.

In determining what belongs to everyone, the law marks frontiers, firstly, to remove uncertainty, and secondly, to determine where action may be taken against the offending party, if it oversteps the proscribed limit, and what action to take. How to regulate the conduct of the administrator and provide proper remedies to the victims against abuse of exercise of administrative discretion is the basic challenge, as there is an unequal bargaining power between the parties.

Right of / ^{effective} access to justice is of paramount importance since possession of rights is meaningless without there being any mechanism for their effective vindication. To make the right effective, their violations are to be treated 'speedily', 'effectively', and 'equitably' as these are the measuring scales of effectiveness of any dispute institution. Another source of efficiency is emphasis on 'finality' which ensures that a decision, once

red will not be altered. The reduction of the cost
ation of the litigation make the institutions
ible to ordinary people.

Judicial courts are the traditional and formal
of handling disputes. Role of Judiciary as guardian
citizens rights is widely recognized. Court adjudication
distinguished from other such process by the fact that
the norms it employs possess the characteristic of
neutrality. Judiciary in India is capable of considerable
immunity from political pressures. However, there are some
procedural barriers. This institution is socially and
culturally more distant from some segments of the population
than from others. In India, in an economically stratified
society, highly structured adversary system consisting of
highly trained lawyers and expensive expert witnesses do
place severe limits on the accessibility of our courts for
small claims to be made by the ordinary poor man. Heavy
litigation costs, including court fee, Professionals fee
and the delays and distance deny poorer citizens access,
thereby favouring wealthy and influential litigants. Abuse
of power can be detected and curbed by the judicial process,
but in nine cases out of ten, the process is simply
inaccessible for the common man because of these barriers.⁶
Though the Supreme Court has held that the procedure does
not stand in the way of access to justice to the weaker
sections and that the power of the court is not only

injunctive in ambit but also remedial in scope,⁷ still there is ample to achieve in this area. Concept of locus standi has been widened by judicial activism by permitting **Social Action Litigation** but these are only subjective views of the judges. Subordinate judiciary, the first step of the judicial system still requires restructuring to make it accessible for the common man. Though the objective of the paper is not to argue for the replacement of the traditional State Legal System but to devise a procedure aimed at making it an effective forum. This paper is to highlight the available for a for resolution of such resource conflicts and to trace a balanced forum for resolving conflicts of interest. The main emphasis is on the question as to 'why only Social Action Litigation' in this area. Efforts are made to suggest means to achieve the following objectives:

- reducing court overcrowding
- lowering barriers to access to the forum
- to ensure consideration of equity in the mind of the dispute resolving authority
- to introduce an ecological perspective while resolving disputes concerning water resources.

While evaluating the available hierarchical set up of administrative bodies as dispute handling forum following factors will be taken into consideration:

- Dispute processing structure available
- Types of disputes involved
- Administrative Bodies expertise in the field
- Whether a question of law or fact is involved
- Inherent specialization and differentiation within the differentiation within the dispute institution i.e. provisions of appeal, revision or review means

of co-ordination between the administrative bodies and judicial courts.

3. Problems of Procedure

Civil Procedure Code, 1908 which lays down detailed provisions with regard to the procedure to be followed in civil proceedings is so technical and cumbersome that in majority of the cases procedural wrangles outweigh the real issues. Relief of injunction against polluting companies can be granted only if the victim can show to the court that the injury caused is of such magnitude that it cannot be compensated in terms of money. Writ petitions lie only against the State and 'other authorities' as contemplated in Article 12 of the Constitution of India. Supreme Court now has widened the scope of the provision to include even a registered society and some private bodies also.⁸ Now State can also be made liable even for its inaction.⁹

In criminal prosecutions it is for the complainant or the prosecution to prove the intention of the accused to commit the offence. However, concept of 'no fault' theory is evolving in some of the recent legislations concerning Water Resources Management.¹⁰ Lack of access to the necessary information is another major hurdle especially in pollution cases^{to} effectively vindicate grievances.

In short this paper will analyse legal conflicts
*) water legislations mainly in areas of Irrigation, Fisheries,

Pollution, Ferries etc., to trace the procedural barriers relating to jurisdiction, locus stands, pleadings, evidence etc. Main emphasis will be on the structural properties of the disputes, in particular, role of the intervener, evolution of the principles of natural justice, limitation period, finality clauses etc.

Though for a proper evaluation of the system field work is the best technique, it could not be resorted to because of some constraints. Therefore, social practice in the field of resolving conflicts may not find much place in this study. The aspect as to how the traditional machinery for resolving them has failed and how the new machinery, being introduced by the legislative measures deal with these conflicts is ^{also} not covered.