PREFACE

The making of just civil-society, in which all people enjoy the benefits of their resources equitability and use them productively, is an ongoing task. In the last hundred years, howerver, India has witnessed a major set-back. The civil society has lost all powers to regulate its resources, and the state has usurped these powers, in terms of absolute rights, without the corelated duties or accoutability to the people. This was required for colonization, where the colonial regime found it necessary to seperate the state from the civil-society and vest absolute powers in the former so as the be able to exploit the resources at its will. It is not the civil-society in India which has made the law concerning India's natural wealth, nor do these laws reflect the people's will. Almost all of them were made by the colonial regime prior to the coming of the Indian Constitution. Hence, though we the people of India gave ourselves the Constitution, we have not given to ourselves the laws concerning the natural wealth of India, with reference, to all the vital resources : land, forests, water, mines and minerals, electricity, etc; we have simply continued with what the colonizers needed for themselves.

In the coming years, as the process of ecomomic decolonization of India unfolds itself, this separation of state from civil-society, which our natural resources law allow, will be intolerable. No just civil-society can permit the existence of a state which works in accordance with laws which do not reflect the people's will. At the heart of this struggle for economic decolonization and the remaking of a just society will be issues concerning laws that regulate the natural wealth of the people of India. The progress of law, we need to remember Sir Henry Maine's dictum, involves movement from status to contract. The natural resources of India have a legal status only --'owned by the state'. There is no contract with the people about their use or safeguards against misuse. Where a rational choice is possible, a civil-society would opt for a contract with the state, where the state would be a trustee of people's heritage, and never for one in which it looses significant control over the resources and allows the state to destroy this heritage, as has happened with our forests and water.

Amongst all natural resources, one that is most vital for the sustenance of life is water. One who owns water or has absolute rights over it, therefore, has absolute power over the life of others, including of animals, birds, plants, trees and insects. Water hence, as Professor Upendra Baxi has rightly described, is 'power'. In so far as the Indian state has absolute rights over all natural water of India, it has absolute power over the life of all its citizens and flora and fauna. A state having absolute power over the life of others is a totalitarian state, not a democrtatic one. As it turns out, therefore, although politically we may claim to be democratic, but economically, and specially from the point of view of the most vital resource for life, namely water, we live in a totalitarian state. The on

going struggle for decolonization is precisely this struggle against totalitarianism, and for democratization of the natural resources law.

This first work on water law in India is, evedently, a minor step, but a step which would hopefully lead towards this process of democratisation. Since the subject area is so vast, this minor step does not pretend to be exhaustive, it limits itself to the case and statutory law. However, in doing so, it is comprehensive on the side of narration about the state and its activities. An exhaustive work, which must address itself to the civil society in general and not merely to the state, would relate itself to the activities of the people too, that is, to customary law as well as the non-formal legal or quasi-legal regime. The customary and non-formal legal regime have a vast role in Indian water law. In the Introduction to this work I have tried to explain the reasons for scope of the work and the topics chosen. This, however, is not a justification for delimiting the scope. The other works that have been undertaken in this project go into the details of other dimensions of water law. For instance, the issues relating to International water disputes, touched upon in the last chapter of this book by Dr. B.R. Chauhan, is dwelt upon exhaustively by him in a seperate book on the subject, in this series. The issues of water rights taken up by me in the first chapter, is analysed in detail in a seperate work on 'Water Rights'. As a companion to this volume where the resources have been discussed form the perspective of law, we have done a separate work in this series in which the law is analysed form the perspective of the resources, namely form those of rivers, estuaries, sewage and drainage, seas, etc. This is being published as a special issue of the 'Journal of the Indian Law Institute' and also subsequently as a book. The study of customary law has begun through Ms. M. S. Vani's work on the working of the panchayati institutions. A vast amount of work, however, remains to be done in this domain. Also, we have barely been able to scratch the surface of the groundwater law. These areas are planned to be taken up in the coming future. In the meantime we hope this volume provides the basis for water law reserach and studies in India.

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28th Jan. 1992