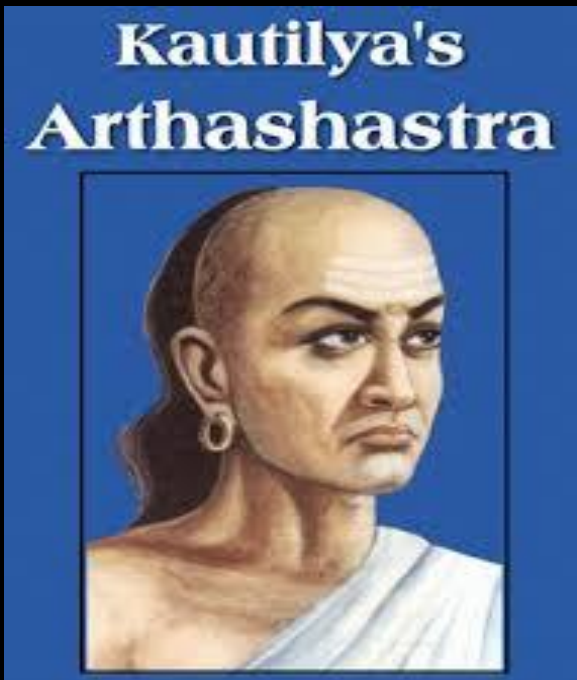


# **Contemporary Issues in Public Policy**

**Aseem Prakash  
Professor and Chair  
School of Public Policy and Governance  
TISS-Hyderabad**

**Review: How it began?**

**State Sciences:** Serving the interests of the absolute ruler in knowing about the subjects of his principality and about the state of its resources. It was thus known as “state sciences,”







**Oliver Wendell Holmes, Jr.**

**“Your Liberty To Swing Your Fist  
Ends Just Where My Nose Begins”**

It is this situation that created the demand for application of social knowledge furthering human cause

- Social knowledge for the purpose of social betterment
- Social knowledge would permit the gradual amelioration of social life.
- The object of social knowledge are the human and the community

- **Moment V– Regulatory State**

- Public Policy : Beyond Government
  - Modern states are placing more emphasis on Regulation
    - the use of authority, rules and standard-setting
    - Displacing an earlier emphasis on public ownership, public subsidies, and directly provided services
- ↓
- Bureaucratic functions of regulation are being separated from service delivery.
  - the regulatory functions of government are being separated from policymaking functions

# **State and Doctrine of Public Trust**



## Case Study I: Coal Mines



- Private Participation
- The Mines and Minerals (Development and Regulation) Act, 1948 which was subsequently replaced in 1957 provided that the central government will provide license of mining lease to any private party which it deems fit.

## Coal – Public Ownership-I

**The coking coal mines (nationalization) act, 1972**



Public ownership of the mines; As per the specified formula compensation is paid to the erstwhile owners

**The coal mines (taking over of management) act, 1973**



Management is taken over the central government – Custodian general is Appointed

**The coal mines (nationalization) act, 1973**



Consolidates both the acts (1972-73); it allows private organisation engaged in steel production and power generation to lease coal mines

### **Regulatory Instruments:**

Public Ownership, control by Ministry of Coal , Office of the Custodian General is the main regulator

Rules made by the central government for the judicious use of coal to be used in national interest

## Coal – Public- Private Ownership-II

By the Coal Mines (Nationalisation) Amendment Act, 1976



Allow Private companies involved in Iron and Steel to mine coal.

By the Coal Mines (Nationalisation) Amendment Act, 1993



Allow private sector participation in Power Sector by allowing power plants and coal mines

Coal Mines (Nationalization) Amendment Act 1996



Allow Cement companies ; also to captive mine coal

Coal Mines (Special Provisions) Act 2015



Allow mining leases to successful bidders to ensure continuity in coal production

## Coal – Public – Private Ownership-II

### Regulatory Framework:

- It is set in motion by **The coal mines (nationalization) Amendment acts 1976, 1993, 1996**
- Public Ownership, control by Ministry of Coal , Office of the Custodian General is the main regulator
- Licences were granted to organizations engaged in Power Generation, Iron and Steel plants, Cement production

**Regulatory Instruments:** Rules made by the central government for the judicious use of coal to be used in national interest

The Coal Mines (Conservation And Development) Act, 1974

### **Manohar Lal Sharma vs The Principal Secretary & Ors.**

The allocation of coal blocks made by the Central Government, according to petitioners, is illegal and unconstitutional *inter alia* on the following grounds:

- Violation of the principle of Trusteeship of natural resources by gifting away precious resources as largesse.
- Arbitrariness, lack of transparency, lack of objectivity and non-application of mind; and
- Allotment tainted with *mala fides* and corruption and made in favour of ineligible companies tainted with *mala fides* and corruption.
- Court declared the allocation of Coal Blocks based on recommendations made in all the 36 meetings of Screening Committee is illegal.

# Case Study II : Property Rights in P&NG

Beginning in Public Ownership

The Petroleum Act, 1934

Regulates the import, transport, storage, production, refining and blending

The oilfields (Regulation and Development) Act, 1948

- Central Government has the power to grant mining leases and specify the manner in which licences are granted

Petroleum Mineral Pipelines (Acquisition of Right of user in Land) Act, 1962

- To provide for the acquisition of right of user in land for laying pipelines for the transport of petroleum and minerals and for matters related.

**Regulatory Framework: Public Ownership and control**

- Land is acquired through eminent domain, and this is not affected by the LARR 2013.

New  
Exploration  
Licensing  
Policy (NELP),  
1997/98

- 100% FDI is allowed under NELP
- No mandatory state participation through ONGC/OIL
- Blocks to be awarded through open international competitive bidding
- Freedom to the contractors for marketing of crude oil and gas in the domestic market.

**Regulatory Framework:** Public and Private Partnership  
**Regulatory Institution :** Central Government, Ministry

Hydrocarbon  
Exploration  
and Licensing  
Policy (HELP),  
2016

- Provides uniform licensing system to cover all hydrocarbons under single licensing framework
- Marketing and Pricing freedom has been granted, subject to ceiling price

**Regulatory Framework:** Public and Private Partnership  
**Regulatory Institution :** Petroleum and Natural Gas Regulatory Board



# Case Study III: National Water Policy – 1987 and 2012



## The NWP 2012 institutionalizes the idea, water as an economic resource

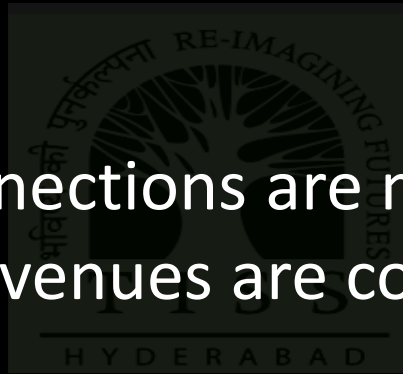
- National Framework Law as an umbrella statement of general principles governing the exercise of legislative and/or executive (or devolved) powers by the Centre, the States and the local governing bodies
- Thus water, particularly, groundwater, **is now being treated as economic resource to be managed as a common pool community resource held by the state under public trust doctrine**
- Pricing of water should ensure its efficient use and reward conservation.
- Equitable access to water for all and its fair pricing, for drinking and other uses such as sanitation, agricultural and industrial, should be arrived at through independent statutory Water Regulatory Authority, set up by each State, after wide ranging consultation with all stakeholders

- Recycle and reuse of water, after treatment to specified standards, should also be incentivized through a properly planned tariff system.
- Water Users Associations (WUAs) should be given statutory powers to collect and retain a portion of water charges, manage the volumetric quantum of water allotted to them and maintain the distribution system in their jurisdiction.

## The Rationale for Restructuring Governance (Price) Regime in Water

( World Bank-2014)

- Service efficiency is weak, which means utilities have low cost recovery, further exacerbated by low tariffs that have little relation to operating costs.
- Only about 20 percent of connections are metered, and nonrevenue water—water for which no revenues are collected—averages over 40 percent in most cities.
- Challenges occur in a context of weak management systems and little data on existing assets, which makes it difficult to assess investment needs and time lines to improve service levels and operational efficiencies.
- Complex and fragmented institutions with little accountability



## Supreme Court Judgements, Policy Regimes and Emerging Consensus

- Constitution vests the natural resources within the territory of India with the Union.
- It is not “ownership” in the traditional sense as it is understood.
- It is not upto the complete discretion of the Government of the day on how to make use of the resources.
- In that sense **it is not a power** that is being vested on the Government.
- Rather, it is an **obligation or duty placed upon the Government** to make use of these resources in the manner prescribed by the Constitution
- Its “rights” as a property owner are circumscribed by this Constitutional imperative of Part IV and the rights of the citizens under Part III of the Constitution.
- In that sense, the Government does not strictly “own” the property in the sense of how “ownership” is understood in the context of a private owner

Thank you !