

Introduction

The primary aim of this work is to first systematically analyse the role that law plays in the management of ecology, especially in the mountain regions; document the main customary and administrative processes that law promotes or inhibits in relation to State formation and environmental management; identify the major problems; and then mainly to suggest what type of work programmes or research needs should be carried out if we are to come up with alternative legal frameworks for equitable and sustained ecological development.

To introduce the overall theme of this paper, it will be useful to begin with some observations about the role of law in management and planning in general.

Although planners have not been taking law as an important variable for consideration in their programmes, policies, or projects, it is important to realise that no scheme can be successful unless from the very beginning - at the designing stage - it takes the existing legal parameters into account. The operative laws partly define the framework of possible actions and actors in terms of organisation, management, beneficiaries, administration, transactions, and types of contract. If a plan or project is made without recourse to this framework, sooner or later it is bound to run into various problems, whether the plan or project be one of afforestation, irrigation, housing, electrification, or services. We have seen in India how various land reform programmes have failed because of the fact that they did not take the tenancy laws into consideration at the beginning and, similarly, how social forestry programmes have been turned into commercial forestry because of the fact that the plans did not at the beginning take account of the legal rights of the intended beneficiaries and the manner in which such rights could be realised. That legal framework is extremely important for any type of planning becomes evident if we keep another factor in mind - the fact that the actual policy at work at the administrative level is the one that is embodied in the operative laws, no matter what any other policy statement may say. India's forest policy is the one expressed in the Indian Forest Act, 1927 - one of total exploitation of the forests, and not the National Forest Policy which the Government has been propagating since 1950 onwards. Similarly, the water policy is the one expressed in the water laws, and not that of the National Water Policy of 1987. Planners often fail to understand the difference between the actual policies and the officially propagated policies. The involvement of law professionals in the planning and amendment of planning or project designing will perhaps take a long time to come; it involves a major transformation in the nature of social science, management research, and pedagogy. In the meantime, it needs to be noted that if genuine eco-development plans or projects are to be designed for integrated development of the mountains, it cannot be done without taking into account the legal framework at the project design stage. Similarly, a study that has not taken note of the legally legitimised arena of actions, actors, organisations and administration, will be grossly inadequate for any practical purpose.

Although environmental law issues have a common basis -- acquisition and exploitation of common property resources through law, usurpation of local rights, hegemony over community resource management systems -- there are some issues that are peculiar to mountain regions such as specific land use patterns, sparse population distribution, dependency of the plains on the mountains for water resources, and special flora and fauna and scenic beauty which attract tourists¹. These issues make it necessary to study the application of environmental legislation as a special and different case for the mountain regions. The study presented herein is relevant for the mountain ecology in general, but, for the sake of empirical and analytical convenience, the database is limited to the State of Himachal Pradesh in India. There are important reasons for selecting Himachal Pradesh for empirical study. The State is illustrative of the problem faced in mountain ecology in some very significant

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For a detailed analysis of the dependency of the ecology of the plains on that of the mountains, especially with reference to the river systems, see: *Report of the Irrigation Commission*, Ministry of Irrigation and Power, Government of India, 1972. Vol. 1.

ways, including the legal problems. First, from the point of view of flora, fauna, and natural resources, it is comparatively more richly endowed than many other regions of the Himalayas. An appropriate legal management of the ecology of this State will have significant lessons for all other regions. Second, from the point of view of management, the State is politically and legally nascent and the fluidity of structures offers scope for experimentation and alteration, including in terms of people's habits, beliefs, and State formation. There exists, thus, a more realistic opportunity for social engineering through law in Himachal Pradesh than in many other States in India. Evidently, these possibilities for legal engineering have an important bearing on any search for legal alternatives for development in other regions of the Himalayas.

Analytically, environmental law concerns can be broken down into specific natural resource concerns. Amongst the most significant natural resources are the land, forest, and water resources. The study here is confined to the legal regime concerning the acquisition, utilisation, and distribution of these three resources, with specific reference to Himachal Pradesh. In the context of this State, however, there is another aspect that demands our special attention -- that of tourism -- since it has a bearing on ecology. The scenic beauty of the State has necessitated not only the promulgation of special laws to reserve forests, parks, and sanctuaries but also the construction of lengthy road tracts to tender interior accessible to the public and hence also to ecological disaster. But, before we begin, it will be necessary to explain the plan of exposition in this paper.