

# The Implication of 2005 Model Bill on Ground Water Resources : A Legal Review

Model Bill Regulate and Control of Development and Management of Ground Water

***“Drinking Water Supply and Management for Leh Town, UT-Ladakh”***

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# Ancient

- Historically all Hindu and other major civilisations survived along rivers and basins.
- Indus River Valley Civilisation
- The Great Bath of Mohenjodaro

# Medieval and British

- Islamic Law principles state that water is a gift of God, that no individual or ruler can own water and that everyone should have access to water.
- When Britishers arrived in India, they settled along major sea and water bodies.
- Most important legislation passed by them was Northern India Canal and Drainage Act (1873), which regulated irrigation, navigation and drainage.

# Independent India

- Constitution of India: Schedule 7, List 2, Entries 17, 21- water is a state subject. States have the exclusive power to regulate water supplies, irrigation and canals, drainage and embankments, water storage, water power and fisheries.
- In case of disputes between States relating to water, a specific tribunal can be formed under Article 262 and Inter-State Water Disputes Act (1956), eg-Cauvery, Krishna-Godavari, and Narmada rivers.

- The Krishna-Godavari began in 1951; a key issue was whether initial agreements about diversions from the river were justified given legal and political changes following independence.
- The Cauvery dispute between Karnataka and Tamil Nadu is more than a century old and relates to water sharing.
- The Narmada dispute focused on the use of available water by riparian states and provided the framework for the construction of the Sardar Sarovar dam, situated in Gujarat, but whose submergence zone is mostly in Madhya Pradesh and Maharashtra (Narmada Water Disputes Tribunal 1979)

# Surface and Groundwater Irrigation

- Since the Central Government does not have jurisdiction over groundwater, the measures that it can take are limited. The rapid depletion of groundwater as a result of extraction for irrigation and other uses over the past 50 years has led to policy development in this area. The central government formulated the Model Bill to Regulate and Control the Development and Management of Ground Water (2005)
- The Environment Protection Act (1986: section 3(3) ) established a Central Ground Water Authority to regulate and control development and management of groundwater resources

# Landmark cases on water

- While the Constitution does not recognize a fundamental right to water, court decisions deem such a right to be implied in Article 21.
- In *Subhash Kumar v. State of Bihar*, 1991, the Supreme Court recognized that the right to life ‘includes the right of enjoyment of pollution free water and air for full enjoyment of life.
- *Narmada Bachao Andolan v. Union of India* 2000, Supreme Court directly derived the right to water from Article 21, stating that water is the basic need for the survival of the human beings and is part of right of life and human rights as enshrined in Article 21 of the Constitution of India

- M.C. Mehta v. Kamal Nath 1997, water is a public trust, with the state as ‘the trustee of all natural resources which are by nature meant for public use and enjoyment.
- Regarding water pollution, one of the most important developments was the adoption of the Water (Prevention and Control of Pollution) Act (1974). This act seeks to prevent and control water pollution and maintain and restore the wholesomeness of water. It creates water boards to set standards and regulations for the prevention and control of pollution.



- Internationally India has signed a number of agreements with neighbours like The Indus Waters Treaty signed in 1960 with Pakistan and with that of Nepal (Mahakali Agreement, 1996) and Bangladesh (Joint Rivers Commission, 1972)

# Water Policies

- National Water Policy (1987) was reformulated in 2002 and 2012. These documents are similar, focusing on developing a data bank, estimating the available water, prioritizing water (with access to drinking water accorded priority), developing groundwater rules, meeting drinking water needs, developing irrigation facilities, encouraging the participation of stakeholders in water management, monitoring water quality, promoting conservation consciousness, developing a flood control and management system, using cost effective measures to minimize erosion, maintenance and modernization of water works, ensuring the safety of structures built on water bodies, developing relevant science and technology, and training of personnel.

- The Model Bills and National Water Policy address the governance of ground water under the public trust doctrine. The concept of public trust doctrine ensures that resources meant for public use cannot be converted into private ownership.
- It may be noted that the fundamental right to water has been evolved by the Supreme Court and various High Courts of the country as part of 'Right to Life' under Article 21 of the Constitution. Courts have delivered verdicts on concerns such as access to drinking water and on the right to safe drinking water as a fundamental right.

- In response to the Model Bill, so far, 11 states and four union territories (UTs) have adopted and implemented ground water legislation.
- **Plachimada Coca-Cola Case-** The Plachimada panchayat in Palakkad district of Kerala granted a license to the Coca-Cola Company in March 2000 to use groundwater for the production of its beverages. However, in 2003, the panchayat ordered the closure of the plant as it caused lowering of the water table and deterioration of the water quality. This order was challenged by the company before the High Court of Kerala.

# Commission and Committees

- Central Water Commission, Central Ground Water Board, Central Ground Water Authority, Central Pollution Control Board.

- There are Inadequate regulation of ground water law. The government, from time to time has stated that ground water needs to be managed as a community resource. However, Section 7(g) of the Easement Act, 1882 states that every owner of land has the right to collect and dispose within his own limits all water under the land and on its surface which does not pass in a defined channel. The legal consequence of this law is that the owner of the land can dig wells in his land and extract water based on availability and his discretion.

# Model Bill 2005 on regulation and development of groundwater development.

- First proposed in 1970, revised in 1992, 1996, 2005 and more recently discussed in 2016.
- It has 25 Sections and provides establishment of an Authority to be known as the Ground Water Authority for regulating groundwater use in every State and UT.
- Since this is a model bill, many states have made or implemented laws in respect of this bill.

Model bill was followed by The Groundwater (Sustainable Management) Bill, 2017 drafted by the Ministry of Water Resources, River Development & Ganga Rejuvenation provides a new template that states can use to adopt legislation capable of addressing the fast-increasing groundwater crisis faced by many states. This Bill follows on an earlier model bill drafted in 1970 and updated several times until 2005 on which the dozen of existing groundwater acts are based.



# Thankyou.!!

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