
REGULATION OF GROUNDWATER IN INDIA

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ABSTRACT

Over the last 30 years there has been a drastic increase in the groundwater extraction being practiced in India. The legal framework being spotty has enabled a lot of unregulated groundwater extraction to take place for the industrial and agricultural requirements. Unavailability of the necessary legislations to manage groundwater in a sustainable manner has posed questions on the environmental law system. The paper seeks to answer the questions posed on the legality and measures for regulation of groundwater in India. One of the earliest Indian regulations still in effect, the Easements Act of 1882, granted landowners' rights to collect and dispose of all water beneath their property that doesn't flow through a designated channel. The Act, however, does not establish ownership rights; rather, it simply provides for the rights over groundwater of the user. Other legislations, such the Transfer of Property Act of 1882, which envisions the landowner's proprietary rights to groundwater based on the principle of absolute dominion, have also supported similar rights. It is impossible to transfer groundwater rights without also transferring the underlying land due to the resource's inherent characteristics. The solution cannot be to provide a link between land ownership and groundwater usage due to the huge population of landless families in India. The following paper throws light on the status of regulation of groundwater in India and analyses the National Water Policy with respect to the required steps for implementation of strict regulations and legislations to protect and preserve the ever-depleting groundwater levels in the country.

Keywords: groundwater, regulation, legislation, sustainable

INTRODUCTION:

Groundwater is in great demand in India since the country's development is heavily dependant on it. The entire agricultural and industrial sectors thrive form free access to groundwater. The ever-increasing demand leads to overexploitation and quality deterioration of the resource. Moreover, uncertain and varied monsoon patterns remain a concern for recharge of groundwater level and quality. Excessive groundwater extraction continues due to the absence of a regulatory framework. Taking into account the gravity of the matter and the significance of aquifers for storage, the policies of India's groundwater resources desperately require reform. The pressure on groundwater resources due to high demand calls for directives to specify conditions of usage of the resources. The authorizing body of groundwater regulation in its hypothesis suggests that legal frameworks are an important part in effective governance and for converting policies into rights and regulations. The current groundwater rights structure in India has been derived from the English Common Law, which means groundwater rights are tied to ownership of land. Landowners have the right to construct wells in any manner and extract as much water as they want. "Adopting Model Bills from the central Government, most of the States and Union Territories have passed Acts and Regulations on groundwater usage. The federal Government is attempting to pull the State legislators towards more progressive regulation that incorporates the doctrine that the state at all levels is the trustee of groundwater"¹. Among many arguments ,a major reason advocating for such reform is the suggestion to split the linkage between land or property rights in groundwater, which is faced with strong opposition by landowners. Administration of formal groundwater law is generally a challenge due to the number of users involved, the problems with respect to monitoring, unavailability of up-to-date scientific proficiency, and financial as well as technical limitations. The main issue regarding laws to regulate groundwater is monitoring the same. Constraints with respect to human, financial, technical, and administrative scope is a considerable hindrance that should be regarded while implementing reforms, however, legislators and the authorities implementing reforms must not forgo their responsibilities. The restricted legislative power in this area does not imply that there is insufficiency in the Centre's decree to formally regulate affairs relating to groundwater. The Apex Court, in 1997, held that the Federal Government was authorized to establish an authority which would further be entitled to regulate and manage groundwater management and development to certify its long-term

¹ WATER GOVERNANCE FACILITY (2013), *Groundwater Governance in India: Stumbling Blocks for Law and Compliance*. WGF Report No. 3, SIWI, Stockholm.

sustainability “(M.C. Mehta v. Union of India², 1997, guided by Article 253 of the Constitution along with the Environment (Protection) Act, 1986)”. Following the Court order, the Central Ground Water Board, which was set up in 1970, was constituted as an Authority, as a subordinate base of the Ministry of Water Resources.]

1. GROUNDWATER GOVERNANCE IN INDIA:

The current situation pertaining to groundwater governance in India is based on the colonial British era legal system which associates groundwater rights and land. Rulings by the Indian courts in the 19th and 20th century have laid down the distinction between property and groundwater. The Indian Easement Act of 1882 provide the landowners the right to extract or use unrestricted amounts of groundwater which exists beneath their land. The Doctrine of Public Trust suggests that the government is responsible for protecting the resources for the public rather than allowing private possession or enjoyment. This suggests that the State has right on water flowing above the surface, however, due to the absence of groundwater regulating laws, the scope of this doctrine was considered limited with regard to groundwater rights. However, the Supreme Court of India stated that even groundwater comes within the State’s rights based on the precedent *State of West Bengal v. Kesoram Industries Ltd. &Ors.*, 2004³. Despite the doctrine intended to protect groundwater from being exploited by private landowners for personal usage, the English common law trumps over the doctrine of public trust.

2. NEED FOR REGULATION OF GROUNDWATER IN INDIA:

Indian agriculture and the industrial sector depend heavily on groundwater. More than 50% of the agricultural sector is heavily dependant on irrigation through wells. These sectors enjoy free access due to which the groundwater is exploited excessively which depletes the groundwater level. Moreover, irregular and unequal rainfall negatively impact the groundwater recharge potential. The unregulated exploitation is possible because there is no regulatory framework to monitor the groundwater usage in India. The heavy demand and pressure on groundwater calls for the need for policies which will regulate and monitor groundwater usage. The authorities responsible for groundwater regulation call for legal frameworks to ensure effective governance and refashioning policies into regulations and rights. Currently there does not exist any central law which monitors the groundwater usage. However, there is a law called

² M.C Mehta v. Union of India., (1997)11 SCC 312

³ State of West Bengal v. Kesoram Industries &Ors., (2004)10 SCC 201

the *Indian Easement Act, 1882* which gives the landowners the right to collect/dispose or use groundwater within the limits of their land to whichever extent they want. This is one of the major reasons why landowners are strictly against new policies which may split the linkage between property rights and groundwater. Experts believe water belongs to the state and hence the right to use groundwater should be decided by the state and not left to the discretion of the landowners.

3. IMPLEMENTATION OF GROUNDWATER REGULATIONS IN INDIA:

Implementing laws to regulate groundwater becomes a difficult task due to scientific and financial constraints like lack of updated improved technological competence, as well as the difficulties of monitoring posed by the enormously large number of users involved. There is limited capacity with respect to monitoring, administration, technical and financial resources. In countries where groundwater is the major source for agriculture such as India, China, etc. implementing laws in theory is possible, however, in practice it will involve huge amounts of transactional costs. One of the major reasons why India has failed to adopt the Model Bills is that it is not feasible for India to follow up on the legislations and implement them due to the country's diminutive capacity with respect to resources. Many of the States in the country are disinclined towards adopting the Model Bills based on the belief that the new licensing system would give rise to extensive corruption. Regulation of groundwater may also lead to the State facing strong opposition from farmers who are assisted by powerful politicians. Moreover, aspects such as personal and vested will by strong political leaders or landowners oppose formulation in groundwater governance which ensures the situation regarding groundwater governance remains within their own interests.

4. NATIONAL WATER POLICY:

The National Water Policy by the Ministry of Water Resources focuses on planning and developing ways to govern freshwater usage in India and ensuring optimal utilization of the natural resource. The Ministry of Water Resources in the updated policy calls for the State to govern groundwater on the basis of the doctrine of public trust to maintain and manage groundwater as a groundwater resource in order to ensure equitable, sustainable development as well as protecting livelihood and achieving food security. The policy further suggests that in urban as well as rural areas, groundwater be used in concurrence with rainwater and water above the surface such as lakes, rivers, creeks, prioritizing the source which provides the best quality, dependability, and consistency. The policy is not only better than the previous Water

Policies in terms of scientific and technological aspects, but it also considers the need for better and improved infrastructure in India's water rich areas such as the Northern and Eastern parts. Factors such as climate change and adaptability to the subsequent climates barely receive attention and are often ignored when it comes to infrastructural innovations regarding water resources. However, the new National Water Policy has recognised the need for adaptive technology due the drastic climate changes especially in the Northern areas of the country, and has mentioned it as one of its primary principles pertaining to planning and development.

5. CASE LAWS:

There are certain cases pertaining to groundwater usage and groundwater regulations in India. The following cases have been relevant for this research:

*Hindustan Coca-Cola Beverages v. Perumatty Grama Panchayat*⁴:

The Coca-Cola Company's Indian subsidiary Hindustan Coca-Cola Beverages Private Limited was extracting huge amounts of groundwater in Plachimada which was resulting in water shortage in the Perumatty Panchayat as well as the nearby panchayats. The tribal community filed a case to not allow a renewal of the company's license. "As per the agreement struck by the company with the Kerala State Pollution Control Board, up to 1.5 litres of water was drawn commercially from 6 bore-wells situated inside the factory compound. The permit granted Coca-Cola the right to extract groundwater to meet its production demands of 3.8 litres of water for a litre of Coca-Cola."⁵ The Panchayat appealed to the High Court of Kerala claiming that Hindustan Coca-Cola Beverages is excessively extracting groundwater and polluting it. The company denied these accusations, and the single judge bench agreed to the appeal that a private sector company extracting groundwater at such large volumes is against the public interest. However, when the company challenged the accusations, the Court did not find reasonable arguments to discontinue the company's license as it stated that the company was extracting water which was well within their rights and so it is not violative of the law. It also stated that based on the English Common law, the company had the authority to exercise its property rights to extract groundwater from their own land. The Court granted Hindustan Coca-

⁴Hindustan Coca-Cola Beverages v. Perumatty Grama Panchayat, 2005 (2) KLT 554

⁵The Hindu Net Desk, *Water Wars: Plachimada Vs Coca-Cola*, THE HINDU (Jan. 22, 2021, 19:35), <https://www.thehindu.com/sci-tech/energy-and-environment/water-wars-plachimada-vs-coca-cola/article19284658.ece>

Cola Beverages the right to extract 50,000 litres of water per day and decided against revoking their license since proper scientific valuation had been undertaken to assess the situation.

M.C Mehta v. Union of India:

A news report in *The Indian Express* titled “Falling Groundwater Level Threatens City” led to the apex court of the country issuing notice to the Central Groundwater Board, the Municipal Corporation of Delhi, the Delhi Waterworks and Sewerage Undertaking, as well as the Delhi Pollution Control Committee. The news report was brought to the notice of the Supreme Court of India by M.C Mehta, a public interest attorney who filed a writ petition based on the report. The Supreme Court also issued notice to the Ministry of Water resources and the Government of Delhi, NCT based on the reply to the notice of the court by the Director of the Central Groundwater Board wherein he stated that the depletion in groundwater levels has predominantly been due to excessive extraction and exploitation. The Supreme Court also gave orders to the National Environmental Engineering Research Institute to analyse the situation and file reports regarding the same. The National Environmental Engineering Research Institute provided logical and reasonable suggestions pertaining to Water Resource Management and called for the establishment of a central authority that would undertake all responsibility with regard to planning, development, implementation, and monitoring of water resources.

CONCLUSION:

Currently, law does not play any role with respect to groundwater usage in India. Colonial laws are still being followed, the main reason being that this law favours the landowners and some political players. Any activity pertaining to groundwater takes place based on the interests of the private players such as the landowners, without and statutory or regulatory control. Apart from the opposition created by landowners and politically backed irrigational farmers, implementation of groundwater regulations remains a difficult task, considering the scientific, technological, financial, and administrative challenges posed due to India having a very small resource base. There is an ardent need for stricter laws which would help in limiting the extent to which landowners can extract groundwater, and assist in monitoring the same. Proficiency and sustainability can only be achieved through systematic efforts, and ensuring that the new policies help the authorities in controlling and monitoring groundwater in India while satisfying the needs of the landowners and others who benefit from the existing regulations.

REFERENCES:

Philippe Cullet, “*Groundwater Law in India: Water Governance Facility (2013) Groundwater Governance in India: Stumbling Blocks for Law and Compliance.*” WGF Report No. 3, SIWI, Stockholm (2014), INTERNATIONAL ENVIRONMENTAL LAW RESEARCH CENTRE.

WATER GOVERNANCE FACILITY (2013) “Groundwater Governance in India: Stumbling Blocks for Law and Compliance”. WGF Report No. 3, SIWI, Stockholm.

Marcus Moench, “*Groundwater Policy: Issues and Alternatives in India*”, International Irrigation Management Institute (IIMI Country Paper, India No. 2).

THE HINDU, “*Water Wars: Plachimada vs Coca-Cola*”, The Hindu Net Desk, (July 15, 2017).

Ministry of Water Resources (2012), National Water Policy 2012, New Delhi: Government of India.