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LEGISLATIVE INTERVENTION TO CURB GROUNDWATER POLLUTION

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ABSTRACT

Groundwater is the major source of drinking water in both urban and rural India. Besides, it is an important source of water for the agricultural and the industrial sector. It is considered traditionally to be a dependable source of uncontaminated water. Groundwater crisis is not the result of natural factors; it has been caused by human actions. During the past two decades, the water level in several parts of the country has been falling rapidly due to an increase in extraction. Groundwater law in India gives individual landowners overwhelming control over groundwater. This paper tries to study the legal framework in India, particularly in Maharashtra to deal with the conservation & protection of this important natural resource.

KEYWORDS: *drinking water , Groundwater crisis , agricultural , conservation & protection.*

INTRODUCTION: GROUNDWATER- FACTS AND IMPORTANCE

It is believed that leaving aside the oceans, 94% of all liquid water on the earth exists underground. Water is present in underground materials according to their permeability and porosity, the extent to which water from the surface has been able to percolate to that level and whether such percolating water has been trapped by deeper less permeable layers of rock. Formations sufficiently saturated with water, to be capable of yielding continuous discharges through wells or springs are known as aquifers.

While the international law of watercourses has focused on rivers and lakes, it should focus on the planet's available supply of freshwater located beneath its surface, in groundwater. Groundwater is the water that seeps through rocks and soil and is stored below the ground. For a variety of reasons, these bodies of water remain largely untouched by the scope of existing treaties. Out of sight their boundaries in many cases remain a mystery, as do their hydrological dynamics. Principles developed to manage clearly delineated rivers and lakes whose boundaries and flows are reasonably well known cannot be directly transported to groundwater aquifers. The resulting gaps in the existing legal framework could be closed, by developing a better understanding of how the principles of IWRM (Integrated Water Resource Management), sustainable use and pollution protection could evolve to manage the unique hydrological characteristics of groundwater. Groundwater is especially attractive for human use for a number of reasons. Its availability is widespread. Groundwater often can be found in usable quantities (at varying depths). Thus, groundwater is the primary source of water for most domestic uses in rural areas. Depending on the aquifer, groundwater usually is present year-round, not

disappearing seasonally as do intermittent surface streams. The quality of groundwater is often good, sometimes requiring little or no treatment to be suitable for drinking water.

POSITION IN INDIA

The United Nations Educational, Scientific and Cultural Organization (UNESCO) World Water Development Report states that India is the largest extractor of groundwater in the world. By 2030, the country's water demand is projected to be twice the available supply, implying severe water scarcity for hundreds of millions. Thus, India faces a dual challenge: to regulate the growing demand for groundwater while replenishing its sources.

Under the Indian Constitution, the legislative subject 'water' is vested with the States. The States therefore have the exclusive power to regulate groundwater. In cases where States have not enacted laws on groundwater management, it is common law read with the Indian Easements Act, 1882 which prevails due to Article 372, which mandates that the pre- Constitution laws shall continue in force until altered or repealed. Under the original English rule of absolute ownership, the owner of the property was free to take and use groundwater without limitations. This position is an inheritance of our colonial past and it deviated from the indigenous jurisprudence of groundwater rights in India, providing equal access to water resources. In adopting the land ownership doctrine of water rights approach, the country is not conforming to the constitutional goals.

Indiscriminate ground water withdrawal coupled with ground water quality deterioration due to unscientific waste disposal, has created ground water scarcity in many parts of the country including the state of Maharashtra. Subsidies on electricity are thought to play a central role in the Indian groundwater crisis. Cultivation of water intensive crops also has a role to play. With the advent and proliferation of down the hole drilling technology, construction of bore wells in hard rock formation has become an overnight activity. Mushrooming of drilling contractors and farmer's affordability to pay for construction of bore wells has resulted in over exploitation of ground water. The withdrawal of groundwater has continued unhindered as per the prevailing Ground Water right wherein the landowner has an absolute right on the water under his land. Not only are the principles of sustainable development and distributive justice side lined, but the right to drinking water, an aspect of right to life, is also compromised. Moreover, privatization and commercialization of groundwater have shown a clear and considerable tendency of over exploitation because the withdrawal is not confirmed to the owner's domestic use or agricultural activities.

Over the years, the Central Government has realized the need for extending technological assistance and policy guidance in the legal regime of groundwater by circulating Model Ground Water Bills amongst the States for their consideration. The major strategy of the Model Bill, 1970 was the introduction of the licensing system by the Ground Water Authority, which could notify any area for groundwater control. After notification, no holder of any agricultural land located within the notified area could construct any tube well, artesian well or bore well for extracting groundwater except under and in accordance with the terms and conditions of the license issued. Existing well owners were also required to obtain a license. The Model Bill, 1992 envisaged establishment of a Ground Water Authority by States, to recommend the state governments in matters of notification of any area for the control and regulation of groundwater extraction and development if it was satisfied that it was expedient in public interest. The Model Bill, 1996 provided that before issuing permit, the Authority was now to consider additional factors such as spacing of groundwater structures, long term groundwater level behaviour and provision for appeal against the decision of the Authority etc. The recent 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. Meanwhile, the Central Government has drafted the Groundwater (Development and Protection) Rules, under the framework of the Environment (Protection) Act, 1986, to be applicable to the whole of India. A Central Ground Water Authority has since been constituted as per the directives of the Supreme Court whose main

objective is to regulate the indiscriminate boring and withdrawal of groundwater in the country. The Authority can resort to penal provision contained in Environment (Protection) Act 1986.

This overstretching of the Environment (Protection) Act, 1986 and the consequent rendering of the state's power nugatory is not appropriate as the problem is region specific in nature, the solution should also be region specific. Silence and dilly- dallying over the issue by the States is also equally abhorrent. In fact, controversy about legislative competence alienates federalism from environmentalism. Federalism's relevance in groundwater management lies in promotion of co-operation between the various layers of government, including the *Panchayat Raj* system. However, when the fragile coastal zones of the south are irreparably damaged due to over extraction of groundwater, the problem ceases to be purely local since the resulting ecological imbalance affects the nation's environment. In *S. Jagannath v. Union of India (1997)*, the Supreme Court enforced the CRZ Notification provision strictly, to protect groundwater from being tapped for shrimp farming in coastal areas. The Coastal Regulation Zone Notification prohibits among others, the harvesting or withdrawal of groundwater and construction of mechanisms within 200 meters of the High Tide Line), in the 200-to-500-meter zone apart from manual extraction through ordinary wells for drinking, horticulture, agriculture and fisheries. Other provisions prohibiting the discharge of untreated wastes and effluents from industries, cities or towns, the mining of sand, rock and other substrata materials and the storage and disposal of hazardous substances, also contribute to maintain the wholesomeness of groundwater. Guidelines for development of beach resorts in CRZ-III areas prohibit tapping of groundwater within 200 m of the HTL and in the 200 to 500m. zone without the permit of the Central or State Ground Water Boards. In the aftermath of the 2004 tsunami, which killed 10,000 people along the eastern coast, CRZ Notification 2011 was brought in to beef up the coastal zone. But over the period, CRZ has been more violated than protected.

VARIOUS STATE LAWS & POLICIES

The Maharashtra Groundwater Act 1993 mainly protected the public drinking water supplies on a year-to-year basis. The status of ground water reservoir as a whole and development taking place elsewhere is not taken care of. The state of Maharashtra in 2000, proposed a modified draft bill to enhance the scope of Maharashtra Ground Water Act of 1993. The draft legislation addressed important management challenges as water logging, pollution, quality, conjunctive use allocation and environmental considerations. As far as the South Indian state governments are concerned, Tamil Nadu in 1987 enacted the Madras Metropolitan Area Groundwater (Regulation) Act for augmenting and preserving groundwater sources for supply of water to the metropolitan city of Madras. Subsequently, Kerala has enacted the Kerala Ground Water (Control & Regulation) Act, 2002 for the whole state. The Andhra Pradesh Water, Land and Trees act, 2002 provides for a comprehensive holistic policy as applicable to the whole of Andhra Pradesh. In 2003, Karnataka enacted the Karnataka Ground Water (Protection and Regulation for Drinking water) Act with the sole purpose of dealing with drinking water.

The haphazard development and /or over exploitation of ground water leads to deterioration in the water quality, pollutes the fresh water and causes environmental degradation. The subject of development of groundwater could, therefore, have been (expressly) covered from the very beginning by enlarging the scope of the Water Pollution Act or the Environment (Protection) Act. The need for a uniform legislation is also justified to ensure the same level of protection to all citizens who may suffer due to over-exploitation of ground water which in the long run may cause land subsidence, land ward movement of the coastline and disturbance of ecological balance. Therefore, there seemed to be a well - established need for having a central legislation. A similar observation is made about the Water law in the United States. Water law in the U.S developed separately for groundwater and surface water. Even today, many state systems do not directly acknowledge the important physical interrelationships of these systems. Consequently, legally authorized uses of groundwater exist throughout the country that are directly affecting the availability of surface water but that are not now regarded as legally responsible for any resulting harm.

The changing trends in policy are apparent as the rules had as its avowed object the regulation of indiscriminate boring and withdrawal of groundwater in the country and its protection and preservation. The Rules were designed to apply to the whole of India to all aspects of groundwater resources including their prospecting, assessment, development, protection, conservation and augmentation. It contemplated the formation of a Central Ground Water Authority consisting of a Chairperson and such number of members as directed by the Government. A distinct feature of the draft Rule is that it aimed to deal with the problem of deterioration in groundwater quality due to industrial, mining and oil refinery activities. Prescription of minimum standards for chemical quality of effluents from industry or requirement of purification before their disposal lest it may affect groundwater quality was also considered. Recently the central government in its 12th five-year plan proposed a policy of participatory groundwater management (PGM), which involves a collaborative approach among government departments, researchers, NGOs and community members. The plan involves training community workers to carry out aquifer mapping and implement innovative ways to use groundwater conservatively with the local community. Thus, some conscious legal & policy efforts are being made in this direction.

CONCLUSION

All in all, it is observed that there are a number of potential legal interventions in the area of groundwater conservation in India. However, there are problems with the rigorous implementations of these rules. Farmers may be encouraged to use micro irrigation like drip irrigation wherever possible. Community participatory management efforts is also a progressive step.

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