

Comments on
MODEL BILL FOR THE CONSERVATION, PROTECTION, REGULATION
AND MANAGEMENT OF GROUNDWATER, 2016

By

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MODEL GROUNDWATER BILL 2016

Specific comments

		Comments
	Long title	
	An Act to restore and ensure groundwater security ... to all stakeholders in rural and urban areas	What is the meaning of 'all stakeholders'?
	Preamble	
	Whereas groundwater, being the single..., is the backbone of drinking water, food and livelihood security in rural and urban areas;	It is also the backbone of economic development.
	And whereas groundwater in its natural state is a common pool resource and the Supreme Court of India has applied the public trust doctrine to groundwater,....;	Has the SC applied the doctrine to GW?
	And whereas the present legal framework for groundwater has led to...	Is it the present legal framework has led to...? Or is it also the absence of a legal framework to address some of the concerns has led...?
	Section 2: Definitions	
(a)	'Appropriate government' is the lowest possible public authority, including gram sabhas, gram panchayats, block panchayats, district panchayats, ward sabhas, municipal authorities and the State Government;	Appropriate authority as the lowest possible 'public authority' including... - Does this open the door for other public authorities being empowered in respect of groundwater?
(b)	'Aquifer' means an underground layer saturated rock or unconsolidated materials including gravel, sand and silt, that is capable of providing sufficient water to various types of wells and such water extraction mechanisms and to springs and seeps;	It should be: underground layer ' of ' saturated rock. What does ' <u>such</u> water extraction mechanisms' refer to?
(e)	'Groundwater' means water occurring under its natural state, where it exists below the surface	It should be: water occurring ' in ' its natural state. The separate statement that in its

	in the zone of saturation whereby it can be extracted through wells or any other means or emerges as springs and base flows in streams and rivers. In its natural state, it is a common pool resource;	natural state, GW is a common pool resource explicitly paves the way for other alternatives.
(g)	‘Groundwater Security Plan’ means a plan to be progressively based on available aquifer information, as under sections 15-16 of this Act;	What is the meaning of ‘progressively based’?
(j)	‘Pollutant’ means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, harmful to groundwater and impacting human and non-human life;	This term is defined in the EPA.
	Section 3: Objectives	
(1)		The following should be added: ‘To abolish the common law right that recognises the controlled right of landowners to extract groundwater from their land’.
(1)(b)	Meet food security, livelihoods, basic human needs, livestock and aquatic life needs;	Should not basic human needs be mentioned first?
	Section 4: Right to water for life	
		Please see comments on the similar section under the Draft National Water Framework Bill.
4(5)		this provision is clear when it positively endorses the outsourcing of water supply to private agencies by the state. At the same time, it seems self-contradictory when it states that the state’s responsibility shall remain same. Both these are inherently incompatible. Given the fact that the Supreme Court of India has repeatedly recognised the fundamental right to water as a constitutional right, it along with the state’s responsibility shall be given priority. Proviso: there is no need for this law to underline that ‘...delegation of water

		service provision to a private agency will, in no event, constitute the privatisation of water'. This would only result in legitimization of PPP in water supply and it amounts to ignoring of all the existing critique against the implementation of PPP in water supply in India. On this aspect, it is better to follow the Model Bill, 2011 as it remained committed to the constitutional norm of the fundamental right to water and did not venture to legitimise PPP in water supply.
	Section 5: Non-discrimination and equity	
(1)	Every person shall have access to groundwater without any discrimination, including among others, caste, creed, religion, community, class, gender, age, disability, economic status, land ownership and place of residence.	Does this refer to access for all uses of GW?
	Section 9: Legal status of GW	
(1)		This Act declares 'Groundwater, as a common pool resource, is the common heritage of the people held in public trust...' The additional advantage of using all these concepts, as opposed to one of them, is not clear. Moreover, this might lead to confusion at the implementation level or it may even lead to non-application any of these principles on the ground.
(3)	Without limiting sub-section (3), the appropriate government is responsible for ensuring that groundwater is allocated and used equitably in the public interest, while promoting environmental values.	It should be 'Without limiting sub-section (2)'. This clause does not fit in this section it is directly on the responsibility of government on allocation and use of the groundwater, NOT directly on 'legal status of Groundwater' as stated in the title.
	Section 10: Groundwater use prioritisation	
		Ecological needs should also be explicitly prioritised like water for life because vagueness in this regard would lead to a situation of least priority to ecosystem needs. It is better to follow

		the formulation in the 2011 Model Bill (Chapter 3).
	Section 11: GW protection zones	
(1)(a)		S. 11(1)(a): The meaning of the term ‘appropriate areas’ is not clear.
		What happens if the GW protection zone falls within the jurisdiction of more than one concerned body/authority?
(1)(3)(b)	Existing groundwater uses and users in the recharge area(s);	the following should be added to b) – ‘and discharge area(s)’.
	Regulation of GW protection zones	
(3)	Wherever an area has been notified as a Groundwater Protection Zone, appropriate measures regarding regulation on the extraction and use of groundwater, rules regarding afforestation and deforestation, prohibition of waste disposal, regulation of mining leases will be adopted and if necessary, enforced.	Please consider deleting ‘if necessary’ before ‘enforced’. This clause refers to ‘appropriate measures’ without mentioning by whom.
	Section 12: GW security plans	
(1)	The appropriate government shall prepare and oversee the implementation of a Groundwater Security Plan to be based on progressively available groundwater resources / aquifer information in consultation with elected local bodies and in consultation and coordination with information and monitoring cells and supporting institutions.	What is the difference b/w elected local bodies and appropriate government? Are the members of the public/local communities not to be involved in the process of preparation of a GW security plan (since they are involved in the demarcation of the GW protection zones)? ‘The appropriate government shall prepare and oversee’ – it is not clear if this provision is referring to same institution or different. If it is same, it is not appropriate to vest the power to prepare and oversee on the same agency. This is particularly relevant when the subsequent clauses only mention only ‘preparation’.
(2)	The objectives of the Groundwater Security Plan shall be: a. attainment of sufficient quantity of safe water for life	The objectives of GW security plan are restrictive. What about the other uses of GW?

	and sustainable livelihoods by every person b. ensuring water security even in times of emergencies like droughts, floods etc.	
(4)	A groundwater security plan shall be prepared for every watershed or administrative unit (and aquifers wherever possible), falling partly or entirely under a groundwater protection zone defined in section 11 of this Act...	The boundaries of a watershed, an administrative unit and an aquifer may/may not coincide. How will such differences be reconciled for the preparation of a GW security plan?
	Sections 13 and 14: Institutional framework – rural and urban areas	
(1)	Every Gram Panchayat shall constitute a Groundwater Sub-Committee as part of the Village Water and Sanitation Committee vested with all the functions and powers required to protect and manage groundwater resources under this Act.	Instead of ‘vested with <u>all</u> the functions and powers required to...’, perhaps it should simply state ‘vested with the functions and powers required to’...
(2)(a)	The functions of the Groundwater Sub-Committee/Ward Groundwater Committee shall include: Determination, in accordance with section 4 of this Act, of the minimum quantity of water for life to be supplied from groundwater and/or surface water depending on their respective availability;	Why does the Gram Panchayat/Ward Groundwater Committee have the power to determine the minimum quantity of water for life to be supplied from surface water?
(2)(b)	Provided further that the Gram Panchayat Village Water and Sanitation Committee shall ensure,...	It should be Gram Panchayat Groundwater Committee instead of Gram Panchayat Village Water and Sanitation Committee.
		All the gram panchayats may not have the capacity to discharge this responsibility. What type of support mechanisms are envisaged in order to improve their capacity?
	Block Panchayat Groundwater Management (c) Monitoring and supervising implementation of gram panchayat groundwater security	What is a groundwater management protocol?

	plans and ensuring sufficient inclusion of groundwater management protocols in such plans;	
	(h) & (d) Recommending the granting of authorisations under section 20 of this Act on the basis of prior informed consent;	Why are both Ward and Municipal Committees granting authorisations?
(2)(d)	Collection of information from all sources including persons or agencies engaged in activities, such as drilling of tube wells, construction of open wells and construction of spring-tanks and to discharge this function the Groundwater Sub-Committee shall obtain a log from the drilling agencies;	it uses the term ‘Collection of information’ but does not clarify what kind of information.
		There are some provisions which should be reflected in the sections concerning both Gram Panchayat/Ward GW Committees, and Block/Municipal Committees. For example, in the preparation and presentation of GW security plan provision, why is the proviso absent w.r.t. the Ward GW Committee? Why does the Gram Panchayat GW Committee not facilitate the implementation of the security plan (like the Ward GW Committee)? Why is a distinction made b/w wells and other sources used for commercial activities and those found in areas declared as GW protection zones in respect of the Ward but not the GP?
		Why are provisions in respect of GW protection zones included here when there is a separate section on GW protection zones?
(6)(1)	Every Block Panchayat shall include the mandate of groundwater management as part of all its existing water-related committees.	it does not consider a scenario where there is no ‘existing water-related committees’
	Section 14: Urban areas	
(7)(2)(c)	Facilitating the implementation of the Ward Groundwater Security Plan	this provision says ‘Facilitating the implementation of the Ward Groundwater Security Plan’ as a function of the Ward Committee. If its

		duty is ‘facilitating the implementation...’, who will take care of implementation?. This provision should state implementation as a duty, NOT ‘facilitating the implementation’.
(8)		This is called ‘municipal water management committee’ and not ‘groundwater management committee’ as used in the context of Block Panchayat.
	Section 16: CONSTITUTION AND MEMBERSHIP OF THE STATE GROUNDWATER ADVISORY COUNCIL	
(1)	The State Government shall, by notification, establish, with effect from such date as may be specified in the notification, a Council at the State level to be known as the State Groundwater Advisory Council to exercise the powers conferred on, and to perform the functions and duties assigned to, it under this Act.	It would be more effective if this provision prescribes a timeline to set up the Council.
(2)		It would be better to use formulation such as ‘department dealing with irrigation’ and ‘department dealing with water supply’ because not all states have a PHED to take care of drinking water supply.
	Section 18: DUTIES AND LIABILITY OF GROUNDWATER USERS	
(3)	Whoever contravenes the provisions of this Act by polluting or contaminating groundwater or encroaching flood plains or water bodies shall be strictly liable for any groundwater pollution they cause and shall be responsible for the cost of its remediation	It is not clear which agency will initiate this proceeding.
	Section 18(25): Water harvesting, GW recharge and catchment conservation	The heading should be modified.
18(26)	Recycling and reuse of groundwater	The word ‘groundwater’ should be explicitly used in the body of the provision.

18(27)	Waterlogging	
(1)	The appropriate government shall discourage and prevent such activities that are likely to lead to potential waterlogging of land. It shall undertake all possible regulation for the protection of land against waterlogging within its jurisdiction.	What will be the form of the regulation? Can it vary from place to place subject to the discretion of the appropriate government?
(2)	The Gram Panchayat Groundwater Committee or Ward Groundwater Committee, as the case may be, may impose stipulated conditions for regulating activities in waterlogged areas that lead to worsening of the waterlogging condition...	Where are these conditions stipulated?
		There is some repetition in this provision, which can be avoided.
		It only talks about the duty to conduct social and environment impact assessment but silent on the circumstances or activities for which it is needed. Further, a clause may be added to clarify that this is not essentially needed as a separate requirement if it can be included in an impact assessment procedure required under any other law in force.
	Section 19: GW for livelihoods and irrigation	
(1)	...The livelihood pattern and the resultant needs should be incorporated in groundwater security plans.	GW security plans at what level?
(2)	Provided that in case of severe drought or where the area has been declared a Groundwater Protection Zone 2, limits may be imposed for restricting water use by the appropriate government.	These are limits on water use for livelihoods and irrigation?
(3)	Major or medium irrigation projects using groundwater shall be based on an authorisation system allocated by the appropriate government in	The authorisation system is allocated by the appropriate government in consonance with the GW security plan (which may not be at the panchayat level) but the water rate is paid to the

	consonance with the groundwater security plan. The procedure for issuing authorisations shall be the same as that outlined in Chapter 9.	panchayat always?
(4)	Major or medium irrigation projects using groundwater may be subject to paying a water rate to the panchayat, as determined by the Gram Panchayat Groundwater Committee, to be used for groundwater conservation and augmentation activities.	
(5)	In any area that has been declared a Groundwater Protection Zone 2 and where water intensive cash crops are grown, an undertaking shall be obtained for a change from water-intensive crops and such undertaking must be incorporated in the authorisation.	The undertaking to change from water-intensive crops has to be complied within what period, especially as this is a GW protection zone 2?
(6)	In the command areas of irrigation systems where water user associations have been established under the law, the said water user associations may levy and collect from the farmer or any other person using groundwater such fees, as they may deem appropriate.	What will the fees be used for?
	Section 20: Authorisation to abstract GW	
(1)	No one shall abstract groundwater for industrial use or infrastructure projects without an authorisation issued by the appropriate government as specified in schedule 2 on the basis of a social and environment impact assessment and as defined in this chapter: Explanation: Industrial use includes, but is not restricted to groundwater extracting industries, bottling plants and other commercial activities	What is the definition of ‘infrastructure projects’? Is it correct to include government agencies responsible for water supply using GW in industrial use?

	consuming more than 10 kl of groundwater a day and agencies – government or private – responsible for water supply using groundwater.	
(2)	Bulk supply of water for life through groundwater shall be in accordance with the provisions of the Groundwater Security Plan in the concerned area. Other uses of groundwater for life shall be monitored but not subject to an authorisation.	Monitored by whom?
	Section 21: Pricing of industrial and bulk use of GW	
(1)	Industrial or bulk groundwater use shall be priced and a water rate, as prescribed by the appropriate government shall be charged.	Which is the appropriate government for this purpose?
(2)	Funds collected under this section shall be used for groundwater conservation and augmentation activities.	At what level?
(4)	An annual water audit will be conducted in cases where the annual bulk water usage exceeds a prescribed limit decided by the Act.	The prescribed limit will be decided by the Act or the rules framed thereunder?
	Section 22: Mining	
(1)	Any entity planning reconnaissance, prospecting, general exploration, detailed exploration or mining in respect of any major or minor minerals, including sand mining, shall prepare and file a prospecting plan with the appropriate government of the area concerned,...	Who will be the appropriate government if the area straddles more than one jurisdictions? Should not some minimum measures be prescribed or is it being left entirely to the discretion of the mining entity?
(2)	Any entity preparing and filing a prospecting plan under subsection (1) and any person having undertaken mining operations for a major or minor mineral shall take immediate measures, as prescribed by the appropriate government of the area concerned, to restore, as far	What is the previous timeframe within which the person should have undertaken mining operations in order to be bound by this obligation? In the case of an entity preparing and filing a prospecting plan, operations have not yet been conducted.

	as possible, water regimes and the ecosystem in general in the areas in which prospecting or mining operations have been conducted.	
(3)	Any entity undertaking mining activities shall support groundwater enrichment activities in their watershed and provide drinking water from their own sources to nearby habitations in case of emergency in the manner prescribed by the appropriate government.	What is this emergency? It is not clear why a duty to provide drinking water is imposed only on mining entities. There is apparently not justification for not applying this to all bulk users.
	Section 23: SEIA and public consultation	
		It only talks about the duty to conduct social and environment impact assessment but silent on the circumstances or activities for which it is needed. Further, a clause may be added to clarify that this is not essentially needed as a separate requirement if it can be included in an impact assessment procedure required under any other law in force.
(1)	Provided further that in no case the promoter of the project, which is subjected to the social and environment impact assessments, shall be involved in this process.	But the promoter should be required to render all necessary assistance for this purpose.
	Section 24: Duty to establish transparency systems	
(4)	The transparency regime for provision of information to any person shall include, but shall not be restricted to: (d) Ensuring the transparency of the decision-making processes.	How does (d) fit in to the transparency regime for provision of information?
(5)	Provided that any request for information not complied with within the time period specified shall be considered a deemed refusal.	What is the remedy in case of deemed refusal of request for information?
	Section 25: Duties of proactive disclosure	
(2)	It shall be the duty of the appropriate government to	The dissemination of information in a consolidated and summarised form may

	disseminate the records in such a manner that a layperson can understand the information easily. This obligation shall also include the dissemination of information in a consolidated and summarized form, wherever appropriate.	be misused.
	Section 26: Social audits	
(1)	Social audits of activities undertaken in pursuance with this Act shall be conducted in every twelve months. It shall be the obligation of the gram sabha or ward sabha, as the case may be, to conduct social audits, as required above, of activities undertaken in pursuance of this Act within the gram panchayat or municipal ward:	What are these activities? Who is supposed to conduct these activities? What about activities undertaken in pursuance of this Act at the higher levels (i.e. above gram panchayat or municipal ward)?
(4)	The appropriate government shall encourage independent audits, carried out by civil society or citizens' groups.	How will the findings of these independent audits be considered in the official process?
(5)	All social audits shall be universal and open, allowing for ongoing social audit (concurrent) as well as post facto social audits.	What does this mean?
(6)	The Groundwater Grievance Redressal Officer shall take necessary action on the findings of all social audits, including directions to initiate criminal prosecution.	How will the findings be conveyed to the GW GRO?
(7)	The Groundwater Grievance Redressal Officer may impose a fine and/or award compensation on the basis of the findings of the social audit, within a reasonable time period and in any case not later than six months.	Is there a minimum and maximum fine and/or compensation?
	Section 27: Offences and penalties	
(1)	Whoever does any activity, which prejudicially affects the quality of groundwater or availability thereof shall be	How is an activity defined? What about not doing an activity? Is this provision applicable only to users or government officers as well?

	<p>punished with imprisonment, which may extend to one year and six months or with a fine, which may extend to one lakh rupees or with both.</p>	
(3)	<p>Any supplier of water who supplies or causes to be supplied groundwater which fails to meet the quality standard prescribed under law shall be punished with a fine which may extend to five thousand rupees.</p>	<p>If the supplier is a government agency, who will pay this amount? The department? Is that it?</p>
(5)	<p>Whoever, being an owner of a building liable to be fitted with mechanisms for harvesting rainwater for recharging groundwater as per the requirements under this Act, fails to do so, shall be punished with a fine, which may extend to five thousand rupees. In addition to the penalty imposed on her or him, she or he shall be required by the Groundwater Grievance Redressal Officer to comply with the requirements of law within a stipulated time. In case of failure on the part of the owner of the building, the appropriate government shall take steps to install or restore such mechanisms and the expenditure incurred for this shall be collected from the owner as arrears of land revenue or as a judgment debt realisable through execution proceedings initiated before the Groundwater Grievance Redressal Officer.</p>	<p>Who is monitoring this? What about use of the rainwater harvesting structures?</p>
(7)	<p>If an offence punishable under this Act is committed at any time by a company, every person who is in charge of and responsible to the company for the conduct of its business at the time of the commission of the offence and the company shall be deemed to be responsible for the offence and shall be personally liable under the Act.</p>	<p>What will happen if the offence is committed by a government department?</p>

	This also includes criminal liability:	
		Is the same fine/punishment to be imposed on all violators? Are there differing circumstances, paying capacity, social conditions not to be considered as mitigating factors?
	Section 28: Civil and administrative remedies	This provision deals with violation of GW security plan (remedy – before GW GRO); and violations of the Act, rules as well as regulations and violation of conditions of authorisation (remedy – administrative action by appropriate government). These should be clearly separated to avoid confusion.
(1)	Whoever violates the Groundwater Security Plan prepared and implemented under this Act shall be liable to be sued. Any act done or any omission to do an act in violation of the Groundwater Security Plan shall be an actionable wrong.	What happens if the appropriate government violates the GW security plan?
(9)	No action shall be initiated by any person, other than the designated officer, under this section unless he had served thirty days’ notice to the concerned authorities for initiation of legal action:	This only applies to violation of GW security plan, based on a reading of (8).
(13)	The Groundwater Grievance Redressal Officer may impose a fine for violations of the Groundwater Security Plan or any other provisions of this Act and such fine shall not exceed the amount prescribed as fine under the penal provisions under this Act.	This is not what the previous sub-sections suggest.
(14)	The Groundwater Grievance Redressal Officer may cancel the authorisation granted in cases of violation of the Groundwater Security Plan or conditions of the authorisation or suspend it for a specific period in addition to any other order she or he may pass in a	In case of violation of conditions of authorisation, the GW GRO is allowed to cancel the authorisation or suspend it.

	petition for rectification of the Groundwater Security Plan violation.	
	Section 29: Cognizance of offences	
(1)	Offences under this Act shall be cognizable and triable by a magistrate of first class or by any other judicial forum created/empowered in this behalf.	What are these offences?
	Section 31: Dispute resolution avoidance, mediation and conciliation	
(1)	Every dispute under this Act shall be referred to be settled by mediation or conciliation at the appropriate level, by mediators and conciliators.	What is a 'dispute' under this Act?
(4)	Any dispute, which fails to be resolved under the mediation and conciliation shall be referred to the court for adjudication with a statement of failure report.	Not just the court – but also the GW GRO
31(28)	Jurisdiction and procedure	
(1)	The Groundwater Grievance Redressal Officer shall have jurisdiction over all complaints arising under this Act, within the territorial jurisdiction for which she or he is appointed.	What can be the nature of these complaints?
31(32)	Appeals from the decisions of the Block Groundwater Grievance Redressal Officer can be preferred to the Gram Nyayalya set up under Section 3 of the Gram Nyayalayas Act, 2008.	Given the fact that the Gram Nyayalaya Act, 2008 has been implemented poorly, this provision needs to be revisited.
	Sections 37, 38 and 39: Power to make rules, bye-laws and regulations	There should be a requirement of pre-publication.
	Schedule I	
		Groundwater Protection Zones 1 & 2 are to be defined.
(2)	The State Groundwater Agency may also consult any other institution or agency to assist with the demarcation of groundwater protection zones.	Can 'any other institution or agency' be public or private?

(19)	All the steps prescribed above shall be completed within a period of six months from the date of preparation of the proposal by the State Groundwater Agency.	How will the hearing of objections from members of the public by the appropriate government and the interaction b/w the State GW Agency and the appropriate government be reconciled?
	Schedule II	
(1)	The authorisation may be granted with terms and conditions as prescribed by the appropriate government, taking into account the different groundwater requirements of different industries and the specific processes used and such terms and conditions may include but are not restricted to: a) The maximum quantity of water that may be extracted;	Should there be a provision to say that the establishment of water-intensive industries in water-scarce areas should be avoided/discouraged?
(4)	Once the validity of the authorisation has expired, continuation of the authorisation shall require a fresh application by the authorisation holder complying with all the conditions of an original application.	The fresh application for authorisation should be submitted in advance, i.e. before the expiration of the validity of the previous authorisation.
	Schedule III	
(1)	Provided further that the above said notice shall be given through gram or block panchayat offices and/or ward or municipal offices and publication of such notice shall also be made in at least two local language newspapers having circulation in the concerned area.	The notice of public hearing can also be given orally in the village/ward.
		More details are required about the manner in which the report of the public hearing is to be prepared.

General comments

1. What are the checks and balances w.r.t. demarcation and notification of GW protection zones and the preparation and notification of GW security plans?