

CHAPTER 2: THE RESEARCH PROPOSAL

The water management system in India is far from sustainable. There is a need to adopt some reforms to manage and develop the scarce resource today. The challenge of managing water sustainably has to be taken up in the right earnest by all stakeholders. The government has to put in place many policy initiatives in the area and regularly fine tune them. The NGOs which are supporting community action have to manage to turn around many lives in extreme water scarce regions of the country. And most important of all, people have to themselves wake up to the severity of the problem and try to do their bit for conserving water and using it judiciously.

In order to suggest appropriate and acceptable options in this research project for Institutional and legal reforms for effective ground water governance following objectives are been identified for proper management of ground water resources which is also being treated as a common pool resource.

OBJECTIVES

- a) Rationalizing the abstraction of ground water from heavily exploited aquifer
- b) Improving the understanding of underutilized aquifer
- c) Applicability of participatory approach in ground water resources management.

The term governance deals with the processes and systems by which an organisation or society operates. The World Bank defines governance as "the exercise of political authority and the use of institutional resources to manage society's problems and affairs". An alternative definition suggests that governance is "the use of institutions, structures of authority and even collaboration to allocate resources and to coordinate or control activity in society or the economy". Thus, governance can be taken to be broadly synonymous with authority, decision making, power, administration, or

politics. However, more specifically, governance is taken to mean two broad things

- Rules
- Institutions/Agencies.

2.1 Rules

Rules are the agreed sets of behaviour to be complied by the whole society. There can be formal rules in the shape of Constitution, various legislations, bye-laws, customary laws, case laws, etc., and there can be informal rules in the form of social consensus/wisdom, which although not codified, have some force for compliance by individuals, and tend to become codified over the years.

The rules existing in the water sector are - Constitutional entries in the Union/State lists, Inter State Water Dispute Act, some State Water Acts, WUA Acts, Easement Act, etc.

2.1.1 Legal status of Ground water

(a) Constitutional Provisions

Under the Constitution, “Water” is a matter included in Entry 17 of List II in the Seventh Schedule i.e. in the State List. This entry is however subject to the provisions of Entry 56 of List I in the Seventh Schedule i.e. the Union List.

Entry 17 of List II in the Seventh Schedule (State List)

“Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I.”

Entry 56 of List I in the Seventh Schedule (Union List)

“Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.”

Further, the Supreme Court has interpreted certain constitutional provisions as having indirect implications for ground water, which include Article 21 concerning “right to life” and Article 48 A directing the state to “endeavor to protect and improve the environment”, thereby entailing certain obligations for the Government in general.

(b) Model Bill to Regulate Ground Water development

Sensing the need for model uniform regulators, the Centre has prepared and circulated model bill to regulate ground water development to the states in 1970 which has been re-circulated in 1992, 1996 and 2005. The salient features of the latest Model Bill circulated in 2005 are:

- States to establish a Ground Water Authority.
- Authority to have powers to notify areas for control and regulation of ground water development.
- Authority to grant permit for extraction and use of ground water in notified areas.
- Existing users in notified areas and new users in non-notified areas to register with the Authority.
- Penalties prescribed for offences.
- States to implement rain water harvesting for ground water recharge.

So far 11 States/UTs have enacted legislation and are implementing according to these. The States/UTs are Andhra Pradesh, Goa, Tamil Nadu, Lakshadweep, Kerala, Pondicherry, West Bengal, Himachal Pradesh, Bihar, Chandigarh and Dadra & Nagar Haveli. 18 other States/UTs are in the process of enactment of legislation.

(c) The water (Prevention and Control of Pollution) Act, 1974

The Water Act or The Water (Prevention and Control of Pollution) Act, 1974 was enacted by Parliament Act, 1974 purpose to provide for the prevention of

control of water pollution and the maintaining or restoring of wholesomeness of water. As on day, it is applicable in all the states of India. The relevant provisions of this and are given as below:

Under Section 19: The entire National Capital Territory of Delhi has been declared as water pollution prevention control area.

Under Section 21: Officials of DPCC can take samples of the water effluent from any industry stream or well or sewage sample for the purpose of analysis.

Under Section 23 : Officials of the state boards can enter any premises for the purpose of examining any plant, record, register etc. or any of the functions of the Board entrusted to him.

Under Section 24: No person shall discharge any poisonous, noxious or any polluting matter into any stream, or well or sewer or on land.

Under Section 25: No person shall without the previous consent to establish shall

- a. Establish or take any step to establish any industry, operation or process or any treatment and disposal system for any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land or
- b. Bring into use any new or altered outlet for the discharge of sewage or
- c. Begin to make any new discharge of sewage.

Under this section the state board may grant consent to the industry after satisfying itself on pollution control measures taken by the unit or refuse such consent for reasons to be recorded in writing.

Under Section 27: A state board may from time to time review any condition imposed by it on the person under section 25 and 26 and may vary or revoke that condition.

Under Section 28: Any person aggrieved by the order made by the State Board under Section 25, 26 or section 27 may within thirty days from the date on which the order is communicated to hi, prefer an appeal to such authority (referred to as the appellate authority) as the State Govt. may think fit to constitute (in case of NCT of Delhi Appellate authority under this section is Financial Commissioner, Delhi Administration).

Under Section 33 : The State Board can direct any person who is likely to cause or has cause the pollution of water in street or well to desist from taking such action as is likely to cause its pollution or to remove such matters as specified by the Board through court.

Under Section 33A: DPCC can issue any directions to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions. The direction includes the power to direct:-

- a. The closure, prohibition of any industry.
- b. Stoppage or regulations of supply of electricity, water or any other services.

Under Section 43 :Whoever contravenes the provisions of Section 24 shall be punishable with imprisonment for a term which shall not be less than one year & six months but which may extend to six years with fine.

Under Section 45: If any who has been convicted of any offence under section 24, or Section 25 or Section 26 is again found guilty of an offence involving a contravention of the same proviso shall be on the second and on every subsequent conviction be punishable with imprisonment for a term which shall not less than two years but which may extend to seven years with fine.

Under Section 45A : Whoever contravenes any of the provisions of this act or fails to comply with any order or direction given under this act for which no penalty has been elsewhere provided in this Act, shall be punishable with

imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both.

2.2 Institutions/Agencies

Then there are the institutions - to operate those rules (the executive), and to change those rules as and when required in a dynamic world (the legislature), and to adjudicate (the judiciary). Thus we have the Government, the Parliament and the Courts, at the Central, State and Panchayat levels, besides which there are institutions operating exclusively in the water sector e.g. the Water Disputes Tribunals, WUAs, and Water Resource Regulators in some States. The objective of this entire process of governance revolves around rules and the institutions which have to bring about efficiency, equity and sustainability of resources.

2.3 Ground Water Governance

In the present context groundwater governance refers to political, social, economic, and administrative systems that are explicitly aimed at developing and managing water resources and services at different levels of society which rely solely or largely on groundwater resources. This definition includes all related mechanisms including financing, knowledge, and technical capacity, and the rights and responsibilities of sector players (including water users).

"In-effective governance" includes following issues and concerns for groundwater resources management:

- a. Inadequate policies, strategies, and legislation relating to sustainability of groundwater resources and its management, or the ineffective implementation of such policies, strategies, or legislation;
- b. Insufficient technical and financial capabilities to support groundwater resources management;
- c. Lack of professional accountability, transparency and answerability

- d. Ineffective enforcement of laws and regulation relating to allocation and use of groundwater
- e. Ignoring stakeholders rights to equitable access to groundwater resources
- f. Non scientific and poorly managed groundwater projects

2.4 Research Questions

The research questions pertain to suggest viable reforms in the existing policies, and legal as well institutional framework, for ground water governance. As the ground water development is mainly through private entrepreneurship and there is no direct public control, the reform addresses political as well social issues ensuring community involvement.

With an attempt to improve ground water governance for better management, the following research questions are proposed.

1. Can enforcement of legalities institutionalise ground water governance?
2. Whether participatory management is a key to Good Governance of ground water?
3. Can variable pricing of water for different sectors be instrumental for better ground water governance option?
4. Can removal of subsidy on electric power will check the declining ground water levels?
5. Whether lack of awareness is really a fact for poor water resources management? or casual approach of users towards the water resources is one of the major reason.