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Model Bill to regulate and control the development and management of ground water, 1996

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**MODEL BILL
TO
REGULATE AND CONTROL THE
DEVELOPMENT OF GROUNDWATER**

**Ministry of Water Resources
Government of India
New Delhi – 110 001.**

June, 1996

A
BILL
TO REGULATE AND CONTROL THE
DEVELOPMENT OF GROUNDWATER AND
THE MATTERS CONNECTED THEREWITH

BE enacted by the Legislature of the State of.....in the.....year of the Republic of India as follows :

1. SHORT TITLE, EXTENT AND COMMENCEMENT.

- (1) This Act may be called the Ground Water (Control and regulation) Act, (...year...)
- (2) It shall extend to the whole of the State/Union territory of.....in a manner as specified.
- (3) The Act will operate fully in the area so notified by the Government. In the remaining part of the State/Union Territory, assigned as non-notified area, only those sections / sub-sections of the Act will operate wherein it has been so specified.
- (4) It shall come into force on such date as the State Government or Union Territory may, by notification in the official Gazette, appoint for different areas of the State/Union Territory.

2. DEFINITIONS.

In this act, unless the context otherwise requires:

- (a) "Act" means the Ground Water Control And Regulation Act (...year...)
- (b) "Authority" means Ground Water Authority Established in accordance with Section 3 of the Act.
- (c) "ground water" means the water which exists below the surface of the ground at any particular location.
- (d) "prescribed" means prescribed by rules made under this act;
- (e) "sink" with all its grammatical variations and cognate expression in relation to a well includes any digging, drilling or boring of new wells or deepening carried to the existing wells;
- (f) "user of ground water" means the person or persons or an institution including a company or an establishment, whether Government or not who or which own or use groundwater for any purpose including domestic use made either on a personal or community basis;
- (g) "well" means a well sunk for the search or extraction of ground .water by person or persons except by the authorized officials of the State or Central Governments for carrying out scientific investigations, exploration, development or management work for the survey and assessment of ground water resources or for providing water for irrigation and includes open well, dug well, borewell, dug-cum-borewell, tubewell, filter point, collector well and infiltration gallery.

Provided that it will exclude the person or persons who use ground water drawn from a well by manual devices, e.g., hand pump or rope and bucket.

3. ESTABLISHMENT OF A GROUNDWATER AUTHORITY.

- (1) The State Government/Union Territory shall, by notification in the official Gazette, establish with effect from such date as may be specified in the notification, an Authority to be known as Ground Water Authority.
- (2) The Ground Water Authority shall consist of:
 - (a) A Chairman to be appointed by the State Government / Union Territory;
 - (b) ...(Number)...representatives of the Departments which are concerned with Survey, exploration, development, management and protection of ground water to be appointed by the State/Union Territory Government. These representatives will serve as Members;
 - (c) Such number of other members who, in the opinion of the Government have special knowledge or practical experience in matters relating to ground water, to be appointed by that Government;
- (3) The term of office and the manner of filling the vacancies and other conditions of service of the Chairman and other members shall be in such a manner as may be prescribed.
- (4) The Members will advise the Chairman who will be the Chief Executive of the Authority.

4. STAFF OF THE GROUND WATER AUTHORITY.

- (1) In order to enable Ground Water Authority to properly function or exercise the powers under the Act, State/Union Territory Government may appoint such number of technical personnel and other staff as it may consider necessary.
- (2) The functions and the terms and conditions of service of such employees shall be such as may be prescribed.

5. POWERS TO NOTIFY AREAS FOR CONTROL AND REGULATION OF GROUND WATER DEVELOPMENT.

- (1) Ground Water Authority shall function under the overall control and supervision of the State/ Union Territory Government.
- (2) If the Ground Water Authority is of the opinion that it is necessary or expedient in the public interest to control and/or regulate the extraction or the use of both of ground water in any form in any area, it will advise the State/Union Territory Government to declare any such area to be a notified area for the purposes of this Act with effect from such date as may be specified therein. This declaration will be notified in the official Gazette. Provided that the date so specified in the notification shall not be earlier than three months from the date of publication of the said notification.
- (3) Every such notification shall, in addition to its publication in the official Gazette, be published in not less than one daily regional language newspaper having wide circulation in the State/Union Territory, and also be served in such manner as the State/Union Territory Government, may think fit and all or any of the following modes may be followed in affecting such service, namely:
 - (a) by affixing a copy of the notification to some conspicuous part of the offices of the village Panchayats located in the said area;
 - (b) by proclaiming by beat of drum or by means of loudspeakers the contents of the notification in the said area :

- (c) in such other manner as may be prescribed.
- (4) If in the opinion of the Authority, the availability of the ground water has improved in a notified area, it may advise State/Union Territory to denotify such area and the State/Union Territory may do so according to the procedure, prescribed above for notifying the area.

6. GRANT OF PERMIT TO EXTRACT AND USE GROUND WATER IN THE NOTIFIED AREA.

- (1) Any user of ground water (as defined under section 2, sub-section f) desiring to sink a well in the notified area for any purpose either on personal or community basis, shall apply to the Authority for grant of a permit for this purpose, and shall not proceed with any activity connected with such sinking unless a permit has been granted by the Ground Water Authority.
Provided that the person or persons will not have to obtain a permit if the well is proposed to be fitted with a hand operated manual pump or water is proposed to be withdrawn by manual devices.
- (2) Every application under sub-section (1) shall be made in such form, shall contain such particulars and in such manner as may be prescribed.
- (3) On receipt of an application under sub-section (1), if the Ground Water Authority is satisfied that it shall not be against public interest to do so, it may grant, subject to such conditions and restrictions as may be specified, a permit authorizing the extraction and use of the water.
Provided that no person shall be refused a permit unless he has been given an opportunity of being heard.
- (4) The decision regarding the grant or refusal of the permit shall be intimated by the Authority to the applicant within a period of 90 days from the receipt of the application.
- (5) In granting or refusing a permit under sub-section (3), the Authority shall have regard to:
 - (a) the purpose or purposes for which water is to be used;
 - (b) the existence of other competitive users;
 - (c) the availability of water;
 - (d) quality of ground water with reference to use;
 - (e) spacing of groundwater structures keeping in consideration the purpose for which water is to be used.
 - (f) long term ground water level behaviour.
 - (g) any other factor relevant thereto
- (6) The permit shall be in such form as may be prescribed.

7. REGISTRATION OF EXISTING USERS IN NOTIFICATION AREAS.

- (1) Every existing user of groundwater in the State or Union Territory shall within a period of one hundred twenty days from the date of establishment of Authority by State/Union Territory Government will apply to the Ground Water Authority for the grant of a certificate of Registration recognising its existing use in such form and in such manner as may be prescribed.
Provided that the Authority may entertain any such application after the expiry of the said period of one hundred twenty days, if it is satisfied that the user was prevented by sufficient cause from filing application in time.
- (2) the details to be furnished in an application under sub-section (1) shall include the following, namely:

- (i) the description of the source of water, such as type of well, its exact location;
 - (ii) the lifting device, used;
 - (iii) the quantity of groundwater withdrawal and hours of operation per day.
 - (iv) the total period of use in each year.
 - (v) the purpose or purposes for which groundwater is being extracted.
 - (vi) In case of irrigation well, the location and extent of area irrigated.
 - (vii) In the case of State, Municipal or community run water supply schemes, the details of the services involved in addition to the quantities of water extracted, the diversion or the pumping points and their locations.
- (3) On receipt of an application under sub-section (1), if the Authority is satisfied that it shall not be against the public interest to do so, it may grant, subject to such conditions and restrictions as may be specified, a certificate of registration authorising the continued use of the water.
Provided that no person shall be refused a certificate of registration unless he has been given an opportunity of being heard.
- (4) The decision regarding the grant or refusal of the certificate of registration shall be intimated by the Authority to the applicant within a period of ninety days from the receipt of the application.
- (5) In granting or refusing a permit under sub-section (3), the Ground Water Authority shall have regard to:
- (a) the purpose or purposes for which water is to be used.
 - (b) the existence of other competitive users;
 - (c) the availability of water;
 - (d) quality of ground water with reference to use;
 - (e) spacing of groundwater structures keeping in consideration the purpose for which water is to be used.
 - (f) long term ground water level behaviour.
 - (g) any other factor relevant thereto
- (6) The certificate of registration shall be in such form as may be prescribed.
- (7) Pending the communication by the Ground Water Authority of the decision on an application under sub-section (1), every existing user of groundwater in the notified area shall be entitled to the continued use of the groundwater in the same manner and to the same quantity as he was entitled prior to the date of his application.
- (8) If a registered well becomes defunct, this fact should be immediately brought to the notice of the Authority by the user of ground water.

8. REGISTRATION OF USER OF NEW WELLS IN NON NOTIFIED AREA.

- (1) All wells sunk in the State/Union Territory shall have to be registered including the areas not notified under section 5 of the Act, except those excluded under clause (g) of the Section 2 of the Act.
- (2) The clause under Sub-Section (8) of Section 7 will also be applicable.

9. POWER TO ALTER, AMEND OR VARY THE TERMS OF THE PERMIT.

At any time after a permit or certificate of registration, as the case may be has been granted the Authority may, for technical reasons, alter, amend or vary the terms of the permit or certificate of registration, as the case may be, provided the user of ground water has been given an opportunity of being heard;

Provided further that before taking such action, the Authority shall ensure that the standing crop (s) are not damaged.

10. CANCELLATION OF PERMIT/CERTIFICATE OF REGISTRATION OR LICENCE.

If the Authority is satisfied either on a reference made to it in this behalf or otherwise, that:

- (a) The permit or certificate of registration granted, under sub-section (3) of section 7, or sub-section (3) of section 7, as the case may be, is not based on facts.
- (b) the holder of the permit or certificate of registration or licence has without reasonable cause failed to comply with the conditions subject to which the permit or certificate of registration or licence has been granted or has contravened any of the provisions of this Act or the rules made thereunder,
or
- (c) a situation has arisen which warrants limiting of the use or extraction of groundwater, then without prejudice to any other penalty to which the holder of the permit or of the certificate of registration or licence may be liable under this Act, the Ground Water Authority may after giving the holder of the permit, certificate of registration or licence, an opportunity to show cause, cancel the permit, certificate of registration or licence, as the case may be.

11. POWERS OF THE GROUND WATER AUTHORITY.

- (1) The Authority or any person authorised by it in writing in this behalf shall have power :
 - (a) to enter on any property (private or Government owned) with the right to investigate and make any measurements concerning the land or the water located on the surface or the underground.
 - (b) to inspect the well which has been or is being sunk and the soils and other materials excavated therefrom;
 - (c) to take specimens of such soils or other materials or of water extracted from such wells.
 - (d) to require by order in writing the persons sinking a well to keep and preserve in the prescribed manner specimens of soils or any material excavated therefrom for such period not exceeding three months from the date of completion or abandonment of the work as may be specified by the Ground Water Authority and thereupon such person shall comply with such requisition.
 - (e) to inspect and to take copies of the relevant record or documents and ask any question necessary for obtaining any information (including diameter or depth of the well which is being or has been sunk; the level at which the water is or was struck and subsequently restored/rested, the types of strata encountered in the sinking of the well and the quality of the water struck) required for carrying out the purposes of this Act;
 - (f) to require the user of groundwater to install water measuring device on any water supplies when necessary to properly administer the water or where there is reason to believe that the user does not comply with the provisions contained in this Act or any other sufficient reason for defending the public interest.

Provided that where the user of groundwater does not comply with the requisition issued to him within a period of thirty days, the Authority itself may install such water measuring device and recover the cost from the defaulting user of groundwater;

- (g) to seize any equipment/ device utilised for illegal sinking and destroy the work executed fully or partly.
- (h) to require any user of groundwater who does not comply with the provisions of this Act and rules framed there under to close down any water supply or destroy and hydraulic work found to be illegal according to the provisions of this Act and the rules framed thereunder;

Provided that where the user of groundwater does not comply with the requisition issued to him within in a period of sixty days, the Authority itself may carry out the necessary work and recover the cost from the illegal user of groundwater.

- (i) to enter and search with such assistance, if any, as it considers necessary, any place in which it has reason to believe that offence under this Act has been or is being committed and order in writing the person who has been or is committing the offence not to extract or use the groundwater for a specified period not exceeding thirty days.
 - (j) to exercise such other powers as may be necessary for carrying out the purposes of this Act or any rules made thereunder;
- (2) The power conferred by this section includes the power to break open the door of any premise where sinking, extraction and use of groundwater may be going on;

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuse to open the door on being called to do so;

- (3) The provisions of the Code of Criminal procedure, 1973 (2 of 1974) shall so far as may be apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 93 of the said code.
- (4) Where the Authority seizes any mechanical equipment / device under clause (h) of sub-section (1) it shall as soon as may be, inform a magistrate and take his orders as to the custody thereof.

12. SERVICE OF ORDERS, ETC.

- (1) Every order under clause (d) of sub-section (1) of section 11 shall be served-
 - (a) by giving or tendering the order of notice or by sending it by post to the user for whom it is intended, or
 - (b) if such user cannot be found, by affixing the order of notice on some conspicuous part of his last known abode or place of business or by giving or tendering the order of notice to some adult male member or servant or his family or by causing it to be affixed on some conspicuous part of the land or building in which the well is being sunk.
- (2) Where the person on whom an order or a notice is to be served is a minor, service upon his guardian in the manner provided in sub-section (1) shall be deemed to be served upon the minor.

13. DELEGATION OF POWERS AND DUTIES.

The Authority may, by general or special order in writing, direct that all or any of the powers or duties which may be exercised or discharged by it shall, in such circumstances and under such conditions, if any, as may be specified in its order be exercised or discharged also by any employee of the Authority specified in this behalf in the order.

14. MEMBERS AND EMPLOYEES OF THE GROUND WATER AUTHORITY TO BE PUBLIC SERVANTS.

All members and employees of the Authority shall when acting or purporting to act in pursuance of the provisions of this Act or of any rules made thereunder be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

15. PROTECTION AGAINST ACTION TAKEN IN GOOD FAITH

No prosecution, suit or other legal proceeding shall be instituted against the Government. The Authority or any other officer of the Government or any member or other employees of the Authority for anything done or intended to be done in good faith under this Act, or the rules made thereunder.

16. COGNIZANCE AND TRIAL OF OFFENCES.

- (1) No prosecution for an offence under this Act shall be instituted except or by or with the written consent of the Authority or a person authorised in this behalf by the Authority.
- (2) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence, under this Act.

17. OFFENCE AND PENALTIES.

A. For Non Receipt of Information

If any user-

- (a) contravenes or fails to comply with any of the provisions of this Act or any rule made thereunder in supplying information as prescribed, or
- (b) obstructs the Authority or any other person authorised by it to exercise any of the powers under this Act.

he shall be punishable-

- (i) for the first offence with fine which may extend to Rs. One hundred and
- (ii) for the second and subsequent offence, with fine which may extend to Rs. Two hundred.

B. For Illegal Sinking/Construction and/or Use of Wells.

If any user-

- (a) contravenes or fails to comply with any of the provisions of this Act or any rule made thereunder,
- (b) obstructs the Authority or any other person authorised by it to exercise any of the powers under this Act.

He shall be punishable-

- (i) for the first offence with fine which may extend to Rs. Five Thousand and
- (ii) for the second and subsequent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to Rs. Ten Thousand.

18. COMPOUNDING OF OFFENCES.

Any offence under this Act has been or after the institution of the proceedings be compounded by the Authority, as prescribed.

19. OFFENCES BY COMPANIES.

- (1) Whenever an offence under this Act has been committed by a company, every person who at the time of the offence is committed was in charge of, or was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;
- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence

EXPLANATION: For the purpose of this section-

- (a) "Company" means any body corporate and includes a firm or other association or individuals, and
- (b) "Director", in relation to a firm, means a partner in the firm.

20. APPEALS.

- (1) Any person aggrieved by a decision or action of the Authority under this Act may, within a period of thirty days from the date on which the action is taken or the decision is communicated to him and on payment of such fees as may be prescribed, prefer such an appeal to such authority as may be specified by the State Government or Union Territory in this behalf.
Provided that appellate authority may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from filling the appeal in time.
- (2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

21. POWER TO MAKE RULES.

- (1) The State Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for :-
 - (a) the term of office and manner of filling vacancies the other conditions of service among the Members and Chairman of the Authority;
 - (b) the functions and the terms and conditions of service of the employees of the Authority;
 - (c) any other manner of affecting service of the notification under clause (c) of sub-section (2) of section 5;

- (d) the form of application under sub-section (2) of section 6 and the particulars that may be furnished with these applications;
 - (e) the form of application under section 7;
 - (f) the form of the permit and certificate of registration under sub-section (6) of Section 6 and sub-section (6) of Section 7;
 - (g) the manner in which the specimens of soils or other material shall be kept and preserved under clause (d) of sub-section (1) of section 11;
 - (h) specifying the appellate authority under sub-section (1) of section 20 and the fees to accompany the application for appeal;
 - (i) any other matter which is to be or may be prescribed.
- (3) Every rule made under this section shall be laid, as soon as may be after it is made before the Legislative assembly while it is in session for a total period of fifteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, Assembly agrees in making any modification in the rules or Assembly agrees that the rule should not be made, the rule thereafter shall have effect only in such modified form or be of no effect, as the case may be. However that any such modification or annulment shall be without prejudice to the validity of anything done earlier under that rule.