

# PRESENTATION AT IELRC CONFERENCE, GENEVA, SWITZERLAND

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*Creating Enabling Conditions For  
Sustained Reforms In Urban Water  
Sector: A Case For Legal Reforms In  
National Capital Region Of Delhi*

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# DEBATING WATER

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- Water is essential to life and access to it needs to be ensured for all.
- Water systems are characterized by monopoly .
- The allocation of scarce water resources among alternative uses is incompatible with the efficient use of the resources.
- Urban water systems in developing countries are collapsing due to failures in governance and Demand Side Management failure.
- Radical reforms presupposes water as an economic good rather than a human right.

# EXPERIENCE OF REFORMS

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An emerging global consensus on some key principles of reforms :

- Decentralization of service responsibility to the lowest appropriate levels
- Autonomous utilities,
- A community-driven demand-responsive approach
- Restructuring of sector institutions,
- Public private community participation in the delivery of Water supply services.

# WATER AS A LEGAL RIGHT

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- Interpretation of Article 21 of Indian constitution
- Right to life and environment
- Access to clean water as a Fundamental Right (Doon Valley, Ganga Pollution ,MCM VS UOI 1986).
- People have a right to life and therefore natural right will be claim rights and not an entitlement
- Customary Rights(customary and case laws)

# LEGAL FRAMEWORK IN INDIA

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- The Constitution of India provides for a federal structure with distribution of powers between the Union and the various States.
- Article 246(1) Enumerated in List 1 of the Seventh Schedule to the Constitution (the “Union List”).
  - Regulation of development of interstate rivers
  - Law relating to adjudication of disputes relating to interstate rivers
  - Territorial waters.
- Article 246(3) Enumerated in List II of the Seventh Schedule to the Constitution.

# HYPOTHESIS

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- The existing water supply institutions have failed to deliver water supply in an efficient, equitable and sustainable manner
- Introducing alternative institutions in the water supply sector requires PSP and change in the existing institutional, legal regulatory structure.
- The research work carried out in and around Delhi captured subjective opinion of experts, stakeholders and consumers for need assessment and opinion on reforms

# LEGISLATIONS ON WATER RESOURCES, MANAGEMENT AND DISTRIBUTION

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- Inter State Water Disputes Act 1956.
- River Boards Act 1956
- Indian Easement Act 1882
- Environment (Protection) Act 1986
- National Water Policy 2002
- Yamuna Water Sharing Agreement [May 1994/Nov 2002]
- Water (Prevention and Control of pollution) Act 1974
- The Delhi Water Board Act 1998
- State Water Policy
- Legislations for ground water abstraction (CGWB, Delhi Jal Board)

# LEGAL SYSTEMS PREVALENT FOR DELIVERY OF URBAN WATER

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- The law constituting the municipal authorities which regulate all aspects from the establishment of water works, distribution systems, grant of connection, supply, metering and billing
- The law specifically constituting a water supply and drainage board, which is an authority, constituted to undertake the regulation for provision of water for domestic and/or industrial purposes



# TYOLOGY OF INSTITUTIONS IN THE STUDY REGION

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- Water supply system managed completely (Development as well as Operation & Maintenance) by the State Government through its **Public Health Engineering Department (Rajasthan and Haryana)**.
- Water supply system managed completely (Development as well as O&M) by the **Municipal Corporation (Faridabad in Haryana)**.
- Water Supply Scheme/ project development by a **state level institution** on behalf of the municipal agencies and operation and maintenance by municipal agencies (Uttar Pradesh)
- Independent and **semi-autonomous institution responsible for managing the entire functions** related to water supply (Delhi Jal Board in case of Delhi)

# TRENDS IN RESULT

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- State does have a social and merit obligation. This feeling is quite dominant in a developing city context.
- The negative preference reversal shows that despite good water people are still very volatile about costs being imposed beyond a limit.
- The results provided a limited support for hypothesis that poor services may force respondents to select private sector as the choice

# TRENDS IN RESEARCH

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- Public acceptance of reforms is high but low for privatization because of price and various non-economic factors like political economy.
- Concerns of the distributional effects of reforms with private sector participation overshadow consideration of the positive efficiency gains.
- Increasing conflict between stakeholders about the appropriate institution and opinion is divided on PSP.
- Important institutional, legal and regulatory structures for implementing sector reforms are not in place

# THE POLICY OPTIONS

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- Choosing institutional forms of delivery in local spatial context
- Choosing policy tools which reform the
  - Institutional
  - Regulatory
  - Legal Framework
- Institutional reforms of Govt. monopolies to separate key institutional roles
  - Policy
  - Service delivery
  - Regulation

# LEGAL FRAMEWORK IN INDIA

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- India has a federal set up and administration of water supply is in the domain of state governments.
- Multiplicity of overlapping laws, authorities and jurisdictions and gaps in state laws.
- No state or region has a comprehensive legal framework specifically for the water sector .
- The 74th Constitutional Amendment, mandates state government to transfer responsibility for water supply and sanitation (WSS) services to urban local bodies (ULBs),
- Provides and opportunity to drive far-reaching reforms.

# STATE LIST

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- Administration of Water supply and sewerage services in terms of Articles 246 & 167 read with entries 6 and 17 of the List II of schedule VII.
- Explicitly define water use as a subject in the state list.
- Default responsibility, lies with the State governments are responsible for “water supplies, irrigation and canals, drainage and embankments, water storage and water power”

# THE MUNICIPAL LIST

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- The 74th Constitutional Amendment mandates state government to transfer responsibility for water supply services to urban local bodies (ULBs).
- Amendment (74<sup>th</sup> Constitutional amendment, Article 243-W and twelfth schedule) to the Constitution specifies that water supply (domestic, industrial and commercial), are responsibilities of the Local Bodies (Municipal Corporation, Councils, and other forms of self governance).
- Provision of services, operations, maintenance, and determination of user charges, collection, and up gradation of services are responsibilities of the Local Bodies

# LIMITATIONS IN STATE ACTS

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- Processes of decentralization and devolution are yet evolving, and the role of the third tier is not fully developed
- The municipal laws of most States do not contain provisions that permit community and private players to discharge all or some of the functions of the municipal corporations, such as the supply of water
- Need to define the regulatory framework to ensure accountability and to balance relations between service providers and customers



# LIMITATIONS IN STATE ACTS

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- Some of the states have set up **water supply and drainage Boards to perform the function of planning, investigating, preparing and executing schemes** for the provision of drinking water only at the instance of the state Government or a local authority.
- The Act under which such board is constituted also stipulates that no local authority can, without the approval of the supply and drainage Board, investigate, prepare or execute any scheme for the provision of drinking water.

# FRAMEWORK IN DELHI

<b>Agency</b>	<b>Legislation</b>
Delhi Municipal Corporation,	Delhi Municipal Corporation Act, 1957 revised in 1994
Delhi Water Supply & Sewerage Board (Delhi Jal Board)	Delhi Jal Board Act , 1998
Delhi Pollution Control Committee	Water Prevention & Control of Pollution Amendment Act, 1974
Delhi Development authority	Delhi Development Authority Act, 1957

# THE REFORM STRATEGY IN DELHI

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- Structural reform of the utility by Corporatization model
- Competitive neutrality through monitoring of licenses.
- Pricing oversight by the Regulatory authority
- Enabling third party access

# EVOLVING FRAMEWORK

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- Re-organization of the water supply sector setting out the separation of powers and the respective roles, functions and powers of key stakeholders.
- Institutional restructuring to develop and implement participation in different formats which may extend to more than one urban local body.
- The regulatory framework governing economic and performance regulation so as to balance conflicting interests of the various stakeholders;
- Transition of the sector to viability with effective public private partnership and establish cost-reflective tariffs while securing access to the poor.

# FUTURE DIRECTION OF LEGAL REFORMS

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- Municipal decentralization is the Key policy instrument.
- The basic tenet will be the compatibility of decentralization of reforms and regulation objective at a basin level.
- The contradictions in the objectives of the 74<sup>th</sup> Amendment Act and the policy of reform can create centralized regulatory agency
- The changes required in the legal framework for reforms and to evolve a regulatory framework through legislation.

# LEGAL DESIGN ISSUES

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- Legal treatment of water sources e.g. surface, and sub-surface
- Format of surface water rights
- Effectiveness of conflict-resolution mechanisms
- Effectiveness of accountability provisions
- Extent of a centralization/decentralisation tendency within water law
- Legal scope for community and private sector participation in the water sector

# SYNTHESIS

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- The review above point that reforms in water sector need to be actualized by riparian states in a basin and municipal level in an integrated manner through structuring of an enabling legislation.
- THE legislation will have to be enacted by states to create an efficient, local ownership under the control of basin regime to facilitate IWRM.
- The deepening of decentralization and private sector and community participation with the broadening of reforms in the overall context



**Thank You**  
for your  
kind attention



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