

Comments on
DRAFT NATIONAL WATER FRAMEWORK BILL, 2016

By

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DRAFT NATIONAL WATER FRAMEWORK BILL 2016

SPECIFIC COMMENTS

| | Long title | Comments |
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| | AN ACT to provide an overarching national legal framework with principles for protection, conservation, regulation and management of water as a vital and stressed natural resource, under which legislation and executive action on water at all levels of governance, as also water-use and water-related actions by citizens and their associations , public and private institutions and bodies corporate of all kinds, can take place, and for matters connected therewith and incidental thereto. | How are the terms - protection, conservation, regulation and management - defined? Vital natural resource – for what? Stressed natural resource – where? What is envisaged under legislation at all levels of governance? What is the meaning of water-use and water-related actions? What is the meaning of citizens’ association? The use of the word ‘can’ introduces an element of discretion. |
| | Preamble | |
| | Whereas water is the common heritage...an inseparable part of a people’s landscape,...; | the people’s landscape |
| | And whereas water in all its forms...effects on others ; | What does ‘others’ refer to? |
| | And whereas each river basin,... empowered with adequate authority to do the same; | Who is so empowered? |
| | And whereas water in its natural state...the Supreme Court of India has applied the public trust doctrine to water ; | Has the Court applied the doctrine to all sources of water? |
| | And whereas water has to be protected and preserved for generations ...; | What is the difference between protection and preservation? Please consider adding the word ‘future’ before generations. |
| | And whereas water returns as waste or sewage or residue or effluent , often in unusable form , and sometimes contaminating water sources; | Where does the water return? Sewage is a type of effluent; it is also a waste. What is ‘unusable form’? The use of the term ‘sometimes’ undermines the extent of the |

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| | | problem. |
| | And whereas freshwater is coming under increasing pressure because of the processes of urbanization and economic growth, leading to over-use/depletion, abuse ,...; | Why not mention population as well? What is the meaning of ‘abuse’? |
| | And whereas existing legal provisions governing water have aggravated...; | What about the absence of legal provisions? |
| | And whereas it is the duty of the appropriate government...; | Why not just use the term ‘government’ or the ‘State’? |
| | And whereas there are many different perceptions and perspectives on water among people, States and groups ,...; | Why are these categories being specified? |
| | And whereas having regard to the foregoing...national consensus on certain general approaches, concerns, directions , and principles,...from locality to locality,...; | What is the meaning of the terms ‘concerns’ and ‘directions’? Is there a reason for the focus on ‘locality’ as a unit? |
| | Section 2: Definitions | |
| (1)(a) | ‘Appropriate Government’ is the authority at the lowest possible administrative level, including in relation to interstate rivers and river valleys, the Central Government, the State Government and local self-government institutions, both rural and urban; | Reconstruct the phrase: ‘the Central Government, in relation to interstate rivers and river valleys,’ |
| (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; | Different word: underground layer ‘ of ’ saturated rock |
| (c) | ‘Base flow’ means that portion of a stream flow that is contributed by groundwater from an aquifer. In other words, it is the discharge of groundwater into a stream channel; | What does the word ‘such’ refer to? |
| (g) | ‘Ecological integrity’ means...aspects of the aquatic and terrestrial environment; | only aquatic and terrestrial environment? Does aquatic include marine and coastal? |
| (h) | ‘Environmental flows’ is the quantity, timing, and quality of water flows required to sustain freshwater and estuarine ecosystems and the human livelihoods and well-being that depend on these ecosystems. It also includes the flow regime required to maintain | The term ‘environmental flows’ is broadly defined to include cultural and religious needs and livelihood uses. It seems inappropriate to include cultural, religious and livelihood uses under this category as it may lead to the undermining |

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| | sediment and nutrient transport from source to sea. This also includes water for cultural and religious needs. | of ecosystem needs. Further, this provision needs to be in consistent with the narrow application of the term in s 6(6). |
| (j) | ‘Groundwater’ means water occurring under its natural state, where it exists below the surface 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; | Different word: water occurring ‘in’ its natural state |
| (o) | ‘Non-point source of pollution’ means pollution from diffuse sources, such as polluted runoff from agricultural areas draining into a river, or wind-borne debris; | Why define non-point source of pollution, when point source is not defined? |
| (q) | ‘Participatory Approach’ means and refers to the active association and involvement of the people or the community in policy-formulation, project- planning or implementation, or activity, scheme, programme, project or institutional arrangements of any kind; | The definition of ‘participatory approach’ is unclear. |
| (u) | ‘Public trust’ means the doctrine that the state at all levels holds natural resources in trust for the community; | The term ‘public trust’ mentions ‘community’ as the trustee and at the same time in other parts (eg 4.2) mentions ‘people’ as the trustee. Since these two terms have different meanings, it is appropriate to use people in the definition section. |
| (v) | ‘Rainwater harvesting’ means capturing and conserving rainwater or retarding run-off through various structures either for the direct use of the stored waters or for recharging groundwater aquifers; | Please consider removing ‘and’. |
| (x) | ‘Sustainable use’ means the use of water that ensures continued availability for present and future generations, without depletion or deterioration or dysfunctionality, and the continued healthy function of the related ecological system; | Is this possible: ‘without any depletion or deterioration or dysfunctionality whatsoever’? How is dysfunctionality defined? |

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| (z) | ‘Water footprint’ means the total volume of water directly used and the water embodied in goods and services used, by an individual or community or country as a whole, or by an industry or business in its production or other commercial activity; | Why restrict only to the directly used total volume of water? Please consider adding ‘in’ before ‘other commercial activity’. |
| (bb) | ‘Watershed’ means the ridge or line of high land separating two areas such that rainwater falling on one side of the line drains on that side and cannot pass to the other side; by extension, the area bounded by the ridge; generally used to denote a small local area bounded by low ridges, but sometimes also a large area bounded by high hills. | The use of several semi-colons creates some confusion. |
| (2) | Words and expressions used in this Act, but not defined, shall have the meaning assigned to them in any other law in this regard in force as the case may be. | What does ‘in this regard’ mean? |
| Section 3: Right to water for life | | |
| | | <p>The recognition of the right to water needs to be strengthened the Bill, as done, for instance, in s 3 (Fundamental Right to water for drinking, hygiene and domestic Use) of the Meghalaya Integrated Water Resource Management Bill, 2015 which reads:</p> <p>3. Fundamental Right to water for drinking, hygiene and domestic use</p> <p>(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any custom or usage or in any contract or other instrument, a fundamental right to water for drinking and basic hygiene purposes to all people residing in the state, irrespective of their caste, creed, gender and nationality, is hereby recognised.</p> <p>(2) It shall be the duty of the MeWDA and the Water Councils constituted at the appropriate level under this Act to ensure that right to water guaranteed under subsection (1) herein above is respected and implemented by all members of the community and no</p> |

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| | | <p>person in their territorial jurisdiction for the reasons whatsoever is denied this fundamental right.</p> <p>(3) Any person whose Fundamental Right to water is infringed upon or affected by any reason other than the Act of God shall have a right to approach the Dispute Settlement Committee constituted under the Water Resource Councils created at the appropriate level under this Act, for the restoration of fundamental right to water recognized under sub-clause (1)</p> <p>(4) The quantity of water required per capita, for drinking and basic hygiene purposes or the basic water supply shall be determined by the State Water Resources Council. Any water over and above this quantity shall be available to anyone depending upon its availability and upon payment of requisite and adequate price, if so required, as determined by the competent authority.</p> |
| (1) | <p>Every person has a right to sufficient quantity of safe water for life within easy reach of the household regardless of, among others, caste, creed, religion, community, class, gender, age, disability, economic status, land ownership and place of residence:</p> | <p>This section uses the concept of right to water in restrictive manner as it talks only about “sufficient quantity of safe water for life within easy reach of the household...” and thereby neglects the realisation of the right to water in other contexts, for example public places and work premises. It is not appropriate to restrict to households.</p> <p>‘from time to time’ – yes, but it should not fall below a certain minimum.</p> |
| (2) | <p>Every drinking water supply agency shall comply with the Manual of the Central Public Health and Environmental Engineering Organization, Bureau of Indian Standards specifications or standards adopted by the appropriate government as modified or revised from time to</p> | <p>Against which specific aspects will compliance be tested?</p> <p>Should the NWFB not introduce a more binding basis for determination of quality standards?</p> |

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| | time. | |
| (3) | The state's responsibility for ensuring every person's right to safe water for life shall remain even when water service provision is delegated to a private agency and in case of such delegation, the right of citizens to safe water for life and the duty of the state to provide the same shall remain in force: | <p>It should read right to 'sufficient quantity of' safe water for life.</p> <p>The fundamental right to water needs to be provided by the state. This goes beyond a residual obligation of the state after privatisation.</p> <p>This Act follows the understanding that PPP is not essentially conflict with the fundamental right to water or the legal status of water as a common heritage, common pool and public trust. While it positively endorses the idea of PPP, it stops at emphasising the 'primary responsibility' of the State even in the context of private actors in water supply sector. An enhanced role for private actors in the water supply sector is incompatible with the legal recognition of the 'primary responsibility' of the State.</p> |
| | Section 4: Water as a common heritage and resource, held in public trust | The title should include the words 'common pool' resource. |
| (2) | The state at all levels holds water in public trust for the people and is obliged to protect water as a trustee for the benefit of all: | Please consider replacing 'the state at all levels' with 'the appropriate government at all levels'. |
| (4) | It shall be the duty of the state at all levels, the citizens, and all categories of water users, to protect, preserve and conserve all water sources, and pass them on to the next generation. | |
| | Section 5: River rejuvenation | <p>Should the title be changed as it talks about more than river rejuvenation?</p> <p>This Act appears to give primacy to rivers and aquifers are included mostly in the context of its link with rivers and river basins (the term used is 'associated aquifers'). It would be appropriate to use the term water rejuvenation and treat</p> |

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| | | surface water and GW with equal importance. |
| (2) | Provided that wherever the quality of the groundwater has deteriorated, the appropriate government shall undertake aquifer remediation to restore the quality by taking appropriate measures. | Isn't aquifer remediation an appropriate quality restoration measure? If yes, there is no need for 'by taking appropriate measures'. |
| | Section 6: Sustaining ecosystems dependent on water | It would be helpful to define 'ecosystems dependent on water'. There is a lot more focus on the river in this provision. |
| (2) | Rivers, water bodies, aquifers and wetlands shall be recognised as ecological systems both in themselves and also as parts of larger ecological systems, and protected from over-use/depletion, abuse, pollution/contamination, and degradation. | Why restrict to 'rivers, water bodies, aquifers and wetlands'? |
| (5) | Where water sources, catchments, drainage paths, river flows, water bodies, aquifers, wetlands, flood plains or riverbeds have already been encroached upon or interfered with, efforts shall be made to stop further encroachment or interference and reverse the adverse impact already made, to the utmost extent possible. | 'efforts shall be made to stop' or 'such encroachment or interference shall be stopped' |
| | Section 7: People centred water management | |
| (2) | | 'Customary laws' are acknowledged but this is weak and moreover there is not recognition of community rights over water. Communities come in only in terms of 'participation', as a generic term equivalent to 'everyone' etc. Here too, the Meghalaya Integrated Water Resource Management Bill, 2015 provides interesting wording in s 5: 5. Recognition of Community Right to water resources Right to protect, regenerate, conserve or manage any community water resource which a community has traditionally been accessing, protecting and conserving for sustainable use shall be recognized under this Act. |

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| | Section 11: water use prioritisation | |
| | | Environmental flow/ecological use should also be explicitly prioritised like water for life because vagueness in this regard would lead to a situation of least priority to environmental flow and ecosystem needs. |
| | Section 12: Integrated River Basin Development and Management | |
| (15) | | inter-basin transfer is mentioned only in the context of inter-state rivers and ignores intra-states inter-basin transfers. |
| | Section 15: Preparation of Water Security Plans | |
| 15(1) | The appropriate Government shall prepare and oversee the implementation of a Water Security Plan for (a) attainment of sufficient quantity of safe water for life and sustainable livelihoods by every person; and (b) ensuring water security even in times of emergencies like droughts and floods. | Water security plans are only to address water for life and livelihood and emergencies and consequently do not include other uses. This is a minimalist approach and inappropriate. |
| | Section 17: Adoption and Validity of the Water Security Plan | |
| 17(2) | The Water Security Plan shall be valid for a period of five years from the date on which it becomes binding. It shall be revalidated or amended after every five years | This section is silent on when a water security plan becomes binding |
| | Section 18: Groundwater Conservation, Protection, Regulation and Management | |
| (1) | Groundwater shall be conserved, protected, regulated and managed through appropriate laws based on the Model Bill for the Conservation, Protection, Regulation and Management of Groundwater, 2016 | This section makes the Model Groundwater Bill mandatory for states. This can be done only if the mandate under art. 252 to adopt this law include specific aspects of GW regulation and protection. |
| | Section 22: Water Pricing and Water Regulators | |
| | | This section recognises that some people are unable to pay but is based on the wrong premise that the right to water must be fulfilled by paying for water, rather than starting from the premise of a minimum quantity of water having |

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| | | to be provided free with larger/industrial users paying more to cross-subsidise the cost incurred |
| (2) | All States shall establish an independent statutory Water Regulatory Authority for ensuring equitable access to water for all and its fair pricing depending on the purposes for which water is used. The Authority shall function in a transparent and participatory manner, conducting widespread public consultations and hearings before deciding upon tariffs. | Given the experience of working of WRAs so far and given the fact that the central government has diluted its stand towards the idea of WRAs, this provision seems overstretched and not on the basis of empirical evidence and experience. |
| | Section 23: Urban water management | |
| | | It is not clear why this chapter included only urban water management and not rural drinking water management. |
| (1) | The appropriate Government shall ensure conformity with the Service Level Benchmarks for water supply, sanitation, solid waste management and storm water drainage, as may be prescribed. | Why does this mention solid waste management and storm water drainage? |
| (2) | Provided that the appropriate Government shall provide sufficient quantity of water for drinking and sanitation free of cost as part of the realization of the right to water for life. | It should read: sufficient quantity of 'safe' water. |
| (4) | The appropriate Government shall encourage reuse of urban water effluents from kitchens and bathrooms, after primary treatment, in flush toilets ensuring no human contact with human excreta. | Why is reuse restricted to flush toilets? |
| (5) | Water resources projects and services shall be managed with community participation. | How? |
| | Section 25: Industrial Water Management | |
| 25 | | This section is based on an idea of self-regulation of industry that has already proved to be ineffective. Water footprints must go and be replaced by binding standards, permits, penalties (but not just to 'discourage profligate use') and strict liability rules. Transparency needs to be part of the framework |

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| | | but cannot be at the centre of the regime. |
| | Section 29: Water Conflicts: Inter-State River Water Disputes | |
| | | Sharing principles among states highlighted in chapter VIII need to be applied (and consequently rethought) to water regulation of inter-state rivers in general rather than to conflicts only |
| (1) | Appropriate institutional arrangements shall be established at all levels within the State and beyond up to an inter-State river-basin, to obviate and/or resolve emerging inter-State river-water disputes through negotiations, conciliation or mediation, or other such means, at the earliest stages before the disputes become acute, so as to avoid recourse to adjudication as far as possible. | This law in effect makes the 1956 redundant by prescribing permanent institutional mechanism for resolution of inter-state water disputes. This requires further explanation to clarify the relationship between this law and the 1956 Act. It is not clear why an institutional mechanism at all levels is necessary to address inter-state disputes. |
| (2) | In such efforts, and in the event of adjudication under the Inter-State Water Disputes Act 1956 (as amended in 2002) if it becomes necessary, the following broad principles shall be kept in view... | Inter-State Water Disputes Act 1956 - 2002 amendment is repealed by the Repealing and Amending (Second) Act, 2015. |
| | Section 30: Water conflicts: other kinds | |
| (1) | All efforts shall be made through appropriate institutional arrangements at all levels to prevent a water-related dispute or conflict from arising between or among different water-uses, or different groups or classes of users, or different areas, and when a dispute or conflict does arise, to settle it through negotiations, conciliation or mediation, or other such means, before the dispute or conflict becomes acute, so as to avoid recourse to litigation as far as possible. | What are the ‘appropriate institutional arrangements at all levels’? Is there any authority to guide the disputants through the peaceful means of dispute settlement? |

GENERAL COMMENTS

1. The co-existence of the ideas of water as a common heritage and a common pool resource, as well as water privatisation, is problematic.

2. The Bill recognises the public trust doctrine and prohibits ownership of water per se. Yet, it fails to effectively enshrine the public trust in a bottom-up regulatory framework (whereby the state at the lowest level is effectively the public trustee, rather than the central government)
3. The public trust recognition is limited to water in its natural state, implying that any water that is not in its natural state can be a commodity without any restriction. This implies, for instance, that there is nothing in the Bill that would drive the country away from bottled water (once the water is extracted it can be a commodity) or from water ATMs (once the water is filtered in the RO plant it can be a commodity) or from privatisation of water supply services more generally (since the private sector only provides a service without having to own the water).
4. Water conservation and river rejuvenation: The conservation principles of the Bill are centred around river rejuvenation rather than water conservation.
 - a. Water conservation must be a central dimension of the bill for all water.
 - b. Water conservation principles must be the ones already adopted and practised in environmental law (prevention, precaution etc) rather than legally undefined terms like Aviral Dhara, Nirmal Dhara and Swachh Kinara.
5. Water conservation can only be effective if it includes strict penalties that must include liability rules.
6. The multiple references to water pricing and privatisation are a matter of concern. What about a certain quantity of free water for all?
7. There is a need for stronger provisions to regulate, and binding obligations on, the industrial/commercial water users.
8. In addition to formal laws and informal customary laws, there are other community rights over water. These need to be included.
9. Water scarcity – physical, economic and social – needs to be recognised and addressed.
10. The appropriate government needs to be specified in relation to the different requirements.
11. Further clarity is required in respect of the balance between the roles and responsibilities of the appropriate government at different levels, and the citizens and water users.
12. The Bill is based on ‘people-centred water management’ when it should be based on democratic decision-making starting from the gram sabha onwards. The Bill fails to effectively operationalize the constitutional principles of decentralisation, as already reflected in various state laws.
13. Priorities need to be reworked. For instance, in terms of Preservation of Water Quality, recycle and reuse is not the main priority in the country. Water quality has now been a concerned for decades in environmental law and the

understanding that has evolved from this, as well as the shortcomings need to be the starting point for the present framework legislation.

14. There are unreconciled inconsistencies between statements on decentralisation (based on 73rd/74th constitutional amendments) and the push confirmation for user-based group management, such as participatory irrigation management's water user associations that are outside of the panchayat system.
15. What are the penalties for non-compliance?