

Reimagining the foundations of groundwater
law in India: towards strengthening the
climate change mitigation initiatives

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SOAS

Context

- Current scenario
 - The most important source of freshwater
 - Fundamental right to water
 - Issues: depletion/water logging and contamination
- Groundwater and climate change
 - Dependability
 - Safety

Concerns and questions

- How groundwater is governed in India?
- To what extent the legal framework is equipped to address climate change challenges?
 - Conservation and protection
 - Equity
 - Realisation of the fundamental right to water
- GW legal regime – not informed by environmental law developments
 - E.g. PTD, PP
 - Not equipped to address both contemporary and future challenges

GW: legal status

- Land owner's uncontrolled right to extract groundwater
 - Bucket approach
 - *Plachimada Coca Cola* case
 - Contrast: surface water under PTD (previously state control)
- Source: 19th century case laws from England
 - *Acton v. Blundell* (1843)]
 - A rule based on convenience and ignorance
 - A rule that can probably be justified only in time of plenty

Common law rule's influence

- Indirect recognition under the Indian Easements Act, 1882
- Even if the extraction by a land owner adversely affects others, it is not legally actionable (*Kesava Bhatta v. Krishna Bhatta*, AIR 1946 Mad. 334)
- Applying the rule - out of place, out of time
 - Kerala High Court in *Plachimada Coca Cola* case (2004)
- No focus on protection and conservation

New groundwater laws

- Separate GW Act in many states
 - Kerala, Bihar, West Bengal etc.
- Based on Model Groundwater Bill, 2005
- No change in the nature of GW right
 - Land-based groundwater right remains intact
- Limited regulation
 - Permit/registration system
 - Centralised command and control approach

- Central level
 - CGWA
- Other mechanisms
 - District Collectors/sub-divisional magistrates (e.g. Rajasthan)
 - Low priority for revenue officials
- Conservation
 - Rainwater harvesting
 - Building regulations
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Implications

- GW law in India: unaffected by new knowledge and crisis! including CC
- Artificial distinction of GW and SW
- Common law rule
 - Outdated
 - Inequity in access and use (Plachimada)
 - Implications for the fundamental right to water
- New groundwater laws
 - Lack of focus on protection and conservation

Towards a new groundwater law

- Abolition of land-based groundwater right
 - Common law rule is obsolete
- More focus on protection and conservation
 - aquifer based
 - Protection of recharge and discharge areas
- Get rid of the command and control approach
 - Decentralised mechanism

- Legal bases
 - Public trust doctrine
 - *Kesoram* case, Supreme Court, 2004
 - *Plachimada Coca Cola* case (pending)
 - Fundamental right to water
 - Existing legal regime leads to violation of FRW
 - Right to pollution free environment – restriction of land rights
 - *Bichhri* case, Supreme Court of India, 1996
 - *Thilakan* case, Kerala High Court, 2007

Contd.

- Model Groundwater Bill, 2011
 - GW under public trust
 - Emphasis on protection and conservation
 - GW protection zones
 - Aquifer based approach
 - Decentralised institutional framework
 - Regulation, protection and conservation