

**Comments on**

**The Detailed Note**

*prepared by*

**Groundwater Survey and  
Development Agency  
(GSDA), Maharashtra**

*on*

**Maharashtra Groundwater  
(Development and Management)  
Draft Bill, 2007**



**Resources and Livelihoods Group  
Prayas, Pune**

This note is based on "Maharashtra Groundwater (Development and Management) 2007 Draft Bill: A Detailed Note" sent by GSDA. The note prepared by GSDA provides very brief analysis of 1993 Maharashtra Groundwater Act and equally brief description of major provisions in the proposed bill. These comments are based on this brief description of provisions. It may be possible that some of the recommendations are already included in the proposed bill, which is not shared with the public.

We urged the GSDA to release the full draft of the proposed bill with public so that comprehensive debate takes place before the draft is finalized. There are many precedents, when the draft bills and policies have been discussed publicly before its consideration by the cabinet, notable among them is the long and comprehensive debate on drafts of the Electricity Act 2003.

This note is divided in three parts. In Part 1, comments on some basic issues, such as, the GSDA's analysis of failure in implementation of 1993 Maharashtra Groundwater Act, the issue of decentralization of groundwater governance, and issues related to equity and sustainability are presented. In Part 2, importance of participatory process is discussed. There are specific recommendations in both part 1 and 2 after the discussion of issues. In Part 3, concrete recommendations related to governance process are presented.

## **Part 1: Some Basic Issues**

### **I. Analysis of Past Failure**

Reference: Section 2 of the above-mentioned note by GSDA, titled: 'The Maharashtra Groundwater (Regulation For Drinking Water Purposes) Act, 1993: Implementation and Limitations'.

This section in the GSDA note discusses implementation of the 1993 Groundwater Act and problems faced in its implementation. It candidly states that there was no effective implementation of the act, the reasons being, (a) technical reasons, (b) mistakes on the part of the government (e.g., recourse to provisions of 1976 Maharashtra Contingency Service Rules rather than 1993 Act, and (c) lack of awareness and apathy among people.

Based on this analysis, the prescription that seems to be suggested is of establishing a new type of institution, i.e. 'Watershed level Water Resources Committee' (WWRC) and devolution of the critical functions to this institution. The underlying implicit assumption could be that devolution of functions and authorities to WWRC, would ensure people's participation and would resolve the key problems faced in implementation of the 1993 law, viz., lack of awareness and apathy on the part of people.

The analysis made in the GSDA note seems highly inadequate to comprehend the ground reality and reasons behind the failure of previous attempt to regulate groundwater. In order to expect success in the subsequent attempts, it is imperative to make an in-depth and comprehensive analysis of previous failure so that appropriate lessons can be drawn for the proposed act. In fact, such an analysis should be the precondition for articulation of any new bill. This analysis will provide the base essential for articulating provisions that will avoid repetition of past mistakes, by strengthening certain forces and weaken other. The analysis of the failure in implementation of 1993 Maharashtra Groundwater Act made by different researchers<sup>1</sup> suggests the following points:

- a) The general conclusion is that the 1993 Act lacks social support and legitimacy, mainly because the right to extract groundwater for irrigation even during the stress period is accepted by people as natural and inevitable. Sometimes, they fail to establish a connection between the shortage of drinking water and withdrawal of water from nearby wells for irrigation purpose. But even when they could establish such a connection, they do not find this groundwater extraction for irrigation as unacceptable, mainly because private property regime is well entrenched in their value system.
- b) People who extract excessive groundwater are generally (economically and politically) powerful as against the common people who suffer from their actions. This puts severe constraints on common people in even voicing their grievances, let alone taking any effective action against the violators. Further, the dominant sections at the local level have considerable influence on the local gram panchayat, which is expected to initiate action against them. The panchayat representatives are also unwilling to make a formal complaint and follow it up, considering strong vested interests involved.
- c) Moreover, common people believe that the state will, anyway, take some action to relieve them from the stress situation and ensure supply of drinking water, however unsatisfactory and inadequate that may be. As a result, they avoid taking any unpleasant steps against the powerful local interests. Relying on the government to somehow provide drinking water appears to be a 'soft option' to them as against the 'hard option' of hurting their fellow villagers, that too powerful ones.

The ultimate victim here are women-folk as well as young girls and boys of the village, trudging miles together or fighting among themselves for water, and in the process, closing down their other options and opportunities. Thus, it essentially involves the larger issues of gender and social justice, and, hence, cannot be left to the gram panchayat. Since effective influence of village womenfolk in the affairs of the gram panchayat is very weak, their concerns and difficulties about the issue of drinking water are not likely to be addressed by the gram panchayat members.

- d) Unfortunately in many instances, the elected representatives and officers see more alternative opportunities for financial gains in bringing some drinking water scheme in the village than conserving groundwater.
- e) Further, the tanker lobby, emerged over the years, is also not interested in allowing the long-term solutions to the problem of water scarcity to take shape.
- f) It needs to be noted that apathy among the people, cited by the GSDA note, is due to the lack of ownership or commitment on their part to the implementation of the 1993 act. This lack of ownership and commitment is essentially because the process of making the law or implementing it do not take people in confidence. Hence, such top-down solutions thrust on people from above, however good-intended they might be, are rejected, if not resisted, by people, even out of mere suspicion about the possible ulterior intentions underlying these resources.

Participation of people in making some micro-level decisions and, in merely managing micro-system is not adequate to inspire confidence in the minds of people. Without such confidence there does not arise the possibility of credibility, acceptance, ownership, and commitment to the law or its implementation.

Further, it needs also to be noted that having mere awareness among people is not adequate. Politically and economically strong local forces will not allow common people any action, how much these common people are aware. Managing conflicts and providing level-playing field to all its members by controlling stronger sections are important elements of the institutional capacities of any organization. If local organizations do not have these capacities, then the mere devolution of authority to them is not only an inadequate but often counter-productive measure.

This analysis shows that the government has not taken cognizance of many issues that would also severely affect implementation of the proposed act. The solutions based on inadequate analysis will not yield desired results. The above-mentioned analysis is only from two sources. Similar analysis needs to be compiled from different stakeholders.

***Recommendations:***

- a) It is imperative to undertake an exercise of in-depth analysis of the failure in the implementation of 1993 Act. List of all lessons to be drawn for this analysis as well as that of measures to be adopted to implement these lessons need to be prepared.
- b) There is a need to prepare a multi-pronged and novel strategy, which will include short-term and long-term plan and measures to deal with various probable problems that affect the implementation process. It is necessary to clearly articulate how provisions in the proposed bill would incorporate these lessons from past experience.

**II. Decentralization of Governance of Groundwater**

There is a provision in the proposed act to create a new institutional structure for implementation and devolve power to this structure. According to the GSDA note, Maharashtra Groundwater (Development and Management) draft bill 2007 proposes establishment of Watershed based Water Resources Committee in the notified areas to undertake measures for groundwater management and to protect drinking water sources.

First, the description of provisions of the draft bill in this regard as presented in the note by GSDA is very confusing. It is not clear from the description whether WWRC will be established only in the notified areas or even in the non-notified areas. Second, it is not clear whether it is a hierarchical structure wherein there will be multiple WWRCs at different levels or whether there will be one big WWRC at the watershed level. Third, the composition of WWRC is also not clear from the provisions. It is mentioned that it will comprise of members of all gram panchayats/local self government in the notified area. Further, it is stated that panchayat samiti and zila parishad members within the notified area will be *ex officio* members of WWRC.

Fourth, the WWRC is given wide authority to perform important tasks, such as,

- (a) In notified areas, WWRC will encourage measures to ensure availability, development, and management of groundwater, with public participation, in order to undertake equitable distribution of water,
- (b) it will monitor the measures undertaken for use of pesticides, chemical fertilizers as well as disposing off effluent water and garbage and request district authority for action,
- (c) it will control use of available water and extraction of groundwater based on water accounting done by GSDA,
- (d) it is necessary to take permission of WWRC for digging new well or setting new pump for extraction of groundwater,
- (e) it will decide areas from where sand can be extracted,
- (f) to adopt measures for groundwater management and to protect public drinking water resources.

Considering this wide range of responsibilities related to implementation of the proposed law, the composition of WWRC becomes critical. According to the draft bill, in addition to the automatic membership of gram panchayat and often panchayat rajya institutions, the gram panchayat will select one member from gram sabha and one NGO representative for WWRC. Effectively, the WWRC will be made of a large number of members of gram panchayat and other panchayat rajya institutions as its members. Thus, considering this composition of WWRC, it would be as effective as the gram panchayat was effective in implementation of the 1993 law. The analysis of past failure presented in Part 1 of this note clearly mentions serious failure of gram panchayat in implementing the 1993 act. The analysis presented in the second section of the above-mentioned GSDA note is equally clear on this issue. If there is no qualitative change in the ground reality, how the body that has the same members can again be entrusted with the similar task in the proposed act? What care has been taken to ensure that past instances will not be repeated?

Another issue is the capabilities of WWRC to perform various functions entrusted to it. The analysis in Part 1 suggests that gram panchayats and local people avoid taking any action against violators, as it may lead to conflict. This is because of the fact that the gram panchayats lack institutional capability to resolve conflict. Therefore, it is necessary to invest in development of capabilities of concerned agencies which will implement the provisions in the act.

However, the whole experience of implementing Jalswarajya scheme has shown how difficult it is to build even technical and managerial capabilities of local institutions. Building institutional capabilities, which essentially is a socio-cultural process, involves very long gestation period and require diligent and intensive efforts.

The limitations on the success of building institutional capabilities are further aggravated due to disparity in distribution of economic, social, and political power among different sections within a village. This skewed distribution of power needs to be corrected by increasing accountability of local and other institutions involved in governance and opening up ways for outside actions to extract this accountability. Such argument creates the potential threat of

affirmative intervention in local affairs by external actors in favour of vulnerable sections or common people, if there is a need.

In short, making the local and other governing institutions accountable to even external/outside actors creates (potential!) force countervailing to the influence of local powerful sections, and thus, increases the possibility of effective implementation of pro-people and pro-environment measures against the wishes of local strong vested interests.

***Recommendations:***

- a) The plan of devolution of functions to WWRC proposed in the draft bill should be revisited on an urgent basis and in an in-depth manner.
- b) The institutional structure necessary for implementation of the act should be evolved in a participatory and transparent manner. The experience of implementation of 1993 Act could provide important lessons for evolving the new structure.
- c) It is necessary to make adequate provision for development of capabilities, including technical, managerial and institutional capabilities, of concerned agencies which will implement the provisions in the act.
- d) There is a need to design and implement governance processes that have appropriate, adequate, effective, and mandatory provisions for accountability as well as for participation and transparency.

**III. Issues related to Equity and Sustainability**

The purpose of the proposed bill is to plan, regulate, and manage groundwater resources in the state. There is no mention of how groundwater will be distributed. It needs to be noted that the MWRRA act specifically mentions 'equitable distribution of water' as one of its objectives. Although the definition of the term 'equitable' in the MWRRA act is very limited and self-defeating in nature, at least the MWRRA has taken cognizance of the crucial issue of distribution of water.

In the proposed bill on groundwater, there is a mention that WWRC will encourage measures to ensure 'equitable distribution of water' in the notified areas. (GSDA Note, Section 5, Point No. 17) This is a welcome step. However, the term 'equitable' is not defined in the bill. Does 'equitable' mean the right over groundwater for all people living in that area? Or does 'equitable' mean the right only for landed people over groundwater? Further, it appears from the description of the GSDA note that this provision applies only to notified areas. Are non-notified areas outside this provision? If so, what should be the principle of distribution of groundwater in the non-notified areas and which agency will execute this function?

It is necessary to note that participation and involvement of all people in conserving groundwater can only be ensured if they are assured of their rightful share in the conserved water. A very skewed pattern of distribution of land in Maharashtra has left large population without land rights. Consequently, they lose their right over water, if the water right is linked to the land right, as has been done in the MWRRA Act. Since recharging of groundwater, in this situation, is not likely to benefit them in the long run, there is no significant incentive to common people to participate in implementation of the law. Further, past experience suggests that activities undertaken to recharge groundwater do not benefit much to landless and poorer sections in the village. On the contrary, it results in increasing inequality by favouring the landed

people, with economic and political power, who can invest in wells and pumps. The interests of rural poor are, in turn, hampered due to closing of commons and ban on keeping goats and cutting trees.<sup>2</sup> In this situation, it is wrong to expect any participation of common people in the implementation of the proposed act.

It is remarkable that the proposed bill does not subscribe to the principle of sustainability. There is no provision to prevent unsustainable use of groundwater once it is recharged. Thus, there is a danger that enhanced water resource through recharging will be used again in an unsustainable manner by a few powerful people. All public resources and efforts put in recharging the groundwater would be conquered for own benefit by a few. The conservation of groundwater, therefore, will not prove a long-term solution, unless it is accompanied by restrictions on its use even after recharging. The factors such as, crop-pattern and high-input modern agriculture are very important in this regard. The issue of groundwater depletion cannot be treated in an isolated manner. Further, the proposed bill provides no guarantee against restrictions on use of groundwater by industry for commercial purposes.

It seems that implementation of the new act will primarily concentrate on the ninety-six notified areas out of 1505 watershed areas in the state. The development and management of groundwater is of utmost importance even in non-notified areas, although they are not in a critical situation today. There is a need adopt preventive rather than curative approach to the question of groundwater. Accordingly, there is need to articulate detailed provisions to regulate groundwater even in non-notified areas.

***Recommendations:***

- a) It should be clearly mentioned in the proposed bill that ground water is a common property resource.
- b) The principle of 'equitable distribution of groundwater', i. e. right of all people in the village over groundwater, should be recognized by the government and the proposed bill should clearly mention that 'equitable distribution of groundwater' is one of the major objectives of the bill.
- c) The process of operationalizing the principle of 'equitable distribution of groundwater' should be defined in the proposed bill.

**Part 2: Importance of Participatory Process**

It is necessary to comprehend the broader picture of water sector reforms in India, while pondering on the proposed groundwater bill. In the pre-reform era, the state was regarded as 'the' custodian of public interest. The state was responsible for and accountable to the citizens through democratic mechanisms, including elections. Therefore, in return, it was invested with wide authority, including that of planning, implementation, and regulation of the infrastructure sector. With the introduction of independent regulatory institutions after the reforms, the state was divested of its regulatory role and the center of decision-making in the infrastructure sector shifted from the state to the newly constituted regulatory authority.

This created a situation wherein, the state (which was accountable to public at least to some extent), on one hand, gave up the mandate and responsibility of protecting the public interest, while, on the other hand, the regulatory authority, which was given the powers that ones were enjoyed by the state, is not effectively or adequately accountable to the public, on whose behalf and whose interests, it is claiming to make decisions.

This imbalance between authority and accountability in the new structure will have the disastrous implications for the sector, economy, and even society. This is because, this imbalance would give rise to, on one hand, unaccountable behaviour by the authority, and, on the other hand, rejection by people of the power and mandate given to the authority and the decisions made by the authority.

***Recommendation:***

- a) There is an urgent need to introduce adequate provisions to allow citizens to directly extract accountability from the authority as well as similar provisions of participation and transparency, which, in turn, are required to effectively operationalise the provisions for accountability.

**Process of Participation**

After introduction of regulatory institutions in the infrastructure sector, taking participation of people in governance processes became a norm. However, attempts made by the government to take public participation in the governance process in different sectors during last few years exhibit many limitations. Generally, sector experts along with some NGOs are invited to 'participate' in a 'consultative' process on the proposed policy or legislation. The grassroots activists and people hardly ever find place in such a 'participatory process'. Further, generally it is not binding on the government or regulatory authority to accept advise of these consultations neither the consultants/experts have adequate 'nuisance power' to ensure that their advise is taken seriously. On many times, such exercises are implemented in such casual, if not sham manner, that even minutes of those consultations are not recorded nor the minutes are shared with the invited experts. Thus, although such process gives an opportunity for outside experts to give their opinion in decision-making process, there is a danger that it will lead to 'expertocratic' influence on consultation rather than true and meaningful public participation in the decision-making. Participation of people could be meaningful only if the agencies seeking such participation are effectively accountable to participants for conducting an honest and open process of deliberations. It needs to be noted that experts or NGOs do not necessarily represent people and there is danger that they become early target for pressures or enticements of vested interests.

***Recommendations:***

- a) Any participatory process should be open for any member of public. It should be accountable, in different ways. Full and timely information should be made available for such process to be meaningful. Thus, transparency, that too in operationalized manner, is a necessary precondition for true process of participation.
- b) The following could be seen as necessary steps in a meaningful process of public participation.
  - ? The agency seeking public participation should invariably put the proposal (of a new policy, legislation, rules, regulations, notification, etc.) in the public domain.
  - ? This proposal should be given wide publicity by using electronic and print media, website, and other available options for communication.
  - ? The rationale and detailed reasoning behind the proposal should be articulated in the proposal.

- ? Adequate time should be given for the public to provide comments, suggestions, and objections.
- ? The process of conducting consultations (except in the case of minor, limited proposals) on the proposal should be open to public and any person should be allowed to participate in the consultations held for this purpose.
- ? The concerned agency should diligently process all comments, suggestion and objections received from the public.
- ? The final draft of the proposal should be published, with reasoning, recorded in writing. The necessary shall include rationale behind adoption and rejection of each of the suggestions received from public.
- ? After publishing the final draft, there should be time for public to study the final draft. If people find the draft unsatisfactory, there should be provision to make an appeal or seek a review.
- ? It is necessary, therefore, to provide for Appellate Authority where an appeal or demand for review can be made.

### **Part 3: Concrete Recommendations Related to the Governance Process**

In this section we provide some of the most crucial recommendations relating to the process of governance in groundwater sub-sector. This section is based on the analysis of the (proposed and current) governance process as it reflects from mainly the following (existing and proposed) legislations:

- i. The Model Bill to Regulate and Control The Development And Management of Ground Water, 2005 (hereafter referred as the Model Bill),
- ii. Maharashtra Groundwater (Development and Management) 2007 Draft Bill: A Detailed Note' prepared by the GSDA (hereafter referred as the GSDA note)
- iii. Maharashtra Groundwater (Regulation for Drinking Water Purpose) Act, 1993
- iv. Maharashtra Water Resources Regulatory Act, 2005

#### **3.1 Role of Regulatory Authority**

##### ***Background Logic***

- a. Section 5 of the Model Bill provides for the powers to notify certain areas for regulation and control of the development and management of ground water. The subsection (2) of Section 5 reads, '*...the Authority...will advise the State Government to declare...area to be a notified area for the purpose of this Act...*'
- b. Hence, the model bill assumes only advisory role for the Authority in the process of notifying the area for groundwater regulation. In this case, the regulatory authority does not have adequate powers to notify the area for the purpose of the act. The final decision remains with the state government.
- c. While the model bill depends on government to take the decision about the notification, it does not specify any designated officer or an authority, which is responsible for taking such a vital decision. This leads to weak accountability structure.

- d. In the GSDA note it is proposed (section 5-1 & 5-2 of the GSDA note) that the area for groundwater regulation shall be notified *through* the Maharashtra Water Resources Regulatory Authority (MWRRA). To be more precise, it seems to be proposed that the area shall be notified *through* the MWRRA and *not by* the MWRRA. Thus, there is no clarity on whether the MWRRA is the final authority to notify the areas for regulation or it is the government.
- e. If the final authority to decide about the areas to be notified for groundwater regulation rests with the government, then there is hardly any autonomy to the regulatory authority in such a highly important decision. This defeats the very purpose of having a regulatory authority.

***Recommendations:***

- i. The power to notify the areas for control and/or regulation of the extraction or use or both of the ground water should be vested in the hands of the regulatory authority constituted for the purpose. The government should play the role of laying down the rules and policy directions for the regulatory authority for this purpose.
- ii. If the powers to notify are given to the regulatory authority, then it should be backed by strong provisions for transparency, accountability, participation (TAP), which are currently lacking in the Model Bill.

**3.2 True Participation in the Process of Notifying or De-notifying Areas for Regulation**

***Background Logic***

- a. Sect. 5 (2) of the Model Bill reads, '*If the Authority, after consultations with various expert bodies, including Central Ground Water Authority (CGWA) is of the opinion that it is necessary or expedient in the public interest to control and/or regulate the extraction or the use or 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.....*'
- b. Thus, through Sect. 5 (2) the model attempts to bring in 'participation' in the process of notification, but in a very limited sense, by providing for consultation of 'expert bodies' and CGWA.
- c. Sect. 5 (4) of the Model Bill, related to the process of de-notification, is also based on the similarly limited interpretation of the term 'participation'.
- f. Both these provisions, in fact, provide for 'consultation' and only with 'experts'. It does not provide for 'participation of general or affected section of public'. The bill also does not provide further details of the process by which the actual decision would be taken.
- d. As per Sect. 5 (2) of the model bill, the authority will advise for notifying a certain area, if it is of the opinion of that it is necessary to notify in the public interest. We appreciate that the particular section gives emphasize on public interest. But unfortunately, as per provision in the model bill, the public is not consulted in this process of protecting public interest.

### ***Recommendations:***

- i. The process of notification (both, for notifying and de-notifying the areas to be regulated for groundwater) should be open to any general public and any member of the public should be allowed to participate in the consultations held for this purpose. It should follow the procedure of public participation described in Part 2 of this note by Prayas.
- ii. The Act should also include a section that provides for preparing the rules and regulations for defining the process of notifying or de-notifying the areas for control and regulation of groundwater.

### **3.3 True Participation in the Process of Granting or Refusing Permission for Extraction of Groundwater in Notified Areas**

#### ***Background Logic***

- a. Sect. 6 of the Model Bill provides power to the Authority for granting or refusing of permission to sink a well in a notified area.
- b. Though, this is one of the most contentious issue (about who will get the permission and who will not), the model bill does not provide appropriate provisions related to transparency, accountability and participation (or TAP) in the process of granting or refusing permission for extraction of groundwater in notified area.
- c. In the Model Bill, there is a general list of points that the Authority should consider while granting or refusing a permit (Section 6-5). But, there is no provision for making public the proceedings of the decision nor is there any provision for inviting objections from the public while granting the permit.
- d. There is a provision in the Model Bill (Sect. 6-3) for giving a hearing to the applicant before refusing a permit to the applicant. Though, this is a good measure of transparency and participation, the same is inadequate considering the overall importance and criticality of the issue of granting permits to extract water in notified areas.
- e. The issue of granting or refusing the extraction of groundwater in notified areas should not remain as an internal matter between the applicant and the permission-granting Authority. Rather, this issue should be seen as a broader 'public-interest' issue, involving stakes of the farmers and villagers from adjoining areas as well as the larger public.
- f. The repercussions of depletion of groundwater in any specified area are not limited to the particular watershed of that area but it has clear linkages (e.g. water scarcity in one region leads to increased demands for water in other regions) to the overall water balance at the level of river basin and also at the state-level. Hence, the issue of allowing permission for groundwater extraction in notified areas is an issue of broader 'public interest'.
- g. Apart from these direct implications (or repercussions), depletion of such key natural resource like water (many times non-renewable on cases of aquifer extraction) would naturally be a concern for all the right-minded citizens and organizations in the country.
- h. Hence, there is a need to bring all aspects of granting or refusing permission for groundwater extraction into the public domain.

- i. The note by GSDA on the main principles for the proposed groundwater act (2007) suggests (in point no. 5-5) that, the Authority (i.e., MWRRA) will prohibit the sinking of wells and deep-tube-wells in notified areas. At the same time, the note also mentions that (in point no. 5-19), the approval of the watershed-level water resources committee (WRCC) is compulsory for sinking a new well or installing a new electricity pump for extracting groundwater. This leads to an interpretation that the Authority will prohibit groundwater extraction while the WRCC may approve the same. Hence, it is also not clear whether the approval of watershed committee is a sufficient condition or just one of the necessary conditions for the Authority to approve groundwater extraction. The roles of the Authority and the WRCC are not clear in this regard. In any of these cases, there is a need to bring this process in the public domain.
- j. Point no. 5-12 of the GSDA note states that there will be prohibitions on sinking new wells in the area of influence of the existing public drinking water sources. Further, it states that there is a need for recommendation by the village panchayat or WRCC and final approval by the District Authority for sinking new well in such an area of influence. Here also, there is a need to bring this process in the public domain.

***Recommendations:***

- i. The entire process of granting or refusing permission for ground water extraction in all type of cases (as mentioned in the background logic) should be made public.
- ii. Clear (i.e. specific, measurable) criterion as well as the method of processing of applications (for granting permission for groundwater extractions), based on these criterions should be clearly laid down in the form of regulations to be prepared by the regulatory Authority.
- iii. There should be provision for giving powers to the Authority to make regulations in this regard. The method of processing of the applications and the criterion for decision making should be finalized after taking suggestions and comments from the public.
- iv. Such criterion and methodology should be published and disclosed to the public through making it available at the local level (in the village) as well as on the website.
- v. The information about the processing of applications, right from submission stage to the stage of final decision making, should be maintained in a systematic database with all details (using a computerized system) and the same should be openly and easily accessible to the public.
- vi. The process of granting or refusing the permit for groundwater extraction should follow the procedure for public process as mentioned in the Part 2 of this note by Prayas.
- vii. Apart from such transparency and participation related provisions, there should also be mechanism for monitoring of compliance of the orders of the authority about the permission (granted or refused) for groundwater extraction. This monitoring mechanism should have roles for the appropriate authority as well as the common public.

- viii. The act should provide for an appropriate mechanism that allows any member of the public to appeal against the non-compliance of the orders of the authority in this regard.

### **3.4 Provisions for Reasoned Order**

#### ***Background Logic***

- a. The concerned citizens, do not always understand the underlying rationale of different decisions taken by the various authorities or committees, in totality.
- b. This leads to confusion about the decision making process, and, in some cases, also leads to suspicion and speculations.
- c. Such confusion, speculation, or suspicion seriously erodes credibility, acceptance of the decision-making body as well as the decisions.
- d. Further, this lack of adequate credibility and acceptance of the Authority leads to lack of acceptance and ownership of the decisions made by the Authority, seriously eroding the motivation or peer-pressure to abide by or respect the decisions.

#### ***Recommendation:***

- i. The proposed groundwater act shall provide a blanket provision saying that, ‘All decisions of the appropriate authority should be in the form of a reasoned order’ i.e. the decisions/orders should be accompanied with detailed reasoning recorded in writing. Such a provision will enhance the accountability and transparency in the decision making of the various authorities.

### **3.5 Provision for appeal against any orders**

#### ***Background Logic***

- a. Sect. 14 (1) and 14 (4) of the Maharashtra Groundwater Act (1993) prohibits an aggrieved person to resort to the courts against the orders of the appellate authority or event against any direction issued or any order made under that Act.
- b. Sect. 14 (4) reads, ‘...every order made and every direction issued under this Act shall be final and shall not be called in question in any Court’.
- c. Sect. 14 (1) reads, ‘...every order made by the Appellate Authority...shall be final and shall not be called in question in any court’
- d. Such a blanket provision will limit the scope of providing justice to the any aggrieved person. Such neglect of the basic principles of natural justice leads to suspicion about the intent of having an independent authority. This in turn, leads to rejections and side-stepping of the authority and will-full non-compliance of its orders. Such behaviors give rise to all kinds of malpractices including corruption.

***Recommendation:***

- i. The proposed Maharashtra Groundwater Bill (2007) should not include the provisions similar to Section 14 (1) and 14 (4) of the Maharashtra Groundwater Act (1993).

**3.6 Building Multiple Levels of Accountability (Checks & Balances)**

***Background Logic***

- a. Section 3 (2) of the Model Bill proposes a representative of Central Groundwater Board (CGWB) to be one of the member of the Groundwater Authority (GWA) responsible for regulating groundwater in the state.
- b. Hence, the Model Bill provides for multiple levels of accountability mechanism (checks and balances) within the GWA by inclusion of a representative of CGWB as part of the GWA.
- c. The GSDA note on the Maharashtra Groundwater Bill (2007) does not include the member of CGWA as part of the regulatory authority. This reflects on the tendency to avoid being accountable to an agency outside the state bureaucracy or the control of state government.
- d. Participation of central government body will enhance the accountability of the state GWA and also keep a check on the state-level vested interests. It will also help the state agency to get a different and wider perspective on the issues involved.

***Recommendation:***

- i. The MWRRRA, which is the proposed groundwater regulator in the state, should include within its membership a representative of Central Groundwater Board (CGWB) for all matters or proceedings related to groundwater.

**3.7 Powers to the Authority to Make Regulations**

***Background Logic***

- a. Many decisions that are crucial for individuals, environment, and the society as a whole would be taken with regards to the regulation of groundwater through implementation of proposed act. Also, various proceedings would be undertaken in making and implementing such decisions.
- b. The public at large will not gain confidence in the regulatory authority, unless well-defined procedures have been laid for various processes with appropriate and adequate opportunities for true and meaningful participation. There is a need to lay down such procedures and norms in the form of regulations in order to make the law effectively implementable and enforceable.
- c. The Model Bill as well as The Maharashtra Groundwater Act (1993) does not provide powers for the Authority to make its own regulations on the crucial processes of regulating groundwater. In absence of such regulations, the executionary as well accountability mechanisms of the Authority would remain weak.

***Recommendations:***

- i. The proposed Maharashtra Groundwater Bill (2007) should provide powers to the regulatory authority to make regulations. Among other things, the Authority should make regulations on following aspects –
  - o Procedure for notifying or de-notifying areas for regulation and control on groundwater
  - o Procedure for granting or refusing permission for groundwater extraction in notified area or in areas of influence of public sources of drinking water
  - o Procedure of implementation of powers given to the watershed-level water resources committee (WWRC) (powers to decide water use & control on extraction based on groundwater assessment, specifying the areas for sand mining in river beds and enforcing the measures of groundwater recharge for existing irrigation well - as per point number 5.21, 5.22, 5.23 in the GSDA note)
  - o Procedures for bringing prohibitions on groundwater extraction in any area for protecting public sources of drinking water (as per point no. 5.13 of the GSDA note)
  - o Procedures for declaring an area as water scarce area (as per point 5.14 of the GSDA note)

**3.8 Condition of Previous Publication for Making Rules and Regulations**

***Background Logic***

- a. The Model Bill does not provide the condition of previous publications while making the rules by the government, whereas the Maharashtra Groundwater Act (1993) does provide the same.
- b. The MWRRA Act, which is the law that governs the proposed groundwater regulatory in Maharashtra, provides the condition of previous publications for the rules but it does not provide the condition of previous publication for the regulations made by the Authority.
- c. Absence of the condition of previous publications leads to absence of any opportunity for the public to participate in the process of making rules and regulations. This affects the quality of rules as well as it leads to lack of ownership and apathy by the people towards abiding by this rules and regulations.

***Recommendation:***

- i. The condition of previous publication for all rules made by the government and all regulations made by the Authority should be included in the appropriate sections of the proposed Maharashtra Groundwater Bill (2007)

**3.9 Issuing Orders for Prohibiting Over-Exploitation of Groundwater in Non-Notified Areas**

***Background Logic***

- a. As per the GSDA note on the proposed Maharashtra Groundwater Bill (2007), the Authority shall issue guidelines for undertaking measures for watershed based

groundwater use, for avoiding over-exploitation of the groundwater and for avoiding deterioration of quality of water in notified as well as non-notified areas (refer point no. 5-8 in GSDA note).

- b. This is an important provision towards sustainability of groundwater. But the provision will not be influential, if the same is attempted to be implemented by issuing guidelines. It needs to be noted that the guidelines are not enforceable by law.
- c. For effective implementation of this particular provision, which has crucial implications for the very purpose of the law, the Authority should be empowered to issue detailed mandatory orders in this matter.

***Recommendation:***

- i. The regulatory Authority should be empowered to issue orders and not just guidelines for undertaking measures for watershed based groundwater use, for avoiding over-exploitation of the groundwater and for avoiding deterioration of quality of water in notified as well as non-notified areas (refer point no. 5-8 in GSDA note).

**3.10 Public Participation in Preparing the Maharashtra Groundwater Bill (2007)**

***Background Logic***

- a. The invitation letter sent by the Director, GSDA for the consultation workshop on the proposed Maharashtra Groundwater Bill (2007) states that, the future adverse impacts can be avoided by preparing the Groundwater Act through public participation.
- b. But there is no well-defined process (that has been made public) outlined for ensuring public participation in preparing the proposed Maharashtra Groundwater Bill (2007). There is tendency to have consultations of invited experts, NGOs and others but there is no attempt to involve general public in preparing the act.
- c. Often even basic norms of such a consultative process are not followed (such as sharing the detailed proceedings or the ways in which the inputs from the consultation have been considered in the final draft). These norms should be followed in the process of making the Maharashtra Groundwater Bill (2007). In adherence to these norms, the participants and the public gets an impression that these exercises of consultations are not serious but a farce, undertaken to satisfy some conditionality put by some external agency like the World Bank. Such an impression severely erodes credibility not only of the consultation process and of the agency conducting the process but also of the law that ultimately emerges from this process.

***Recommendations:***

- i. The process of preparing the Maharashtra Groundwater Act (2007) should be open to public and it should follow the process detailed in the Part 2 of this note by Prayas.
- ii. The current and similar consultative process undertaken in regards of the proposed Maharashtra Groundwater Bill (2007) should be made public and it should follow the following norms:
  - o Preparation of detailed proceedings of the consultations (including the inputs received) and distribution to all participants and publishing the same in website.

- Preparation of ‘Action-Taken Report’ (ATR) on various suggestions and comments given by the participants. This report would record reasons for accepting or rejecting each of the suggestions and comments and would be published as soon as the bill is tabled before the cabinet.
- Often such a process is seen as cumbersome, infeasible and unnecessary burden. It needs to be mentioned that MERC undertakes this process for its every order. Further, this process is unavoidable if we want to establish credibility of the process, the agency, and the law that would emerge from this.

### **3.11 Public Participation in Preparing the ‘Integrated Watershed Area Development and Management Plan’**

#### ***Background Logic***

- a. Point 5-7 of the GSDA note on the Draft Maharashtra Groundwater Act (2007) proposes a provision for ‘Integrated Watershed Area Development and Management Plan’ (refer point 7. in GSDA note), which will be incorporated into the Integrated State Water Plan (which in turn will be prepared as part of the MWRRA Act, 2005).
- b. The section 15 (3) of MWRRA Act provides for preparation of draft Integrated State Water Plan but it does not provide for public participation in preparing the plan. Though, the Maharashtra Water Policy (2003) provides for some level of participation, the same is not enforceable, since the policy does not have the force of law.

#### ***Recommendation:***

- i. The proposed Maharashtra Groundwater Bill (2007), should explicitly provide for public participation in preparing the ‘Integrated Watershed Area Development and Management Plan’ and shall follow the process outlined in Part 2 of this note by Prayas.

\* \* \*

#### **References:**

1. The analysis is taken from, (a) Sanjiv Phansalkar and Vivek Kher, A Decade of the Maharashtra Ground Water Legislation: Analysis of the Implementation Process; (b) Analysis made by Resources and Livelihoods Group of Prayas
2. K. J. Joy, Suhas Paranjape and others, Watershed Development Review: Issues and Prospects, Center for Interdisciplinary Study of Environment and Development, December 2004.

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