

**Bill No. 214 of 2019**

THE INDIAN EASEMENTS (AMENDMENT) BILL, 2019

By

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**BILL**

*further to amend the Indian Easements Act, 1882.*

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

**1.** (1) This Act may be called the Indian Easements (Amendment) Act, 2019.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2.** In section 7 of the Indian Easements Act, 1882 (hereinafter referred to as the principal Act), in the Illustrations—

Amendment of section 7.

5 of 1882.

(a) illustration (g) shall be omitted; and

(b) for illustration (j), the following illustrations shall be substituted, namely:—

"(j) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land: 5

Provided that the use of water from such natural stream, lake or pond as well as any existing aquifer, well or mechanized tube-well shall be regulated by the concerned Gram Sabha or Municipality, as the case may be, under whose territorial jurisdiction it falls to ensure the equitable distribution of water to all and prevent the depletion of the groundwater table or over-extraction of groundwater." 10

*Explanation.*— For the purposes of this illustration,—

(a) "aquifer" refers to the rocks in which groundwater is stored;

(b) "Gram Sabha" shall have the same meaning as assigned to it under article 243 of the Constitution; 15

(c) "Municipality" shall have the same meaning as assigned to it under article 243P of the Constitution; and

(d) "natural stream" means a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only and in a natural and known course. 20

(ja) The right to construct new wells or tube wells shall be regulated by the concerned Gram Sabha or Municipality, as the case may be.

**3.** After section 7 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 7A and 7B.

Power of State Government to make rules.

“7A. The State Government concerned may, by notification, make rules consistent with the existing laws on the use and regulation of groundwater to ensure equitable distribution of groundwater and prevent the depletion of the water table. 25

Power of Gram Sabha or Municipality to make regulations.

7B. The Gram Sabha or Municipality, as the case may be, may formulate the regulations to ensure equitable distribution of water and prevent depletion of the water table under their territorial jurisdiction." 30

## STATEMENT OF OBJECTS AND REASONS

The Indian Easements Act, 1882 is a pre-Independence legislation that is based on the principle that ownership of groundwater flows from the ownership of land. Section 7(g) of the Act provides every landowner with the right to collect and dispose, within his own limits, all water under the land and on the surface. This private ownership of groundwater has led to its unregulated use, which has resulted in over extraction of water and a depletion of the water table. It has been found that nearly sixty per cent. of all districts in India face issues related to either the availability of groundwater, or the quality of groundwater, or both.

Furthermore, the legal consequences of this pre-Independence legislation are not just that the landowner can dig wells and extract water at his or discretion, but also the fact that this legal framework inadvertently excludes more than thirty per cent. of the population that do not own land and hence, are excluded from groundwater rights. In this context, it must be noted that the Supreme Court and various High Courts have evolved a fundamental right to water as a part of 'Right to Life' under article 21 of the Constitution.

Since independence, several policy postures of the Central Government have addressed this issue. Both the National Water Policy, 2012 as well as the Planning Commission Report on Ground Water Management and Ownership, 2007 came out in support of a 'public trust doctrine' for groundwater management. This means that the Government should be the ultimate guardian of all natural resources, including groundwater, to prevent over-extraction and ensure equitable distribution.

Since, 'water' falls under the State List of the Seventh Schedule to the Constitution, it is the prerogative of the State Legislative Assemblies to amend or enact laws pertaining to ground water management and regulation that are in line with the public trust doctrine, as set out under this Act.

Hence this Bill.

NEW DELHI;  
*June 27, 2019.*

KIRIT PREMJI BHAI SOLANKI

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill empowers the State Governments to make rules to ensure equitable distribution of groundwater. It also empowers the Gram Sabha and the Municipalities to make regulations regarding the management of groundwater. As the rules and regulations will relate to matters of detail only, the delegation of legislative power is of normal nature.

ANNEXURE

EXTRACT FROM THE INDIAN EASEMENTS ACT, 1882

[5 OF 1882]

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7. Easements are restrictions of one or other of the following rights (namely):—

Easement for limited time or on condition.

(a) \* \* \*

(g) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

\* \* \* \*

(j) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situated thereon, provided that he does not thereby cause material injury to other like owner.

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**BILL**

to amend the Indian Easements Act, 1882.

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*(Dr. Kirit Premjibhai Solanki, M.P.)*