

AS INTRODUCED IN LOK SABHA

Bill No. 307 of 2019

THE INDIAN EASEMENTS (AMENDMENT) BILL, 2019

By

SHRI LAVU SRI KRISHNA DEVARAYALU, M.P.

A

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.

5 5 of 1882. **2.** In section 15 of the Indian Easements Act, 1882 (hereinafter referred to as the principal Act), *Explanation IV* shall be omitted.

Amendment of section 15.

3. In section 17 of the principal Act, clause (d) shall be omitted.

Amendment of section 17.

4. In section 28 of the principal Act, clause (d) shall be omitted.

Amendment of section 28.

STATEMENT OF OBJECTS AND REASONS

The Indian Easements Act, 1882 was enacted to define and amend the law relating to Easements and Licenses.

The Supreme Court has held that water is a public trust and that the public trust doctrine is part of the law of the land. It is now essential to make citizens the public trustees of ground water and ensure that the State perform its duties under article 39 of the Constitution of India to ensure that ownership and control of the material resources of the community are so distributed as best to sub-serve the common good, and also to ensure that operation of the economic system does not result in the concentration of the means of production to the common detriment. Therefore, colonial era laws such as the Indian Easements Act, 1882 need to be amended to compensate for archaic redundancies.

The Draft National Water Framework Act, 2011, the Draft National Water Framework Bill, 2013 and the Draft National Water Framework Bill, 2016 have all recognized water to be held in public trust.

The NITI Aayog's Composite Water Management Report, 2019 suggests that industrial water requirement will quadruple between 2005 and 2030. It also reports that industries will need to draw three times the water compared to their actual consumption by the year 2030 due to water efficiency challenges. Groundwater accounts for forty per cent. of India's water supply, including sixty-two per cent. of irrigation water. Due to this dependence, there has been a demand to prevent private enterprises from exploiting groundwater as it is the collective heritage of all who depend on it for their lives and livelihood. There is an urgent need to democratize water resources.

The Bill, therefore, seeks to amend the Indian Easements Act, 1882 so as omit the provisions contained therein that allow for the privatization of groundwater and pollution of air and water.

Hence this Bill.

NEW DELHI;
October 29, 2019.

LAVU SRI KRISHNA DEVARAYALU

ANNEXURE

[EXTRACT FROM THE INDIAN EASEMENTS ACT, 1882]

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15. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years. Acquisition by prescription.

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*Explanation I.—** * * * *

*Explanation II.—** * * * *

*Explanation III.—** * * * *

Explanation IV.— In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to the 1[Government], this section shall be read as if, for the words "twenty years" the words 2["thirty years"] were substituted.

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Illustrations

Rights which cannot be acquired by prescription

17. Rights which cannot be acquired by prescription.—Easements acquired under section 15 are said to be acquired by prescription, and are called prescriptive rights. None of the following rights can be so acquired:—

(a) * * * *

(b) * * * *

(c) * * * *

(d) a right to underground water not passing in a defined channel.

Extent of easements

28. With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:—

* * * * *

(a) * * * *

(b) * * * *

(c) * * * *

(d) Prescriptive right to pollute air or water.—The extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose; and

(e) * * * *

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(*Shri Lavu Sri Krishna Devarayalu, M.P.*)