

REFORM AGENDA IN WATER RESOURCES SECTOR FOR XII FIVE YEAR PLAN

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ABSTRACT

Planning Commission constituted a Steering Committee and eight Working Groups related to Water Resources and Sanitation for XII Five Year Plan. The Committee has spelt out need of a paradigm shift in the management of water resources in India away from an engineering-construction-centric approach to a more multi-disciplinary, participatory management approach to major and medium irrigation projects of the country. A robust policy framework and management programme is required to: (a) narrow the growing gap between irrigation capacities created and those utilized, (b) overcome the neglect of command area development in irrigation projects, (c) move towards transparent, participatory mechanisms of pricing of water by the primary stakeholders themselves, (d) promote use of water-saving techniques of farming and (e) improve water-use efficiency in Indian agriculture. The highlight of the reform agenda proposed are (i) to establish new legal and institutional framework for water based on consensus within the National Development Council on Model Bill/Acts at back end and (ii) induction of Irrigation Management Programme (IMP) for providing new incentivized grants. Significant advancements are proposed for Accelerated Irrigation Benefit Programme (AIBP), Restoration of lost irrigation potential through Extension, renovation and modernization (ERM) of irrigation projects and Command Area Development & Water Management (CADWM) with enhanced allocations to set an ambitious target for XII Plan. This paper also discusses the implications of the Reform Agenda in strengthening the existing infrastructure and restructuring Organizations in State and Center and capacity building of all the stakeholders.

"Opinion expressed in this paper is authors' personal aspirations it may not be considered as an official contribution"

1. INTRODUCTION

Planning Commission constituted a Steering Committee and eight Working Groups related to water resources and sanitation for XII Five Year Plan, which are as under:

1. Working Group on Sustainable Groundwater Management
2. Working Group on Major and Medium Irrigation Systems
3. Working Group on Minor Irrigation and Watershed Development
4. Working Group on Flood Management and Region Specific Issues
5. Working Group on Water Database Development and Management
6. Working Group on Urban and Industrial Water and Sanitation
7. Working Group on Rural Domestic Water and Sanitation
8. Working Group on Water Governance

In the Draft report of the Steering Committee for Water Resources & Sanitation based on the findings and recommendations of these Working Groups, need of a paradigm shift in the management of water resources in India comprising the following elements were identified:

- A move away from a narrowly engineering-construction-centric approach to a more multi-disciplinary, participatory management approach to our major and medium irrigation projects in order to :
 - a. narrow the growing gap between irrigation capacities created and those utilised
 - b. overcome the neglect of command area development in our irrigation projects
 - c. move towards transparent, participatory mechanisms of pricing of water by the primary stakeholders themselves
 - d. promote use of water-saving techniques of farming
 - e. improve water-use efficiency in Indian agriculture
- Map the aquifers of India, separate the electricity feeders for agriculture from those for other uses and promote a participatory management of groundwater resources by the stakeholders themselves in order to :
 - a. impart greater sustainability and equity in the use of groundwater
 - b. break down the silos between drinking water and irrigation
 - c. arrest the alarming decline in water tables
 - d. effectively address issues of groundwater quality
 - e. move towards transparent, participatory mechanisms of pricing of water by the primary stakeholders themselves
 - f. move towards cropping patterns better aligned with the natural resource endowments of each region
- A massive programme for watershed restoration and groundwater recharge by:
 - a. reforms in MGNREGA to transform it into our largest watershed and productivity enhancing programme
 - b. giving renewed energy to the reformed Integrated Watershed Management Programme launched in the 11th Five Year Plan
 - c. launching a completely revamped programme on Repair, Renovation and Restoration (RRR) of Water Bodies
- Major reform in drinking water and sanitation programmes by:
 - a. creating a single rural drinking water and sanitation programme
 - b. targeting habitations rather households in rural sanitation
 - c. zeroing in on households rather than merely habitations in drinking water coverage
 - d. placing central emphasis on resource sustainability
 - e. adopting a community-led approach to both rural drinking water and sanitation to ensure participatory and transparent systems of pricing and better operation and maintenance
 - f. all urban water supply projects to necessarily integrate sewage systems within them
 - g. place central emphasis on capacity building of PRIs, ULBs and water utility personnel
- Definite targets for recycling and reuse of water by Indian industry to move in conformity with international standards
- Vastly improved systems of water-related data collection and management as also transparency in availability of data
- Renewed focus on non-structural mechanisms for flood management
- A new legal and institutional framework for water based on consensus within the National Development Council on:
 - a. National Water Framework Law
 - b. Model Groundwater Law
 - c. Water Resource Regulatory Authorities in every State based on a new draft law

- d. National Water Commission to monitor compliance with conditionalities of investment and environmental clearance

2. SALIENT ASPECTS OF REFORM AGENDA

An attempt to briefly highlight some of the reform agenda that has the potential to transform the water resources sector in India is as under:

2.1 MAJOR AND MEDIUM IRRIGATION PROJECTS – STRATEGY (IMPROVEMENT IN MANAGEMENT PRACTICE AND REFORM MEASURES)

The Working Group has recommended that in respect of major and medium irrigation projects, the focus should be on (a) full utilization of created facilities, (b) improving water use efficiency, and (c) completing as many ongoing projects as possible for which the ongoing projects should be prioritized. In order to achieve these objectives, the central assistance should be used to incentivize and encourage the States to adopt and implement an aggressive MMI management reform agenda and an action plan. With a view to achieve the objective of full utilization of created facilities and increase the efficiency of water use, the works related to (a) command area development and water management (CAD&WM), and (b) extension, renovation and modernization (ERM) of old major and medium irrigation projects are proposed to be given top most priority, liberalized central funding at enhanced rate have been recommended under Accelerated Irrigation Benefits Programme (AIBP) for central assistance to such projects. The reform measures should inter-alia include: (a) rationalization of water charges; (b) establishment of regulatory mechanism; (c) comprehensive capacity building programme for project management personnel including the field level workers; and (d) adoption of modern management tools etc. In this regard, adequate outlays have been proposed for irrigation management, data acquisition, specialized studies, research and training etc. to incentivize and support the states. It is strongly recommended that central assistance should be subject to the condition that better management practices would be adopted by the State Governments.

2.1.1. IRRIGATION MANAGEMENT FUND

The initiative taken by the Thirteenth Finance Commission is being carried forward in the spirit that the central assistance should be linked to outcomes in terms of MMI performance and impacts. The incentive grant of Rs 5,000 crores over 4 years provided by the Thirteenth Finance Commission is too small to nudge the states in taking up an aggressive reform agenda. Moreover, its formula of allocating this incentive grants in proportion to Gross Receipts recovered and IPU of different States at the end of 10th Five Year Plan is not designed to reward improved outcomes. Therefore, a much stronger incentive must be in place for improving MMI performance outcomes. There is a strong case for investing more in realizing the reform agenda. The investment is considered all the more important because it is very much desirable to fully renovate the systems before handing them over to the local bodies such as Water Users' Associations or the Panchayati Raj Institutions. This is the genesis of "IMF". It is also proposed that a very strict monitoring mechanism should be put in place for implementation of "Irrigation Management Fund". An outlay of Rs 10,000 crores has been proposed for the purpose. The incentive should be appropriately linked with ISF collections either by the States or the local bodies such as Panchayats or Water Users' Association.

The O&M budget given to Irrigation Departments offers them little freedom to undertake routine maintenance works, leading to mounting deferred maintenance which over time necessitates rehabilitation. The Working Group noted that despite massive investments in creating new potential, the annual O&M expenditure in all states remains well below 1 percent of the capital cost. Another contributing factor to this condition is the low level at which Irrigation Service Fees (ISF) are fixed and progressive decline in the ratio of actual collection to ISF demand.

The mechanism suggested by the Working Group begins with three measures: [a] increasing the O&M funds available to MMI managers on an annual basis; [b] rationalizing ISF levels; and [c] incentivizing Irrigation Service Fee (ISF) rationalization and improving collection ratio (ISF collected as % of ISF demand).

To this end, the Working Group recommends that the Central Government reimburses to state irrigation departments a matching contribution to its ISF collection from irrigators on a 1:1 ratio, provided: [a] States desiring to avail of this matching grant maintain their own non-plan allocations to Irrigation Departments at the normal rate of growth of the aggregate non-plan budget of the state; this is to ensure that central governments matching support is additional to state's non-plan budget for MMI systems; [b] states allocate central grant to

MMI systems in proportion to their ISF collection; [c] an Independent Water Regulatory Agency / Authority is established to claim central incentive grant on behalf of the state government.

At the end of the financial year, States desiring to avail of this matching grant will – through their regulator – present a certified, audited statement depicting the actual ISF collected from irrigators from different MMI systems. The Central Government will have an independent verification undertaken of the claims on ISF collection (including a scrutiny of a sample of vouchers) based on which central grant will be released each year. To give strong encouragement to PIM, the Central Government will provide a 30 percent bonus on that portion of each state's ISF collection which has been collected through Water User Associations (WUAs), as certified by the state's water regulator and verified by an independent agency designated by the Central Government. This bonus will be allowable only if WUAs are allowed to keep 50% of the ISF collected by them and their federations at the distributary level are allowed to keep 20% of the ISF paid by irrigators.

Similarly, to encourage volumetric water deliveries and ISF collection, the Central Government will provide an additional 20 percent bonus on that portion of a state's ISF collection which accrues through volumetric water supply to WUAs at the outlet level under an irrigation service contract with each WUA.

Such a scheme of incentivizing ISF collection, with proper implementation, will produce myriad beneficial impacts as follows:--

[a] improve the ISF collection ratio; [b] generate more accurate data on irrigation potential utilized; [c] give strong fillip to PIM; [d] speed up CAD works; [e] encourage rationalization of ISF levels; [f] encourage volumetric water supply and pricing; [g] foster partnership between irrigation agencies and WUAs; and [h] in general help reduce the gap between IPC and IPU.

2.1.2 CHANGES IN ACCELERATED IRRIGATION BENEFITS PROGRAMME (AIBP)

In order to ensure that the targets for XII Plan, particularly those related to adoption of better management practices are fully achieved, it is necessary that the Central Government should, on one hand, provide necessary incentive to States and on the other hand strictly adhere to the strategies identified for achieving the targets. AIBP being the most important scheme, the following incentives and conditions are proposed to be linked with the central assistance under this programme.

- The central assistance at the rate of 90% should continue for the projects in special category States, projects in KBK (undivided Kalhandi, Bolangir and Koraput) districts of Orissa and projects benefitting tribal areas, drought prone and flood prone areas. It is also proposed that sustainable irrigation projects in areas included under Desert Development Programme should also be eligible for 90% central assistance under Accelerated Irrigation Benefits Programme.
- The rate of central assistance should be increased to 50% in place of 25% for all ongoing projects in general categories States provided the States initiate necessary actions immediately and fully implement the reform agenda within first two years of the XII Plan i.e., during 2012-13 and 2013-14. In case of failure to fully implement the reform agenda, the central assistance should be restricted to only 25%.
- The condition of one to one should be relaxed in case of ERM projects. The condition of one to one should also be relaxed in case of command area development works in respect of projects already completed under AIBP. This is considered necessary to achieve the objective of increasing water use efficiency by 20% as envisaged under National Water Mission. This relaxation would be in addition to the existing provisions in the AIBP guidelines regarding relaxation in respect of condition of one to one.
- New MMI projects of general category States should be included for support under AIBP only in exceptional cases and such projects would be eligible for central assistance at the rate of 25% only.
- Lift irrigation schemes should have a mandatory condition of implementing micro irrigation in certain percentage of the command area of the project.
- Monitoring of all schemes under central assistance should include a specific mention of the progress made in respect of implementation of the reform agenda.

2.1.3 DATA COLLECTION AND INFORMATION SYSTEM

The Working Group very strongly recommends for observation and collection of all relevant data and information from various sources and making them available for users through water resources information system in public domain. The "Water Resources Information System (WRIS)" being developed by the Ministry of Water Resources with assistance from National Remote Sensing Centre should be made fully operational.

One of the important targets should be to ensure reporting of data in respect of project wise irrigated area, irrigation potential utilized and such other information which are essential for performance evaluation.

2.1.4 RE-STRUCTURING OF WATER RESOURCES ORGANIZATIONS & CAPACITY BUILDING

With focus on adoption of better management practices, it is considered necessary to undertake the re-structuring of the Water Resources Departments in the States and the related organizations in Centre to achieve the objective. Recognizing the fact that water related issues need to be addressed through multi-disciplinary approach, involvement of professionals from various disciplines at working level is considered very much desirable.

Similarly capacity building and career development programmes for water resources professional including those associated with water management at the field level are strongly recommended. It is suggested that various academic and professional institutions and research organizations should be actively associated. Mass awareness programme is equally important. The Working Group recommends the following.

The Working Group recommends that specific provision of funds is made to involve leading ITES players to work with state governments to develop management information systems for MMI schemes with specific purpose of generating real-time information on the working and performance of these systems to enable their benchmarking.

3. OUTLAY AND TARGETS OF THE TWELFTH FIVE YEAR PLAN

The outlay proposed for various activities by the Working Group on Major & Major Irrigation & Command Area Development are as under:

Sl. No.	Description of Planned Activities	Proposed Outlay (Rs in crores)		
		State Plan	Central Plan	Total
A. Full Utilization of Created Facilities and Improving Water Use Efficiency				
a.	Command area development and water management	10,000	20,000	30,000
b.	Extension, renovation and modernization of major and medium irrigation projects	10,000	7,000	17,000
c.	Irrigation management fund	0	10,000	10,000
d.	Dam safety	2,000	200	2,200
e.	Better management practices	900	1,900	2,800
f.	Implementation of pilot scheme with fully automated distribution system for Benchmarking	1,000	9,000	10,000
	Sub-total	23,900	48,100	72,000
B. Completion of On-going Projects				
a.	Major irrigation projects	134,000	67,000	201,000
b.	Medium irrigation projects	11,000	5,500	16,500
	Sub-total	145,000	72,500	217,500
C. Taking up New Projects				
a.	Major irrigation projects	32,000	5,500	37,500
b.	Medium irrigation projects	4,000	700	4,700
	Sub-total	36,000	6,200	42,200
D. Research, Education, Capacity Building and Mass Awareness				
a.	Promotion of research	300	400	700
b.	Promotion of higher studies	0	200	200

c.	Capacity building programme	200	100	300
d.	Mass awareness	300	200	500
	Sub-total	800	900	1,700
E. Strengthening of Data Acquisition, Planning and Monitoring Mechanism				
a.	Investigation, advance planning	700	1,300	2,000
b.	Data acquisition and analysis, information system and monitoring	1,700	4,100	5,800
c.	Restructuring of Water Resources Deptts. in States and related central organization	500	200	700
	Sub-total	2,900	5,600	8,500
	Total	208,600	133,300	341,900

The potential creation through MMI has increased from 9.7 Million Hectare (mha) during pre-plan period to 41.64 mha by the end of Tenth Plan. The Working Group on MMI & CAD for XII Five Year Plan has accessed an additional creation of about 5 mha during XI Five Year Plan. The target recommended by the Group during XII Plan is as under:--

- Reducing the gap between IPC and IPU by 10 million hectare (mha) through CAD etc.
- Increasing the ISF collection of MMI to the level recommended by the 13th Finance Commission;
- Increasing ISF collection through WUAs to 50 percent of the total for the MMI sector of the country
- Increasing the MMI irrigated area served by volumetric water delivery and irrigation service contracts with WUAs to 1 million ha
- Restoration of about 2.2 mha of lost irrigation potential through ERM of MMI projects
- Creation of additional irrigation potential of about 7.9 mha
- Improving water use efficiency from current level of about 30% to about 36%.

4. WATER REGULATING AUTHORITY –WHY & WHAT FOR?

The Need for an Independent Water Regulatory Agency / Authority to be established by the State Governments to claim central incentive grant Under **Irrigation Management Programme** on their behalf could be fulfilled through the enactment of Model Bills/Acts (Draft) suggested by the Working Group on **Water Governance**.

5. BRIEF NOTE MODEL WATER BILLS/ ACTS

The Working Group on **Water Governance** comprised of the following three Sub Groups:

- The Sub Group on Model Bill for the Protection, Conservation, Management and Regulation of Groundwater
- The Sub Group on the National Water Framework Act
- The Sub Group on the Model Bill for State Water Regulatory System Act

5.1 MODEL BILL TO FOR MANAGEMENT OF GROUND WATER

Rapidly increasing groundwater use and lowering water tables led the Government of India to take early notice of the need for a statutory framework governing groundwater. As a result, starting in 1970, the Government of India put forward a Model Bill to Regulate and Control the Development and Management of Ground Water for adoption by the states. This model bill has been revised several times (1992, 1996 and 2005) but the basic scheme adopted in 1970 has been retained to date.

In all the states/UTs that have adopted groundwater legislation, the basic framework is directly derived from the existing Model Bill. At the same time, groundwater laws adopted in recent years are neither adequate nor satisfactory, in large part because of the shortcomings in the Model Bill, 2005 highlighted above.

While the Model Bill, 2005 introduces a limited regulatory framework to address groundwater depletion, yet it fails to address existing over-exploitation, necessary legal status, more equitable access and ensure aquifer based regulation in regard to groundwater. It also fails in regard to implement the 73rd and 74th amendments to the Constitution of India by not providing for any institutional structure below the state level.

Towards a New Legal Framework for Groundwater

The present legal situation calls for significant changes, as the existing legal framework is inadequate to address the challenges of groundwater use and conservation facing most states of the country.

Thus, even though some states still reject the very idea of adopting groundwater legislation, there is an increasing consensus that groundwater legislation is required.

A number of reasons call for the adoption of a new legal regime:

- The overbearing power of landowners on access to and control over groundwater ensures that regulation remains atomised. It thus fails to provide an overall regime for tackling over-extraction, contamination and protection on a larger scale.
- The direct links between rights to groundwater and land ownership excludes the vast number of landless people from a direct stake in the regime. Given the inequality in land holdings, this rule gives large landowners a disproportionately larger access to groundwater. This rule also negatively affects landless farmers' access to groundwater as they are disqualified from acquiring institutional credit for development of groundwater.
- The existing groundwater legal regime (common law rules and legislation) fail to incorporate the many legal developments that have taken place over the past few decades in the legal framework. This includes failing to incorporate new water law principles (for instance, public trust), environmental law principles (for instance, the precautionary principle), decentralisation principles embodied in the 73rd and 74th amendments to the Constitution, and failing to take notice of the changes in irrigation law focusing on participatory irrigation management proposed for the past fifteen years and implemented in a number of states.
- The existing groundwater legal regime fails to integrate the fundamental right to water that has been a part of Indian law for the past two decades. In a context where groundwater is the primary source of drinking water for the overwhelming majority of the population, the legal framework related to groundwater needs to reflect the priority given to the fundamental right over rights granted to landowners.

5.1.1 SALIENT FEATURES OF THE MODEL BILL FOR THE PROTECTION, CONSERVATION, MANAGEMENT AND REGULATION OF GROUNDWATER, 2011

The Model Bill for the Protection, Conservation, Management and Regulation of Groundwater, 2011 [hereafter Model Bill, 2011] has been drafted keeping in mind all the elements mentioned above.

The Model Bill, 2011 is built around an understanding that it is the farmers and all persons living in rural areas that are the most directly affected by the existing legal regime. It is thus based on the idea that while protection of groundwater is key to the long-term sustainability of the resource, this must be considered in a framework in which livelihoods and basic drinking water needs are of central importance.

The overall objectives of the Model Bill, 2011 are to:

- Regulate and control iniquitous groundwater use and distribution, based on priority of allocation to ensure in particular that the drinking water/domestic needs of every person and irrigation needs of small and landless farmers can be met;
- Ensure safe and secure drinking/domestic water for all people, particularly in groundwater dependent regions;
- Regulate the over-extraction of groundwater in order to ensure the sustainability of groundwater resources, equity of their use and distribution, and to ensure fulfilment of ecosystem needs;
- Promote and protect community-based, participatory mechanisms of groundwater management that is adapted to specific locations considering resource enhancement and socio-economic set up;
- Prevent and mitigate contamination of groundwater resources;
- Promote and protect good conservation, augmentation (recharge) and management practices; and
- Protect areas of land that are crucial for the sustainable management of groundwater resources and ensure that high groundwater consuming industries are not located in areas unable to support them.

5.1.2 LEGAL AND INSTITUTIONAL BASIS

The Model Bill, 2011 draws on the various developments that have taken place in the legal framework since the Government of India proposed the first Model Bill in 1970. In particular, it reflects the following:

- The principle that water, and groundwater specifically, is a public trust as put forward by the Supreme Court. This applies to groundwater as a resource and not to mechanisms for abstracting it.
- The recognition of the fundamental right to water by the Supreme Court.
- The principle of subsidiarity, as explicated in the 73rd and 74th amendments to the Constitution (Articles 243G and 243W).
- Protection principles, such as the prevention and precautionary principles, most recently statutorily recognised in the National Green Tribunal Act, 2010 (Section 20).
- The Model Bill also builds on existing laws and schemes and contextualises them to groundwater. This is, for instance, the case of:
- The Right to Information Act, 2005.
- The Environmental Impact Assessment Notification, 2006 under the Environment (Protection) Act, 1986.
- Social audits called for under various schemes and policies of the Government.

Institutional framework

The institutional framework proposed in the Model Bill, 2011 is based on the principle of subsidiarity and framed around existing units of territorial governance. At the same time, in recognition of the fact that aquifer boundaries do not follow administrative boundaries, it provides for mechanisms that ensure that administrative boundaries do not come in the way of effective protection of groundwater aquifers.

The Model Bill is based on an understanding that it should be adopted at the state level in a form that suits the specific conditions and needs of that particular state. In addition, it is expected that the Model Bill will be adapted to suit the existing institutional and legal framework of the state to avoid duplication. Thus, it provides for an institutional framework devoted to groundwater to ensure appropriate management of groundwater from the local to the state level. At the same time, it provides for collaboration or integration of groundwater to already existing institutions addressing water, such as the Central Groundwater Board. In addition, it provides for existing institutions to support the new local level institutions to ensure that they are not hampered in implementing the legislation by a lack of technical or other expertise.

5.1.3 IMPACTS OF THE MODEL BILL

The Model Bill, 2011 provides that groundwater is a public trust. This implies that the state at all levels (from the panchayat to the state government) is the custodian of the resource. The new legal status of public trust for groundwater as a resource does not in any way affect the sources used by individuals or communities to access groundwater.

The Model Bill, 2011 proposes a new legal framework that will ensure effective regulation of large-scale groundwater use. It will have no impact on the overwhelming majority of small farmers' groundwater use whose rights of access will not be affected. Rather, it will contribute to ensure that all farmers (and more broadly groundwater users) benefit from better groundwater availability in the long run by restricting over-exploitation by large users that threatens access by the majority of small users.

The Model Bill, 2011 is built around the need to regulate unreasonable uses of sources of groundwater that threaten the aquifer to ensure that the resource itself is protected and can provide a sustainable basis for meeting the basic needs of every person for decades to come.

[The brief content of draft bill is presented in Annexure 1]

5.2 THE DRAFT NATIONAL WATER FRAMEWORK ACT: AN EXPLANATORY NOTE

Water, like air, is one of the most basic requirements for life. If a national law is considered necessary on subjects such as the environment, forests, wildlife, biological diversity, etc., a national law on water is even more necessary. Water is as basic as (if not more basic than) those subjects.

Under the Indian Constitution water is primarily a State subject, but it is an increasingly important national concern in the context of:

- (a) the right to water being a part of the fundamental the right to life;
- (b) the perception of a water crisis because of the mounting pressure on a finite resource;
- (c) the inter-use and inter-State conflicts that this leads to, and the need for a national consensus on water-sharing principles, and on the arrangements for minimizing conflicts and settling them quickly without resort to adjudication to the extent possible;
- (d) the threat to this vital resource by the massive generation of waste by various uses of water and the severe pollution and contamination caused by it;
- (e) the long-term environmental, ecological and social implications of efforts to augment the availability of water for human use;
- (f) the equity implications of the distribution, use and control of water: equity as between uses; users; areas; sectors; States; countries; and generations;
- (g) the international dimensions of some of India's rivers; and
- (h) the emerging concerns about the impact of climate change on water and the need for appropriate responses at local, national, regional, and global levels.

5.2.1 WHY IS A NATIONAL WATER LAW NECESSARY?

It is clear that the above considerations cast several responsibilities on the Central Government. Some of these can be dealt with only partially under existing laws such as the Environment (Protection) Act 1986, the Water (Prevention and Control of Pollution) Act 1974, and others. On inter-State rivers there are (i) Entry 56 in the Union List which enables the Central Government to act if Parliament legislates for the purpose, (ii) the River Boards Act 1956 enacted under it (which has remained inoperative), and (iii) the Inter-State Water Disputes Act 1956 enacted under article 262 of the Constitution and amended in 2002. However, inter-State rivers and river valleys are not the same thing as 'water' *per se*, and adjudication is not the only thing that needs to be provided for. All the aspects enumerated earlier cannot be brought within the ambit of the existing Central laws. Given the concerns set forth above, the need for a national water law is self-evident. Such a law will not preclude the further use of Entry 56, or the re-activation of the River Boards Act, or amendments and improvements to the ISWD Act. Several States are enacting laws on water and related issues. These can be quite divergent in their perceptions of water. Again, under a number of Projects and Programmes different States are undertaking 'water sector reforms', and as a part of this they have formulated or are formulating State Water Policies. Here again, significant divergences are possible. Some divergences of policy and law may be inevitable and acceptable, but they have to be within reasonable limits set by a broad national consensus on certain basics. Different State Governments tend to adopt different positions on the rights of different States over the waters of a river basin that straddles more than one State. Such legal divergences tend to render the resolution of inter-State river-water conflicts even more difficult than they already are. A national statement of the general legal position and principles that should govern such cases seems desirable.

Finally, the idea of a national water law is not something unusual or unprecedented. Many countries in the world have national water laws or codes, and some of them (for instance, the South African National Water Act of 1998) are widely regarded as very enlightened. There is also the well-known European Water Framework Directive of 2000. The considerations behind those national or supra-national documents are relevant to India as well, although the form of a water law for India will clearly have to be guided by the nature of the Indian Constitution and the specific needs and circumstances of this country.

It was the recognition of the need for a minimal national consensus on certain basic perceptions, concepts and principles that led to the adoption of the National Water Policy of 1987 and the NWP of 2002. **Currently the process of considering further revisions to the National Water Policy is in progress. However, a national water policy has no legal status. A national water law is necessary.**

5.2.2 WHAT WILL BE THE NATURE AND SCOPE OF A NATIONAL WATER LAW IN INDIA?

The proposed national water law is not intended to centralize water management or to change the Centre-State relations in any way. What is proposed is not a Central water management law or a command-and-control law of the usual kind, but a *framework law*, i.e., an umbrella statement of general principles governing the exercise of legislative and/or executive (or devolved) powers by the Centre, the States and the local governance institutions.

No administrative machinery or institutional structure (except for a national water Information system) is envisaged at the Centre under this framework law, and consequently no penal provisions are envisaged. This is not intended to exclude the necessary administrative machinery, institutional structure and penal provisions in State laws within this framework.

However, the law is intended to be justifiable in the sense that the laws passed and the executive actions taken by the Central and State Governments and the devolved functions exercised by PRIs will have to conform to the

general principles and priorities laid down in the framework law, and that deviations can be challenged in a court of law.

5.2.3 HOW WILL THE LAW BE ENACTED?

Given the present constitutional division of legislative powers between the Union and the States, it will be necessary to follow the procedure adopted in the case of the Water (Control and Prevention of Pollution) Act 1974, or more recently in the case of the Dam Safety Act 2010, i.e., a certain number of State assemblies can be persuaded to pass resolutions and then the Centre can enact this law. An Act so passed will be applicable to the States that had passed the resolution and to other States that adopt the Act. There is every reason to believe that most States will adopt the Act, and that the Act will become truly national.

The alternative – a more difficult route – is to wait for water to be moved to the Concurrent List first, and then get this law enacted by Parliament.

The draft proceeds on the assumption that only the first route is available as for now water is not on the Concurrent List.

[The brief content of draft bill is presented in Annexure 2]

5.3 MODEL BILL FOR STATE WATER REGULATORY SYSTEM ACT

The process of deliberation within the Sub Group on the draft of the Model Bill for State Water Regulatory System Act (henceforth referred to as the Model WRS Bill or the Model Bill) started with the discussion on ‘Concerns and Critiques’ related to the conventional design of Independent Regulatory Authority (IRA) in general, and Water Regulatory Authorities in specific. A set of detailed ‘Design Imperatives’, related to the concerns and critiques, emerged from the discussion. These design imperatives were then categorized as substantive, procedural, and institutional design imperatives. The substantive design imperatives yielded the objectives of regulation sought to be achieved (together forming the responses to ‘why’ and ‘what’ of water regulation system), while the procedural and institutional design imperatives formed the basis for the design of ‘how’ and ‘who’ aspects respectively of the system for water regulation. The substantive design imperatives were further classified into different ‘Areas of Regulation’ in the Model Bill, i.e., those areas of water sector that require regulatory intervention. Second, the procedural design imperatives translated into procedural components of the Bill that specify the processes and procedures for preparation of policy instruments and making decisions based on those. Finally, the institutional design imperatives gave rise to the institutional structure and the concept of institutional transition envisaged in the Bill.

5.3.1 INSTITUTIONAL STRUCTURE ENVISAGED IN THE BILL

The Model WRS Bill is designed to address the following concerns and critiques related to the functioning of IRAs:

(A) Critical powers of IRAs such as Tariff Determination

The first set of concerns and critiques stemmed from the authority vested in the IRAs (as per the conventional model) to make critical decisions such as determination of tariff. To be more specific, these concerns are about the ‘selected’ experts—who are not elected and hence, have no political legitimacy—handling the matters (such as tariff) that have very strong social and political implications. The concern is also about the analytical and quasi-judicial—and not political—process followed by IRAs in making such decisions. The bill addresses these concerns by creating three different categories of institutions that have different types of competence and legitimacy. These three types of agencies will be handling three different functions of governance.

It is often argued that there should not be any conflict of interests as on one hand, there is handling the policy-making and execution functions, and, on the other hand, the function of monitoring and regulation. Further, the two agencies, the agency setting policies and the agency conducting regulation adopt different types of processes and procedures for their functioning. While the Independent Expert Authority (IEA) (handling regulation) adopts analytical and quasi-judicial procedure, the agency with political mandate (handling policy-making) adopts the legislative procedures.

(B) Nature of Conventional IRAs as the only State-level Apex Authority

The second set of concerns and critiques relates to the nature of conventional IRAs as the only apex authorities at the state-level. The resultant distance and disconnection with the actual water users and ground-conditions suffered by the state agency not only creates alienation but also affects the quality, efficacy, and efficiency of its functioning.

In response to this concern, the Model WRS Bill incorporates the Principle of Subsidiarity, by laying out an optimum way of decentralizing water sector governance to the following four levels: (i) State-level, (ii) River Basin level, (iii) Sub-Basin level, (iv) Local level. At all these four levels of governance, institutions with different structure, compositions, functions, authorities, and roles are provided for in the bill. It is expected that such decentralization can eliminate the problems with the centralized institutional structure envisaged in the conventional model of IRA. However, many fear such decentralization might prove dysfunctional or sub-

optimal affecting efficiency and efficacy of governance and performance of the sector, especially because of the lack of capabilities and understanding of issues at the lower level of institutional ladder. The bill brings in and implements the concept of phased institutional transition by providing step-wise, gate-protected process for gradual introduction of the decentralized institutional structure. Another concern over the central, state-level agency is the problems that the water users would face in approaching the agency with their service-related grievances. Further, the large number of service related grievances—which are seen as of repetitive and routine nature—of large number of water users are seen as swamping down the agency with the work load. Such swamping and remoteness of the state-level agency is expected to give rise to high level of discontents among the water-users, affecting the water sector governance system. The bill responds to these concerns by creating a multi-structured state-wide Grievance Redressal System, with connection with the IEA at the state level.

(C) Universal Design of the IRAs and Flexibility to the States

The third set of critiques and concerns relates to the universal design of the IRAs, i.e., design based on the 'one shirt fits all' or 'cookie cutter' approach. Such approach is seen as highly inappropriate in view of: (a) the immense diversity of physical (topographic, geomorphic, and agro-climatic) and socio-cultural, political conditions within and across the state, (b) the diversity of policy priorities and political preferences of the governments in different states. The Model Bill addresses these concerns by having a modular structure, from which modules based on the state-specific situation, requirements, priorities of water sector governance, and other different factors could be selected by the state government while preparing and enacting their final draft of the Bill. Additionally, the temporal aspect of the state-specific situation for implementation of the Act, especially for gradual decentralization for governance, is incorporated in the phased approach for institutional transition that is already explained in the previous sub-section. This will enable the states to determine the optimal time and duration for transition through the three phases of institutional transition envisaged in the Bill.

(D) Autonomy and Accountability of the Independent Authorities

The fourth set of concerns and critiques related to the IRAs is two-fold: (a) concern over the autonomy required by the IRA for effective and efficient operation of the independent regulatory mechanism, and (b) concern over the accountability required of such an independent regulatory mechanism in order to ensure clean governance. The Bill addresses this set of concerns by incorporating many mechanisms for ensuring autonomy and accountability of the IRA, in addition to usual mechanisms on the laws creating IRAs. The separation of authority to make 'political' or 'normative' decisions and the authority to make 'technical' or 'predominantly non-normative' decisions have helped bring more clarity in the task of ensuring autonomy and accountability of IRAs. For example, while the State Water Regulatory and Development Council (SC) is expected to ensure accountability with respect to the 'normative' or 'political' implications of the decisions of the IEA, for the technical content of its decisions, the IEA will be accountable to technical experts through the mechanism of regular peer reviews.

(E) Accountability of the Agency Making Political Decisions

While the autonomy and accountability is one of the major concerns over the IRA, the accountability of the political institution is one of the major areas of concern that prompted the reform measures, especially establishment of the IRAs. Hence, this original concern cannot be overlooked while addressing the concerns over IRAs. It certainly is accepted that the political decisions cannot be handed over to 'selected' experts' exempted from the political accountability and that the authority to make political decision should be matched only by political accountability. However, the issue of efficacy and efficiency of the mechanisms for ensuring political accountability remains valid. The concern is over the operationalization of the political accountability for which the major instrument is elections of the legislative bodies. The efficacy and efficiency of this episodic and broad-based mechanism for accountability has been questioned by many. The main concern in this regard is dispersal of accountability through this mechanism. This dispersal has two dimensions. First, it is temporal dispersion, which means that the accountability mechanism is available to citizens only in episodic manner, i.e., only once in five years. The second dimension is the substantive dispersal. This means that it is difficult to hold accountable for the decision and actions the state government in the water sector takes, as it handles the governance of tens of departments and a multitude of sectors and issues. The Model Bill responds to the issue of dispersal of accountability and efficacy of accountability of the agency making political decisions by suggesting creation of the State Water Regulatory and Development Council, which is a body with political mandate, but which can be held directly accountable for its political decisions affecting the performance of water sector.

5.3.2 PROCESS OF GOVERNANCE

The institutional structure envisaged in the Bill is shaped by the concerns and critiques included in the previous sub-section, as well as some salient features of the process of governance. The process of governance is seen here as comprising certain core tasks of governance (CTGs). Each of these CTGs requires certain critical qualities on the part of the agency expected to carry out the CTGs. Various governing agencies are envisaged for each of these CTGs due to their qualities in Phase 1, 2, and 3 of the institutional transition envisaged in the Bill. The following table provides in brief the concept of separation of political (normative), expert (predominantly non-normative or non-political), and executive (or implementing) functions and tasks of governance, and how this separation is reflected in the Bill.

(A) Institutions in the First Phase

The Model Bill envisages the Water Resources Department (WRD) or Valley Development Corporations (VDCs- as may exist) as the implementing or executive agencies. Two other governing agencies are envisaged by the Bill, as elaborated below:

(i) State Water Resources Regulatory and Development Council (SC)

The SC is created despite the existence of the state legislative house (SL), which is the agency having the highest level of political mandate in the state, as it is a body of representatives elected directly by the citizens. Thus, as compared to the SL, the SC has lesser degree of political mandate, first, as it draws from elected representatives from various bodies, and second, because of the presence of a few appointed (unelected) representatives of stakeholders. The rationale of creating the SC, with somewhat lesser degree of political mandate, is to address the problem of dispersed accountability in the case of the SL. The SL is responsible for myriad issues and decisions in numerous sectors at the same time, depriving it of the opportunity, time, and resources necessary for providing undivided and detailed attention to the water sector. This burden of simultaneous responsibility of a wide range of sectors and myriad issues also makes it difficult to hold the members of the SL responsible and accountable for particular decisions in a particular sector. This is coupled with the fact that the effective mechanism available to citizens for extracting accountability viz. elections- has very low frequency and has become blunt. As a result of this, the accountability of SL, as far as the governance of water sector is concerned, gets blunted or dispersed. This dispersed accountability is seen as the major source of problems of governance in the water sector. Creation of the SC is therefore seen as a mid-way out from the problem of dispersed accountability by bringing in elected representatives from various elected bodies, and also providing the agency with a mandate to handle the water sector alone. This is expected to ensure proper attention being paid to the water sector, as well as focused or clear-cut accountability for governance of water sector.

(ii) State Water Independent Expert Authority (SIWEA)

First of all, SIWEA is a purely 'expert agency' with 'non-normative' functions. Second, it is different from a typical 'expert committee' in diverse ways. It is not a committee of part-time experts, but an 'authority' with full-time experts who have certain legal powers and also legal responsibility and accountability to discharge. As it is an expert agency, no 'political/ socio-demographic' regional balance is sought in its membership. However, adequate representation of all fields of expertise which are relevant for the water sector is essential. For structuring the SIWEA, this has been the prime concern apart from capacity, honesty, and integrity of its members. Effort is made to ensure accountability and independence through various ways. For example, provision of peer review of the orders of the SIWEA by peers in the same field of expertise. Thirdly, the SIWEA, unlike a committee which has to be formed and given a mandate to, can take suo-moto actions. In this sense, it is not limited to being an adjudicatory agency, but becomes an authority charged with protection and promotion of public interest, at its own volition and mandate within the framework provided by the Act.

(iii) Hierarchy and Interrelationships amongst the governing agencies

As mentioned previously, the normative (political), non-normative, and executive decisions have been separately mandated to be made by different agencies. In this sense, no strict 'hierarchical' relationship arises amongst the SIWEA, SC, and WRD (or VDC) in normal circumstances. However, the Act does provide that the SIWEA and the executive agencies operate within the normative framework provided by the Act, the Government (in the form of Rules) and the SC (in the form of Regulations). At the same time, in extra-ordinary circumstances, determination of whether a particular decision is normative or non-normative may give rise to a 'hierarchical' requirement for seamless implementation of the Act. In such a case, the Bill also provides for

policy directives by the government, which are envisaged to address such extraordinary circumstances as may arise.

(iv) Other Measures for Strengthening Transparency, Accountability, Participation and Capacity Building (TAP-C)

The other institutions provided for by the Model Bill for strengthening TAP-C are as follows:

1. Public Interest Promotion Office (PIPO),
2. State-wide Grievance Redressal System,
3. Transparency, Accountability, and Participation Ombudsman,
4. Panel of Accredited Stakeholder Representatives

(B) Institutional Transition

One of the major concerns of the IRA model is that the IRAs in current form concentrate decision-making powers in the hands of one agency and that too at the state-level. Though not voiced frequently, concentration of authority in the state level political agencies like the state legislation and the state government are also seen as a matter of concern by many. Another concern/ critique of the current institutional structure in the water sector, is the mismatch between the administrative boundaries and ecological boundaries. The water sector agencies are traditionally organized along administrative boundaries right from the state to the local levels. Considering both these concerns, the institutional transition in three phases is provided for in the Model Bill. The transition is in adherence to the Principle of Subsidiarity for decentralization of governance, which requires devolution of functions to the lowest possible level of governance. The qualifying condition here is the feasibility and optimality of such decentralization. The feasibility pertains to the preparedness of institutions (especially at the lower level) and of stakeholders. So, the transition is seen as gradual and phase-wise, with efforts in each of the successive phases for developing preparedness of both institutions and stakeholders to transition to the next phase. Constraints of optimality require that some decisions will have to be made at higher level of governance, even after condition of preparedness is achieved. Thus, though sub-basin level agencies are prepared to govern, some functions/ decisions will have to be made at the basin or even at the state level, from the point of view of optimality. In addition to this, the institutional transition attempts to align the ecological boundaries with governance boundaries.

5.3.3 SUBSTANTIVE SCOPE AND CONTENT OF THE BILL

(A) Areas of Regulation

Regulation Areas are those Areas of the water sector that need regulatory intervention in order to achieve the objectives of Regulation. These Areas of Regulation are those areas within which the Core Regulatory Functions shall be carried out by the WRS to achieve the sectoral objectives. Core Regulatory Functions are the mandatory functions and set of objectives that the state water regulatory system would carry out and achieve.

The following is the list of Areas of Regulation included in the Model Bill:--

1. Water Access, Extraction, and Use
2. Execution of projects and programs
3. Water Service Provisioning
4. Allocation of Financial and Other Resources to Projects
5. Environmental sustainability
6. Processes and Procedures
7. Disaster management
8. Ensuring Compliance to the Provisions of this Act
9. Private Sector Participation
10. Integrated State Water Plan (ISWP)
11. Climate Change

(B) IRAs, Water Markets, and Privatization

The fifth set of concerns was related to whether establishment of any independent regulatory mechanism in the water sector would automatically mean it is the harbinger of privatization of water sector, opening the doors of the sector wide for indiscriminate entry and take-over of the sector by private sector. This required that these concerns are addressed while, at the same time, leaving open the option of legitimate and adequately regulated private sector participation open to the state governments as a political decision or priority.

To achieve this, the Model WRS Bill includes private sector participation as one of the core regulatory functions of the WRS and provides a way to address the concerns over privatization. Thus, when a state government includes private sector participation as one of the sectorial objectives, the Bill mandates carrying out certain processes and procedures to ensure protection of public interest in the wake of such initiatives.

Additionally, the Bill explicitly mandates that the state government is vested with the ultimate responsibility of provision of water for life and livelihoods to all, irrespective of the means (i.e., even in case of private sector participation in water service provisioning). Further, a concern regarding water entitlements being used as tools for establishment of water markets has been addressed by inclusion of the principle that water entitlements should be introduced to ensure secured livelihoods.

(C) Social and environmental objectives of the water sector

The draft Bill also addresses concerns over neglect of overall sectoral objectives including socio-cultural and environmental sustainability of the water sector, by mandating consideration of these overall sectorial objectives in all decision-making, supplemented by appropriate representation of experts in the IEA and procedural requirements for the same. Additionally, the Bill also addresses the requirement of a seamless, competent, and available pool of talent, experience, and expertise, by establishing a prospective path and vision for a career in the state's water regulatory system. For example, an interested individual may start as a Grievance Redressal Officer, gather experience to become a Consultant to the Independent Expert Authority, and then become a Special Advisor to the IEA, and subsequently a member of the IEA. A number of such options are laid out implicitly in the Bill that achieves the objective. Further, the contents of the Bill can be considered as (a) procedural content, (b) substantive content, and (c) institutional content. The following sub-sections elaborate on each of these categories of the contents of the Model Bill.

(D) Modular Structure and Flexibility

The Bill, while laying out the Areas of Regulation, also incorporates a *Modular Structure and flexibility* for the state to enact the Bill. This is possible through selection of those Areas of Regulation by the states that are in line with the state's priorities, objectives, and the status of water sector development. The module of the Bill related to Processes and Procedures would be then applicable to the selected Areas of Regulation. Such a modular approach was considered necessary and important to avoid a 'one shirt fits all' approach. This element of the Bill to be adopted by the states, according to their priorities and situation, is dealt with in detail in the separate document on pre-legislative processes.

5.3.4 PROCESSES AND PROCEDURAL ASPECTS ENVISAGED IN THE BILL

(A) Processes and Procedures

The Model Bill lays out detailed processes to be followed for preparation of Rules, Regulations, CBRs, and Criteria. These processes are based on the principles of Transparency, Accountability, and Participation, and the Bill specifically mandates well defined functions and responsibilities to be carried out by the various agencies established by the Bill. At the same time, truly meaningful, intense, and effective participation in governance requires extending the scope of participatory processes also to procedures for making critical executive decisions in the operations and maintenance of equipment and facility.

These executive decisions are made within the framework laid out by the Rules, Regulations, CBRs, and Criteria. The Procedure for Public Deliberation (PPD) and Procedure for Comprehensive Public Deliberation (PCPD) are designed as the standard procedures to be followed for ensuring participation in preparation and promulgation of the decisions made based on the policy instruments envisaged in the Act (Rules, Regulations, CBRs, and Criteria). As PCPD is more stringent compared to PPD, it is made applicable while making decisions that have direct and wide-ranging impacts on the operation of the water sector (such as tariff determination, allocation of water access entitlements), while the PPD is mandated as a standard minimum requirement for making and promulgation of all decisions.

(B) Policy Instruments: Rules, Regulations, CBRs, and Criteria

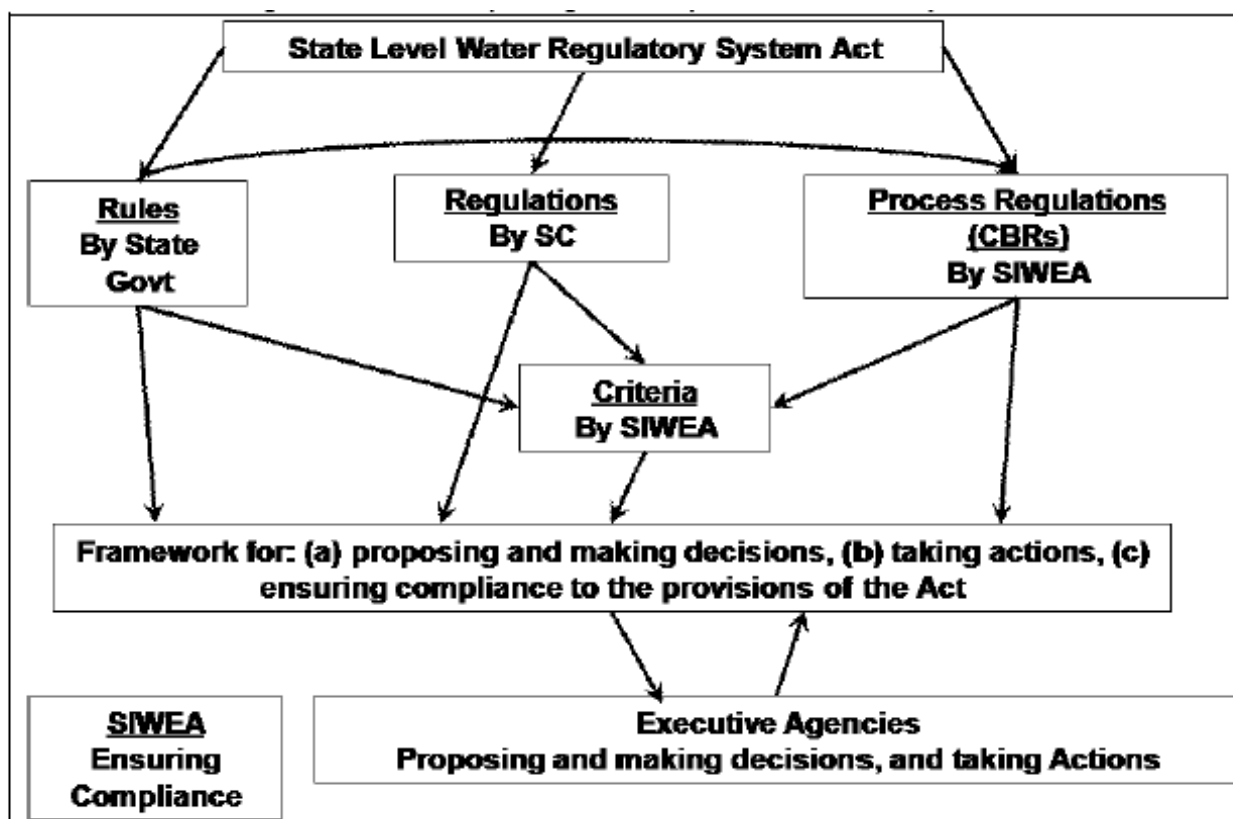
(i) Rules and Regulations: In the Model WRS Bill, State Water Resources Regulatory and Development Council (or SC in short) has been created as an agency with political mandate and focused accountability for making value (normative) decisions. Hence, the responsibility of making most of the value decisions is vested with the SC in the form of Regulations. However, considering the ultimate responsibility of the state government regarding the water sector, the state government has been given the authority of making 'Rules' especially over administrative and financial matters. The SC is, thereby, provided with a handle to make normative decisions without altering the normative core given by the state government and the SL in the form of the Act.

(ii) Conduct of Business Regulations (CBRs): CBRs involve high level of technical decisions as well as processes for making decisions such as preparation of Criteria and making executive decisions based on the CBRs and Criteria. The CBRs would, hence, be prepared by SIWEA within the framework of the Act, Rules, and Regulations. The CBRs would specifically provide step-wise time-lines for making various decisions. In other words, CBRs chiefly deal with the processes of detailing criteria, norms, standards etc. that are used to give effect to the normative framing as well as the techno-economic aspects of decisions.

(iii) Criteria: Criteria would provide more specific framework for executive agencies to make decisions. They would largely contain non-normative elements. Criteria, norms, standards etc provide the framework within which the executive agencies are expected to make non-normative and executive decisions. Some of these decisions, which are critical and significant for the execution, would need prior deliberation and approval for its compliance with the Act, Rules, Regulations, CBRs, and Criteria (such as tariff, entitlements). The procedures for seeking and obtaining such approval are specified in the act as the Process of Public Deliberation (PPD) and Process of Comprehensive Public Deliberation (PCPD) as elaborated previously.

5.3.5 INTERRELATIONSHIPS OF POLICY INSTRUMENTS AND HOW THEY ARE EXPECTED TO FUNCTION TOGETHER

The WRS Act would lay out the overarching framework for all decision-making in the state's water sector. The Rules made by the state government would specify the administrative, financial, and/or further specific normative aspects of decision-making. Regulations, prepared through the process led by the SC, would further specify the normative framework for the decisions to be made. The process regulations or the Conduct of Business Regulations, prepared by the SIWEA would specify the processes to be carried out for the decision-making. Criteria prepared by the SIWEA would embody all the normative and non normative aspects of the framework within which the executive and implementation decisions would need to be carried out. The executive agencies would make decisions based on the Criteria, as well as the overarching framework provided by the Act, Rules, Regulations, and CBRs. The SIWEA would ensure compliance of the processes and procedures of decision-making and promulgation of decisions, based on the framework specified by the Act, Rules, Regulations, and CBRs. The following figure provides a brief overview of this interrelationship amongst the policy instruments.



[The brief content of draft bill is presented in Annexure 3]

6. BRIEF CONTENT OF DRAFT MODEL BILLS/ ACTS

ANNEXURE 1

Model Bill for the Conservation, Protection and Regulation of Groundwater

Preamble

Recognising the unitary nature of water and the integration of surface water and groundwater;

Recognizing that natural resources constitute an integral whole and must be treated as such;

Recognising the need to realise constitutional guarantees linked to groundwater and whereas the Supreme Court of India has recognised the right to water as integral to the right to life; and further specified variously the corresponding duties of the state;

Recognizing the need to strengthen the regulatory powers of gram sabhas, panchayats and municipal bodies related to groundwater in line with Articles 243G and 243W of the Constitution;

Recognizing that diverse conditions and needs require different specific solutions and recognising the need to differentiate rural and urban areas, while providing a single legal framework;

Recognising the need to resolve contestation and conflict not only between users of groundwater but also between different types of uses;

Recognising the common pool nature of groundwater, which has an intricate relationship with rainwater and surface water (through natural recharge) and with surface water (natural discharge);

Acknowledging that various levels of groundwater protection are necessary, the highest priority being given to areas demarcated as groundwater protection zones that need to be established and protected, and that shall be accorded the highest priority in both planning and management:

Be it enacted by the State Legislature in the ____ year of the Republic of India, as follows:

Chapter 1 – Preliminary & Definitions

Chapter 2 – Mandatory Principles for Protection, Conservation and Regulation of Groundwater

Chapter 3 – Right to Water, Legal Status and Groundwater Use

Chapter 4 – Groundwater Protection Zones and Groundwater Security Plans

Chapter 5 – Institutional Framework

Chapter 6 – Duties of Groundwater Users, Water Harvesting, Recycling and Reuse, and Waterlogging

Chapter 7 – Basic Water from Groundwater Sources

Chapter 8 – Groundwater for Livelihoods and Irrigation

Chapter 9 – Industrial, Commercial and Other Bulk Uses of Groundwater

Chapter 10 – Social and Environment Impact Assessment, Transparency and Accountability

Chapter 11 – Offences, Penalties and Liability

Chapter 12 – Dispute Resolution

Chapter 13 – Miscellaneous

STATEMENT OF OBJECTS AND REASONS

The existing legal framework fail to address the emerging status, conflicts & dynamics, concept of public trust, common property resource, natural resource vital to life, livelihood & environment, adopt an aquifer-based, decentralized, participatory approach to its management, ensure to implement changes in pace of contemporary laws & amendments, ensure safe & adequate drinking water for everyone and thereby for the realization of the right to water etc.

if left unregulated, may lead to serious inter-sectoral conflicts, posing a risk to drinking water security, overdraft, biological and chemical contamination, water logging; adversely impacting livelihood security, change in perspective and approach in its use and management, acknowledge the hydro-geological characteristics and its integral link to land, vegetation and surface water resources as well as perceive it as a 'resource' rather than a 'source'.

A new legal framework with norms, principles, procedures and institutions suitable to address contemporary and imminent challenges is therefore required.

The overall objectives of the Model Bill are thus to ensure the qualitative and quantitative sustainability of groundwater resources, equity in groundwater use, not just within users but across uses as well and efficiency in the use of groundwater as a common pool resource, through an appropriate institutional structure and participatory processes.

To achieve the above objectives, therefore, the Model Bill for the Conservation, Protection and Regulation of Groundwater, 2011 is hereby enacted.

ANNEXURE 2

THE NATIONAL WATER FRAMEWORK ACT (DRAFT)

AN ACT to provide a broad overarching national legal framework of general principles on 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 actions relating to water by citizens, their associations and voluntary agencies, public and private institutions and bodies corporate of all kinds, can take place, and for matters connected therewith.

WHEREAS water is essential for the sustenance of life in all its forms; an integral part of the ecological system, sustaining and being sustained by it; a basic requirement for livelihoods; a cleaning agent; a necessary input for economic activity such as agriculture, industry, and commerce; a means of transportation; a means of recreation; an inseparable part of a people's landscape, society, history and culture; and in many cultures a sacred substance, being venerated in some as a divinity;

AND WHEREAS water in all its forms constitutes a hydrological unity, so that human interventions in any one form are likely to have effects on others;

AND WHEREAS water is a finite substance in nature, the same quantum circulating through the hydrological cycle for millennia; and water used for any purpose returns as waste or sewage or residue or effluent, often in unusable form, and sometimes contaminating water sources;

AND WHEREAS freshwater is coming under increasing pressure because of the growth of human population and the processes of urbanisation and economic growth, leading to over-use/depletion, abuse, waste, scarcity, conflicts, pollution, and overall un-sustainability of the resource itself and of the ecological system of which it is a part;

AND WHEREAS there are many different perceptions of and perspectives on water among people, States and groups, leading to divergences in approach, policy, doctrine, principle, law and institutional arrangements;

AND WHEREAS having regard to the foregoing it is desirable that there should be a broad national consensus on certain general approaches, concerns, directions, and principles, while leaving room for differences from State to State and from locality to locality, so as to bring about the prudent, wise, equitable, socially just, conflict-free, efficient, and sustainable use of water for a number of purposes;

Be it enacted by Parliament in theyear of the Republic of India as follows:-

1. Short Title, Extent and Commencement

(1) This Act may be called the National Water Framework Act (2011?).

(2) It applies in the first instance to the whole of the States of..... and the Union territories; and it shall apply to such other States as adopt this Act by resolution passed in that behalf under clause (1) of Article 252 of the Constitution.

(3) It shall come into force, at once in the States of..... and in the Union territories and on the date of adoption in any other State which adopts this Act under clause (1) of Article 252 of the Constitution.

2. Definitions
3. Water: Heritage, Ecology, Equity
4. Water as Sustainer of Life
5. Water as Common Pool Resource
6. Water as Public Trust
7. Water as a Scarce Resource
8. Basin and Aquifer as Guiding Frameworks
9. Water-use and Land-Use
10. Right to Water
11. Priorities in Water Allocations
12. Water Conflicts: Inter-State River Water Disputes
13. Water Conflicts: Other Kinds
14. Institutional Arrangements
15. Major Water Projects
16. Groundwater
17. Local Water Augmentation and Management
18. Water Services: Corporatisation, Privatisation
19. Water Markets
20. Water Pricing
21. Water and Women
22. Water Quality and Pollution
23. Drought
24. Floods
25. Climate Change and Water
26. National Water Information System
27. Existing Water-related Legislation and Reforms
28. Compliance, Deviations and Remedies

ANNEXURE 3

FIRST DRAFT MODEL BILL STATE WATER REGULATORY SYSTEM ACT, 2011 (Act No. – of 2011)

STATEMENT OF OBJECTS AND REASONS

The object of the Bill is to establish an effective, efficient, decentralized, nested and networked multi-layered water regulatory system, comprising independent authorities of professional experts, government agencies and officials, stakeholders' representatives, and elected representatives, to reform and / or replace existing governance structures, so as to –

1. Ensure that the basic need for water, for life and livelihood for all, is met;
2. Enable equitable, democratic, and socio-economic and environmentally optimum and sustainable use of water resources;
3. Protect and promote public interests in the governance of water sector;
4. Promote and ensure conservation, development and use of ground and surface water in an integrated and conjunctive manner;
5. Provide for efficient use of water resources;
6. Ensure ecological sustainability, keeping in view inter-generational needs;
7. Ensure transparency, participation, and accountability in water governance.

The Model Bill, in determining the governance functions of the regulatory system, adopts a flexible, modular approach to accommodate the variation in development of the water sector in different states. The Bill also adopts an institutional transition model depending on the institutional preparedness at each level.

PREAMBLE

An Act to provide for the establishment of a State Water Regulatory System, and for effective streamlining of governance, to ensure meaningful participation of all stakeholders, thus enabling justice and equity for all, environmental sustainability, technical efficacy and efficiency, economic viability, and financial health of the sector, and to formulate rules for matters connected therewith or incidental thereto.

BE it enacted by the State Legislature in the – Year of the Republic of India, as follows:

CHAPTER I-PRELIMINARY

CHAPTER II-PRINCIPLES AND GUIDELINES

CHAPTER III-CORE REGULATORY FUNCTIONS AND OBJECTIVES

CHAPTER IV-STATE WATER RESOURCES DEVELOPMENT AND REGULATORY COUNCIL

CHAPTER V-STATE INDEPENDENT WATER EXPERT AUTHORITY

CHAPTER VI-RULES, REGULATIONS, AND CRITERIA

CHAPTER VII-MAKING AND PROMULGATION OF DECISIONS BASED ON THE RULES, REGULATIONS, CBRS, AND CRITERIA

CHAPTER VIII-TRANSPARENCY, ACCOUNTABILITY, AND PUBLIC PARTICIPATION

CHAPTER IX-STATE WIDE GRIEVANCE REDRESSAL SYSTEM

CHAPTER X-PUBLIC INTEREST PROMOTION OFFICE (PIPO)

CHAPTER XI-INSTITUTIONAL TRANSITION

CHAPTER XII-MISCELLANEOUS

Schedule 1. DETAILS OF INSTITUTIONAL TRANSITION

Schedule 2. PROCESS FOR PREPARATION OF 'ACTION PLAN FOR PREPARATION OF RULES, REGULATIONS, CBRS, AND CRITERIA' (APPRCC)

Schedule 3. PROCESS FOR PREPARATION OF RULES

Schedule 4. PROCESS FOR PREPARATION OF REGULATIONS

Schedule 5. PROCESS FOR PREPARATION OF CONDUCT OF BUSINESS REGULATIONS (CBRS)

Schedule 6. PROCESSES FOR PREPARATION OF CRITERIA

Schedule 7. PROCEDURE OF PUBLIC DELIBERATIONS (PPD)

Schedule 8. PROCEDURE OF COMPREHENSIVE PUBLIC DELIBERATIONS (PCPD)

Schedule 9. POWERS AND FUNCTIONS OF SIWEA RELATED TO REGULATION AREAS

Schedule 10. ASPECTS AND ELEMENTS OF VARIOUS REGULATION AREAS TO BE COVERED BY REGULATIONS

Schedule 11. ELEMENTS OF PROCESSES FOR VARIOUS REGULATION AREAS TO BE COVERED BY CBRS

Schedule 12. ELEMENTS OF VARIOUS REGULATION AREAS TO BE COVERED BY CRITERIA

7. CONCLUSION

The induction of Irrigation Management Programme (IMP) for providing new incentivized grants, Significant advancements proposed for Accelerated Irrigation Benefit Programme (AIBP), emphasis given to Restoration of lost irrigation potential through Extension, renovation and modernization (ERM) of irrigation projects and Command Area Development & Water Management (CADWM) with enhanced allocations to set an ambitious target for XII Plan would encourage the State Government to put forth more projects under these schemes towards meeting the target. The implications of the Reform Agenda in strengthening the existing infrastructure and restructuring Organizations in State and Center and capacity building of all the stakeholders will also give a better impact to the sector. The reform agenda proposed are to establish new legal and institutional framework for water based on consensus within the National Development Council on Model Bill/Acts drafted by Working Group on Water Governance would provide, (i) Groundwater Law for integration of Groundwater to already existing institutions and to support new local level institutions and help to regulate unreasonable uses of Groundwater resources and provide sustainable basis for meeting basic needs of every person for future generation, (ii) Framework law i.e. an umbrella statement of general principles governing the exercise of legislative and /or executive (or devolved) powers by the Centre, State and the local governance institutions, deviation to which can be challenged in the court of law. (iii) Model State(by name) Water Regulatory System with proper institutional Structure, Institutional content, substantive scope and content, Process & procedural aspects and Inter-relationships of policy instruments & their expected functions, for practice by the States Govts. for various regulatory needs in water sector and judicious implementations of water projects.