

Water Law in India

An Introduction to Legal Instruments

PHILIPPE CULLET AND SUJITH KOONAN

OXFORD
UNIVERSITY PRESS

Contents

<i>Acknowledgements</i>	xi
<i>Introduction</i>	xiii
1. WATER LAW IN INDIA: AN OVERVIEW	1
EVOLUTION OF WATER LAW	1
KEY FEATURES OF WATER LAW	2
EVOLVING WATER LAW AND POLICY	5
Water Sector Reforms	5
Water Law Reforms	7
THE MOSAIC OF WATER LAW	9
FURTHER READING: SELECTED BOOKS ON WATER LAW IN INDIA	10
2. INTERNATIONAL AND NATIONAL FRAMEWORK FOR WATER LAW	11
INTERNATIONAL LAW AND POLICY	11
Human Right to Water under International Law	12
Convention on the Elimination of All Forms of Discrimination against Women, 1979	12
Convention on the Rights of the Child, 1989	12
Committee on Economic, Social and Cultural Rights, General Comment 15: The Right to Water, 2002	13
United Nations General Assembly Resolution: The Human Right to Water and Sanitation, 2010	14
International Environmental Law	15
Stockholm Declaration: Declaration of the United Nations Conference on the Human Environment, 1972	15
Soft Law Instruments Concerning Water	15
Dublin Statement on Water and Sustainable Development, 1992	16
FUNDAMENTAL RIGHT TO WATER	17
<i>Subhash Kumar v. State of Bihar</i> , 1991	17

<i>Hamid Khan v. State of Madhya Pradesh</i> , 1996	18
<i>Vishala Kochi Kudiavella Samarkshana Samithi v. State of Kerala</i> , 2006	19
Constitutional Provisions Related to the Fundamental Right to Water	19
JURISDICTION OVER WATER AND SANITATION: CONSTITUTION	20
Centre-State Powers	20
Powers of Decentralised Bodies of Democratic Governance	21
PRINCIPLES AND CONCEPTS OF WATER LAW	22
Prohibition of Ownership and Public Trust	22
<i>MC Mehta v. Kamal Nath</i> , 1996	23
<i>State of West Bengal v. Kesoram Industries</i> , 2004	24
Precautionary Principle and Polluter Pays Principle	25
<i>Vellore Citizens' Welfare Forum v. Union of India</i> , 1996	25
Common Law Principles	27
Indian Easements Act, 1882	27
<i>Secretary of State v. S. Subbarayudu</i> , 1931	29
<i>Karathigundi Keshava Bhatta v. Sunnanguli Krishna Bhatta</i> , 1945	29
Sovereign Appropriation and Eminent Domain	30
Land Acquisition Act, 1894	31
<i>Secretary of State v. P.S. Nageswara Iyer</i> , 1936	34
<i>Tekaba AO v. Sakumeren AO</i> , 2004	34
Inter-sectoral Allocation of Water	35
Maharashtra State Water Policy, 2003	35
Odisha State Water Policy, 2007	35
WATER POLICIES	36
National Water Policy, 2002	37
ADDITIONAL REFERENCES	48
3. INTER-STATE RIVERS: MANAGEMENT, DEVELOPMENT AND DISPUTE RESOLUTION	51
MANAGEMENT AND DEVELOPMENT AT THE RIVER BASIN LEVEL	51
River Boards Act, 1956	52
Betwa River Board Act, 1976	55
SETTLEMENT OF INTER-STATE RIVER WATER DISPUTES	58
Constitution: Inter-state Rivers and River Valleys	59
Inter-State River Water Disputes Act, 1956	60
INTER-LINKING OF RIVERS	63
Ken-Betwa Link Project: Memorandum of Understanding, 2005	65
Proposed River Links	66
ADDITIONAL REFERENCES	67

4. DRINKING WATER SUPPLY	69
INSTRUMENTS WITH GENERAL COVERAGE	70
Draft Guidelines for Preparation of Legislation for Framing Drinking Water Regulations, 2007	71
Disaster Management Act, 2005	73
Uttar Pradesh Water Supply and Sewerage Act, 1975	74
RURAL CONTEXT	83
National Rural Drinking Water Programme, 2009/2010	84
Uttar Pradesh Panchayat Raj Act, 1947	93
URBAN CONTEXT	95
National level	96
Cantonments Act, 2006	96
State level	101
Bihar Municipal Act, 2007	101
Urban Sector Reforms	111
Jawaharlal Nehru National Urban Renewal Mission, Modified Guidelines (Sub-Mission for Urban Infrastructure and Governance), 2006	111
Karnataka Urban Drinking Water and Sanitation Policy, 2003	114
ADDITIONAL REFERENCES	116
5. SANITATION, WATER QUALITY AND ENVIRONMENT	120
SANITATION	120
Fundamental Right to Sanitation	121
<i>Virendra Gaur v. State of Haryana</i> , 1994	121
<i>L.K. Koolwal v. State of Rajasthan</i> , 1986	122
Rural Context	123
Total Sanitation Campaign Guidelines, 2007	123
Haryana Panchayati Raj Act, 1994	126
Urban Context	128
National Urban Sanitation Policy, 2008	128
Cantonments Act, 2006	132
WATER QUALITY AND POLLUTION	134
National Level	135
Water (Prevention and Control of Pollution) Act, 1974	135
Bureau Indian Standards Specifications for Drinking Water (BIS Specification 10500), 1991	156
Uniform Protocol on Water Quality Monitoring Order, 2005	162
State Level: Municipal Laws	164
Karnataka Municipal Corporations Act, 1976	164
New Delhi Municipal Council Act, 1994	164

viii Contents

WATER AND ENVIRONMENT	166
National Level	167
Environment (Protection) Act, 1986	167
National Green Tribunal Act, 2010	170
Environmental Impact Assessment Notification, 2006	174
National Ganga River Basin Authority Notification, 2009	177
Wetlands (Conservation and Management) Rules, 2010	180
State Level	187
Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001	187
Rajasthan Soil and Water Conservation Act, 1964	192
ADDITIONAL REFERENCES	197
6. IRRIGATION	199
GENERAL IRRIGATION LEGISLATION	201
Bihar Irrigation Act, 1997	201
WATER USER ASSOCIATION LEGISLATION	244
Uttar Pradesh Participatory Irrigation Management Act, 2009	244
ADDITIONAL REFERENCES	266
7. GROUNDWATER	268
NATIONAL LEVEL INITIATIVES	269
Central Groundwater Authority	269
<i>M.C. Mehta v. Union of India</i> , 1996	270
Notification Constituting the Central Groundwater Authority, 1997	271
Model Groundwater Legislation	272
Model Bill to Regulate and Control the Development and Management of Groundwater, 2005	272
STATE GROUNDWATER LAWS	282
West Bengal Groundwater Resources (Management, Control and Regulation) Act, 2005	283
Andhra Pradesh Water, Land and Trees Act, 2002	289
RAINWATER HARVESTING	290
Bihar Groundwater (Regulation and Control of Development and Management) Act, 2006	290
Bangalore Water Supply and Sewerage Act, 1964	291
Kerala Municipality Building Rules, 1999	292
ADDITIONAL REFERENCES	293

8. INSTITUTIONAL ASPECTS	296
STATE WATER REGULATORY AUTHORITIES	297
Uttar Pradesh Water Management and Regulatory Commission Act, 2008	298
INFRASTRUCTURE AND WATER	316
Scheme for Support to Public Private Partnerships in Infrastructure, 2005	316
Gujarat Infrastructure Development Act, 1999	317
Himachal Pradesh Infrastructure Development Act, 2001	318
ADDITIONAL REFERENCES	319
9. FISHING, MINING AND ELECTRICITY	321
FISHING	321
Indian Fisheries Act, 1897	321
Gujarat Fisheries Act, 2003	323
Mizoram Fisheries Act, 2002	330
MINING	333
National Mineral Policy (for Non-fuel and Non-coal Minerals), 2008	334
Mines and Minerals (Development and Regulation) Bill, 2010	334
ELECTRICITY	336
Hydropower Policy, 2008	337
Electricity Act, 2003	338
Rural Electrification Policy, 2006	342
ADDITIONAL REFERENCES	342
ANNEXES	344
ADDITIONAL REFERENCES	344
LIST OF LEGAL INSTRUMENTS AND CASES REPRODUCED OR CITED	345
International instruments	345
Union and Multi-state Instruments	346
State-level Instruments	349
Cases	355