

RIGHT TO WATER IN INDIA

Privileging Water for Basic Needs



Forum for Policy Dialogue on Water Conflicts in India

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Right to Water in India: Privileging Water for Basic Needs

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c/o Society for Promoting Participative Ecosystem Management (SOPPECOM)
16, Kale Park, Someshwarwadi Road,
Pashan, Pune 411 008
Maharashtra, INDIA
Tel: +91-20-2588 0786/ 2588 6542
Fax: +91-020-2588 6542
Email: waterconflictforum@gmail.com/ righttowaterandsanitation@gmail.com
URL: waterconflictforum.org ; conflicts.indiawaterportal.org

Copies are available at the above address

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Foreword and Acknowledgement

This paper is an attempt to articulate the content of right to water in India in the context of water for basic needs. The Forum for Policy Dialogue on Water Conflicts in India (Forum to be brief) in its second phase of work had formed a working group to prepare a position paper, on the issue of entitlements and allocations for different needs. The Forum felt that this is an issue that needs immediate attention as it is at the core of many of our water related conflicts. The working group's report which was presented and discussed in a couple of national workshops organised by the Forum has been published under the title "Life, Livelihoods, Ecosystems, Culture: Entitlement and Allocations of Water for Competing Uses". The broader understanding within the Forum, as reflected in the deliberations during all its workshops and the above mentioned publication, is that the right to water should include water for domestic needs or basic needs, water for livelihood, water for environmental needs and water for socio-cultural needs. However, within this broader viewpoint, the Forum is in favour of privileging basic needs taking into account the immediacy and urgency of meeting basic needs as they are much more closely linked to sustenance of life itself. In this paper the discussion is focused on basic needs.

The chapter on "Water for Basic Needs" in this publication has been further strengthened through the inputs that we received from a number of state and regional level consultative workshops that the Forum and WaterAid India jointly organized over the last three years. The draft paper was also circulated amongst the Steering Committee members of the Forum for their suggestions. Though we have tried to engage with most of the important comments and suggestions that we received from all these processes, it is also true that we have not been able to incorporate them in the document mainly because of the limits of both, the structure and length of the paper. The important suggestions that came up in the state and regional level workshops are given as an annexure to enable the readers to get a full picture of the range of comments and suggestions we received through these workshops.

Sujith Koonan from International Environmental Law Research Society (IELRC) with inputs from K. J. Joy and Sarita Bhagat of the Forum secretariat gave the final shape to this position paper.

The paper talks about the legal context of right to water, the important dimensions of the basic needs of water and tentative model of right to water. We hope this paper further helps us to consolidate our thinking and actions on right to water as an explicitly guaranteed right in the Constitution and its actualization.

On behalf of the Forum, we would like to thank each and everyone who have contributed to the preparation and production of this paper.

Firstly, we thank the working group consisting of K. J. Joy, Priya Sangameswaran, A. Latha, Shripad Dharmadhikary, M. K. Prasad and K. P. Soma who prepared the report “Life, Livelihoods, Ecosystems, Culture: Entitlement and Allocations of Water for Competing Uses”. We are specially thankful to Priya for drafting the chapter “Water for Basic Needs” in this report as it forms the core of RTW paper. We are thankful to Sujith Koonan for strengthening the legal context and aspects and also for giving the final shape to the paper. He and his colleague Lovleen Bhullar have been part of all are workshops and have constantly made efforts to provide inputs on the legal and institutional issues, we are thankful for their support and valuable inputs.

We also thank all the participants of the various workshops on right to water and sanitation, for providing critical feedback on the draft paper. Their valuable insights have helped to develop a greater understanding on this issue. A special gratitude to the regional offices of WaterAid India, and all our associated partners in various states, for their help in organising these workshops. We also thankfully acknowledge the inputs and encouragement from Forum’s Steering Committee members.

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Right to Water in India

Privileging Water for Basic Needs¹

“The debates around the right to water in general underscore the need for greater focus on power relations in decision making about water, who gets water and who does not, how water becomes accessible or available, with what means and ends, and how water governance is enacted across sites and scales. Recognising the right to water signals that authorities can be held politically and legally accountable, enabling those who are denied water to have means to contest and struggle for water responsible” (Sultana and Loftus, 2012, pp 4-5)

Introduction

The right to water has been a focus of debate and discussion over the past couple of decades. This is not surprising given the fact that water is denied, both in terms of quality and quantity, to many, particularly the poor, the vulnerable and the underprivileged. Ironically, there is little controversy on the right to water because almost all stakeholders, *including* the corporate sector, at least in principle, recognise the right to water and claim to be working towards making it a reality (Cullet, 2013: 56). This scenario, while optimistic on paper, in fact leaves the issues of the right to water open-ended and too pliable.

¹ This paper is a revised and updated version of 'Chapter Two: Water for Basic Needs' in Joy et al., 2011 which draws heavily on Sangameswaran, Priya, 2007, 'Review of right to water: Human rights, state legislation, and civil society initiatives in India', Technical Report, Centre for Interdisciplinary Studies in Environment and Development, Bangalore.

While there is little dispute on the need for the right to water, there is significant confusion and ambiguity on the meaning and scope of this right. It is not clear what exactly it means for practical purposes, nor how it seeks to help the underprivileged, for whom the right to water is still a distant dream.

The Forum for Policy Dialogue on Water Conflicts in India ('Forum' in brief) organised two national level meetings in its previous phase of work (2009-2012) on the issue of allocations and entitlements, and nine state and regional level meetings over the last three years on the right to water and sanitation. These meetings and workshops have identified essentially two strands of thinking on what should constitute the right to water. The first strand, mainly articulated by groups working specifically on domestic water and sanitation issues, especially in the urban context, argues for a right to water restricted only to drinking/domestic water (also called 'water for basic needs') which is more in line with the international thinking. The second strand, voiced mostly by organisations working with rural labour on a broader set of issues including livelihoods², is in favour of expanding the right to water to include water for livelihoods, environmental flows³ and socio-cultural needs. The broader understanding within the Forum, as reflected in the deliberations during all its workshops, is that the right to water should include all four uses: domestic water, water for livelihood, water environmental needs and water for socio-cultural needs.

However, within this broader viewpoint, the Forum is in favour of privileging basic needs, taking into account the immediacy and urgency of meeting basic needs linked as they are, to sustenance of life itself. In this paper, the discussion is focused on basic needs. Readers may look at Forum's publication, "Life, Livelihoods, Ecosystems, Culture: Entitlements and Allocation of Water for Competing Uses" (Joy et al., 2011) to understand the broader position of the Forum on right to water (which includes water for domestic needs, livelihoods, environmental flows and socio-cultural needs).

As a minimalist position most people would include water for basic needs in any understanding of a 'right to water'. Yet, water and the various dimensions involved in its definition – quantity, quality, affordability, accessibility, the unit at which provision is made, conditions for such provision, institutional mechanisms for delivery, and pricing – are not universal or straightforward. This paper discusses the legal context, the content and different dimensions of water, as well as some of the areas of debate and controversy, and brings out their working (or non-working) in the Indian context, followed by a tentative model for the provision of water for basic needs.

² Water, along with the basic need for water, is important for meeting livelihood needs. Most of India's population is dependent on land and water to meet their livelihood needs. Apart from agriculture, which is the largest provider of livelihoods in the country, almost all artisan activities also use water in one way or the other. Hence, at least in the rural areas, there should be a guaranteed access to at least a certain minimum quantity of water – surface and ground water – for various types of livelihood purposes. This also needs to be seen as part of Right to water (Proceedings of the state-level workshop in Raipur on 'Right to Water and Sanitation' in March 2013).

³ While conceptualising the right to basic water, it is important to maintain the environmental flow, to have a healthy river which in turn helps to maintain the quality of water. Currently, there is not much sensitivity to this issue. Most of the river projects are planned without any consideration of this important factor, and the emphasis has been to extract as much water as possible to meet various needs (Proceedings of the state-level workshop in Raipur on Right to Water and Sanitation in March 2013).

Right to Water In India: The Legal Context

Constitutional Recognition

The section on fundamental rights in the Constitution of India does not explicitly provide for a fundamental right to water. However, the scope of the fundamental right to life as enshrined under Article 21 of the Constitution of India has been expanded dramatically in the last couple of decades through judicial interpretations. As a result, the fundamental right to water is a part of the fundamental right to life under Article 21 of the Constitution. There are a number of judicial pronouncements which make the fundamental right to water part of the fundamental right to life (Cullet, 2010, 2011). The Supreme Court of India, in the *Subhash Kumar case*, held that:

*The right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.*⁴

As per Article 141 of the Constitution, law declared by the Supreme Court is the law of the land and all other courts in the country are bound by it. Thus the fundamental right to water has become the law of the land and therefore, the government as well as other courts are bound to respect, enforce and implement it. In fact, various High Courts have followed the Supreme Court and recognised the fundamental right to water and the corresponding duties of the government.⁵

The fundamental right to water casts various duties upon the state and imposes both negative and positive obligations on the State. On one hand, the State is required not to interfere with the enjoyment of the fundamental right to water and on the other hand, the State is required to take positive measures to ensure the progressive realisation of the fundamental right to water. Further, it needs to be underlined that the right to water, as enshrined in the Constitution, essentially signifies a universal entitlement and therefore, everyone is entitled to the same level of enjoyment of the right irrespective of caste, class, urban/rural or the legality/illegality of the place where people live (as in the case of illegal slums). The fact that the right to water has been elevated to the status of a fundamental right under the Constitution makes it mandatory for all implementing agencies to implement it on a priority basis.

⁴ Subhash Kumar v. State of Bihar, AIR 1991 SC 420, Para. 7.

⁵ Vishala Kochi Kudivella Samarkshana Samithi v. State of Kerala, 2006 (1) KLT 919 (High Court of Kerala, 2006), available at www.ielrc.org/content/e0642.pdf; Hamid Khan v. State of Madhya Pradesh, AIR 1997 MP 191 (Madhya Pradesh High Court, 1996), available at www.ielrc.org/content/e9613.pdf.

However, an explicit recognition of the fundamental right to water in the Constitution, through an amendment (as done in the case of the fundamental right to education Article 21A) is necessary, in order to bring more clarity and consistency, as well as to ensure effective implementation.

Statutory Recognition

A specific statute for the realisation of the right to water is yet to come. Nevertheless, a number of statutes recognise the right to water and most of them, in fact, recognise right to water in the narrow context sought to be addressed through the concerned law.

The right to water can be considered as recognised indirectly in the laws governing local bodies in rural and urban areas. Water supply is invariably a core function of both rural and urban local bodies (Cullet and Koonan eds., 2011: 93-111). The Right of Children to Free and Compulsory Education Act, 2009 (Right to Education Act) provides the legislative framework for the implementation of the constitutional right to education. The Right to Education (RTE) Act makes it mandatory for all schools to provide safe and adequate drinking water facility. Further, the Supreme Court, in a case on RTE, directed all schools to provide drinking water facility⁶. This can be considered as an explicit recognition of the right to water of staff as well as students. Similarly, the Factories Act (section 18) provides that *'in every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water'*. Even though the above cited laws do not use the term 'right to water' explicitly, they recognise the right to water through a duty-based language by articulating water supply as a legal duty.

International Law and Policy Context

The human right to water is well recognised under international law particularly under international human rights law. A number of core International human rights treaties such as the Convention of Rights of the Child, 1989 (Article 24); Convention on Elimination of All Forms of Discrimination against Women, 1979 (Article 14); and the Convention of the Rights of Persons with Disability, 2006 (Article 28) explicitly mention the right to water.

The recognition of the right to water under human rights treaties has been complemented by a number of soft law instruments. Most importantly, the 'General Comment 15' (United Nations 2003), adopted by the Committee on Economic, Social and Cultural Rights, seeks to define the right to water as

⁶ Environment & Consumer Protection Foundation v. Delhi Administration and Others, 2012 (9) SCALE 692, Available at <http://www.ielrc.org/content/e1213.pdf>

inclusive of an “entitlement of safe, sufficient, physically accessible, equal and affordable water for drinking and domestic purpose, that ensures a minimum standard of living to all”. It further explains that the right to water consists of freedoms and entitlements. The term ‘freedom’ signifies the right to be free from interference and the term ‘entitlement’ signifies the right to a system of water supply and management that provides equal opportunity for people to enjoy the right to water (Cullet, 2013: 59). In addition to ‘General Comment 15’, the right to water has been further endorsed by the UN General Assembly⁷. The repeated recognition of the right to water, in a number of binding and non-binding instruments, shows the acceptance of the right to water as a principle of customary International Law (Bates, 2010), and led to the development of a legal regime for the human right to water at the International level (Salman, 2014).

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UN General Assembly
Resolution – the
Human Right to Water
and Sanitation, UN
Doc. A/64/L.63/Rev.1,
26 July 2010, available
at <http://www.ielrc.org/content/e1008.pdf>

India is a party to the human rights treaties that endorse the right to water. India has also supported the non-binding instruments that recognise the right to water, such as the UN General Assembly Resolution. The Indian government’s obligations (legal, political and moral) to ensure the progressive realisation of the right to water thus, arise from both national and international legal sources.

Towards Elaborating the Content of the Right to Water

The legal recognition of the right to water in India is partial, as it stops at formally recognising the right. The nature and scope of the right to water is still in an evolving stage. Even though the Constitution and various laws recognise the right to water (explicitly or implicitly) the laws are, by and large, silent on the detailed contents of the right. There are many other instruments (both legally binding and non-binding) that provide guidance on the scope of the right to water. Various aspects of the right to water, thus, have to be derived from the existing legal and policy sources such as case laws, and rules and norms of specific programmes of different departments working on water (at the central, state and sub-state level). It is to be noted that most of these instruments are framed by the Central Government.

Some of the important aspects of the right to water for basic needs are discussed below.

Universality

The right to water, being a fundamental human right, signifies a universal right. This means every individual is entitled to it. In principle, factors such as caste, class and gender cannot be a reason to deny water to anyone. To put it differently, the principle of non-discrimination is a non-negotiable norm to be followed and ensured by the government vis-a-vis the right to water. Equality of rights is one of the cornerstones of the rights enshrined under the Constitution. Therefore, there cannot be a situation wherein water supply provisioning exists for some people and does not exist for some others, on the ground that they do not have proper rights over the land or house. This is relevant in the context of fixing of quantity and quality norms. This is also relevant in the context of determining the norms regarding access to water. For example, the prevailing practice in India, particularly in the urban water supply context, is that the local bodies generally refuse to provide water supply to the so-called illegal or unauthorised colonies by citing the reason of 'lack of rights over land or house'. This issue was recently challenged before the High Court of Bombay in a case concerning the refusal of the Municipal Corporation of Greater Mumbai to provide water supply to illegal slums where the High Court explicitly disapproved of the policy as a violation of the fundamental human right to water, as understood in the context of the Constitution of India⁸. It can be seen that the legal recognition of the fundamental human right to

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Pani Haq Samiti v. Brihan Mumbai Municipal Corporation, Bombay High Court, 15 December 2014, available at, <http://www.ielrc.org/content/e1407.pdf>. For a critique of the order of the High Court, see Sujith Koonan, A Lesser Fundamental Right, THE STATESMAN, 5 March 2015, <http://www.ielrc.org/content/n1505.pdf>.

water as explained in various Supreme Court and High Court judgements envisages a universal right. Therefore, denial of water supply to anyone, on the basis of any reason whatsoever, would be a blatant violation of the fundamental right to water.

Quality

One of the important aspects of the right to water is water quality. The term 'water quality' refers to both the quality of water at the source, as well as the quality required for particular usage of water. The Water (Prevention and Control of Pollution) Act, 1974 is the most important law dealing with water quality, particularly protection of water sources for regulating and controlling pollution of water sources, such as rivers and streams. It focuses mainly on control of the discharge of various effluents into rivers and streams. The Water (Prevention and Control of Pollution) Act, 1974 provides for a comprehensive scheme of administrative regulation through a permit system. Protection of the quality of water resources is further governed by the Environment (Protection) Act, 1986 mainly through various rules governing waste management (e.g. Municipal Solid Waste (Management and Handling) Rules, 2000). The provisions of the Environmental (Protection) Act, 1986, also relate to water quality and access to water, through its notifications on permissible quality standards, environmental impact assessments, and public hearings. For example, the Coastal Regulation Zone (CRZ) Notification prohibits certain activities such as the discharge of untreated wastes and effluents in coastal areas declared as CRZ.

The quality of drinking water at the point of use is mainly governed by the Bureau of Indian Standards (BIS) IS: 10500 (2012). This instrument mainly lays down the water quality parameters such as bacteriological, virological and physical requirements. The National Rural Drinking Water Programme (NRDWP) – the flagship programme of the Central Government – considers water as safe if it complies with the quality parameters prescribed in the IS: 10500 (2012). However, the problem is that the parameters under BIS are not, per se, mandatory. They are voluntary in nature. They have to be made mandatory through laws, as done in the case of standards relating to packaged drinking water (BIS IS: 13428 and IS: 14543) where a standard was made mandatory under the Prevention of Food Adulteration Act, 1954 through a Central Government notification in 2000.

However, the quality norms are far from adequate (Koonan and Khan, 2010). For instance, the bottled water and soft drink industry, which depends on groundwater extraction and has a huge impact on the surrounding

groundwater (in terms of both quality and quantity), is outside the purview of the 1994 Environmental Impact Assessment (Anonymous, 2005). Further, many of the legal instruments pertaining to water quality are non-binding and therefore voluntary in nature. The legally binding instruments such as the Water Act, 1974 and the Environment (Protection) Act, 1986 appear to be suffering from the problem of inadequate implementation, as testified by the ever-increasing pollution of both, surface water and groundwater sources.

Quantity

Another major component of the right to water is the norms related to quantity. The laws pertaining to the right to water are either silent on quantity norms or, generally use broad terms (e.g. sufficient) that have little meaning at the implementation level. This gap in the law has been filled by the drinking water programmes of the Central Government by standardising the quantity norms. According to official guidelines issued by the Central Government, rural water requirements in India are set at a minimum 55 litres per capita per day (lpcd)⁹ and, urban water requirements are set between 70 to 150 lpcd, according to the size of the city, availability of water supply and availability of sewerage system.¹⁰ To a great extent, these standards prescribed under drinking water programmes have influenced the functioning of drinking water supply agencies at the state level such as the Public Health Engineering Department (PHED) or local bodies.

There are a number of problems with these quantity norms. The rural water requirement does not take into account the needs of livestock (except in desert areas where another 30 litres is allocated on that count)¹¹. There is also little space for flexibility in the norms to deal with differences in requirements, e.g. across different agro-climatic zones. Usually, in designing rural water systems, total demand is determined by fixing the norm at 55 lpcd as a minimum requirement for all rural areas, and then multiplying this by the population.

There is also concern that the urban norms perpetuate technology in water and sanitation systems that make excessive use of water and lead to further inequities between rural and urban areas. It is partly in response to concerns such as these that, in recent times, the need to shift from the conventional norms of litres per capita per day, to ensure drinking water security for all in the community has been mooted (Gol, 2009). The implications of this move however, need to be thought through, as there seems to be a need to exercise caution in extending a security discourse to water.

9 National Rural Drinking Water Programme Guidelines 2013, <http://www.ielrc.org/content/1308.pdf>.

10 CPHEEO Manual on Water Supply and Treatment, 1999, p. 11, http://moud.gov.in/sites/upload_files/moud/files/3_40.pdf.

11 The current guidelines on drinking water do not mention explicitly the norm for water supply for livestock. However, the National Commission on Urbanisation has suggested a minimum norm of 30 lpcd for cattle in the Desert Development Programme areas, http://www.nih.ernet.in/rbis/india_information/drinking.htm

Prioritisation

While there can be different views or arguments on the scope of right to water, water for basic needs undisputedly comes under its purview. The existence of the fundamental human right to water is relevant in the context of the water allocation decision-making process because, water for realisation of the fundamental human right to water warrants first priority in the context of water allocation. The decision-making agencies at various levels of the government cannot violate this prioritisation norm required under the fundamental right to water, because a fundamental right prevails over other rights and it cannot be affected or violated through other laws and policies. In other words, the fundamental human right to water cannot be changed through water policies or water supply programme guidelines. This aspect of the right to water should be a non-negotiable guiding norm in the water allocation decision-making process.

Even though the National Water Policy, 2012, shies away from recognising the right to water explicitly, it has recognised the priority of water for basic needs in the context of water allocation. Thus, 'Safe Water for Drinking and Sanitation' is regarded as high priority, followed by water for other basic domestic needs (including needs of animals). It needs to be noted that the priority of water for basic needs was a part of the National Water Policy, 1987 and the National Water Policy, 2002. Nevertheless, this cannot be considered as sufficient from a right to water point of view. Firstly, policies are legally not binding on implementing agencies and therefore, there is no guarantee that water for basic needs will be given 'high priority' by them. Secondly, provisions in the National Water Policy do not give any right to people to get legal recourse in cases where an implementing agency gives priority to 'any water use' other than water for basic needs. Thirdly, despite repeated assertion of the right to water by activists and civil society movements, the 'National Water Policy, 2012' failed to recognise the right to water. This clearly shows the intention of the government -not to link the ongoing water supply programmes and schemes to the concept of the fundamental right to water.

Water for Basic Needs: Important Dimensions

Scope of 'Basic Needs'

In terms of water, basic needs include drinking, bathing, hygiene (including water for menstrual hygiene management), cooking and other domestic uses. Additionally, basic needs may also include the needs of livestock. However, other than drinking water needs, what exactly constitutes 'basic needs' is not obvious. This is one of the factors that makes it difficult to arrive at a consensus about the exact amount of water required to satisfy basic needs. Basic water requirements, suggested by various International agencies such as the World Health Organisation (WHO), US Agency for International Development, and the World Bank range from 20 to 50 lpcd. However, greater amounts of water are also likely to significantly improve health and quality of life (CESR, 2003). There is also the fear that suggesting a particular level of water provision can provide an excuse for governments to 'lock' the water provision at that level (UNESCO-WWAP, 2003). Further, any discussion on the quantity of water required for basic needs, gets complicated by the question of, whether one should have a universal standard, and how differences in requirement due to culture, climate, and technology (societies living off flowing rivers, societies dependent on extracted water, rural and urban households) should be taken into account.

Accessibility, Quality and Affordability

Other dimensions such as quality, accessibility, and affordability of water – each of which would also vary depending on a number of contextual factors – also need to be taken into account, along with quantity. The question of affordability, in particular, has become very controversial in recent times, following changes in water policies that emphasise cost recovery, and which have also led to an emphasis away from public modes of provision of water, such as public standposts, to private modes such as piped water schemes.

A useful conceptualisation of 'affordability' is provided by WHO (2003). Firstly, affordability could be conceived of as a relation between income and expenditure on water. More specifically, no more than three to five percent of an individual's income is to be spent on water. While WHO does not discuss the possibility of the percentage differing across income groups, this might be a way to deal with inequities in income distribution. However, caution must be exercised while using such percentage figures. For instance, very often, only the tariff on volumetric water is included in the expenditure, while the connection charges are not included, and these can be quite high, especially when a new water supply system is being put in place.

Secondly, WHO emphasises the fact that what people can pay does not depend only on absolute income, but also on the expected income stream. People who earn money on an irregular basis may not be able to enter into long-term arrangements, which may be cheaper in the long run, but which would entail regular financial commitment.

Thirdly, different affordability criteria may also be applied to different slabs of water, such as lifeline water and luxury water, which are discussed later in this chapter. Fourthly, discussions of affordability often take particular modes of provision of water and/or technology as given. Instead, low cost options should be given first preference, as long as other desirable criteria such as sustainability are also met (and in special circumstances, even at the expense of such other criteria). Finally, it is important to note that income-based criteria for affordability may not always be deemed to be relevant, for instance, if it is believed that some minimum quantity of water should be provided free of charge to all, irrespective of their income levels.

Requirements of accessibility and quality have typically been discussed less than the question of quantity of water or pricing (Bluemel, 2004). This is so in spite of the fact that the quality of water is related to health. For instance, drinking water could be contaminated by a range of chemicals (lead, arsenic, benzene), microbes (bacteria, viruses, parasites), and physical hazards (glass chips, metal fragments) that could pose risks to health. In general, water quality is affected by both point and non-point sources of pollution such as sewage discharge, discharge from industries, run-off from agricultural fields, and urban run-off. In the light of increasing groundwater pollution as well as contamination of surface water bodies, the question of water quality is slowly becoming important. Cases, such as the contamination of groundwater due to arsenic in Bangladesh and West Bengal, in the South Asian region have brought this issue into focus. Further, given the magnitude of the problem of quality, it might make more sense to prioritise (at least in the short-run) the elimination of pollutants with the most significant impact on health, rather than set high thresholds for all parameters of water quality, particularly when these cannot be attained immediately within the available resources (UNESCO, 2005: Clause 7.2).

Finally, the dimension of water quality links water and sanitation-- as one of the primary causes of contamination of water through the inadequate, or improper disposal of human/ animal excreta and other wastes.

In order for water to be secure and usable, everyone must also have safe and easy access to water facilities. For instance, in households using water from a remote and unprotected source, health can be jeopardised by

water contamination. Fetching water from long distance sources leads to a number of health implications such as malnutrition, anaemia and damage to the vertebral column. It disproportionately affects women and children who often bear the burden of collecting water in many cultures across the globe, including India. The link between lack of access to water and implications for women's health has been well documented (Dufaut, 1988; Swaminathan, 1997; Seaforth, 2001). Carrying heavy loads of water during pregnancy may affect the growth of a foetus and fetching water soon after giving birth can affect the quantity and quality of breast milk, making the baby vulnerable to malnutrition. Further, collecting water from distant sources entails a lot of time and consequently people (mostly women and children) are unable to undertake other activities (economically remunerative work, domestic chores, leisure in the case of women, and going to school or playing, in the case of children).

Interestingly, 'General Comment 15' of the United Nations defines accessibility not just in terms of the physical dimension, but also includes economic accessibility (which is equivalent to the affordability dimension discussed earlier), as well as non-discrimination against marginalised areas or groups, along with access to information on water issues (UNESCO, 2002: Clause 12).

It is important to note that questions of quality, access and affordability differ for different uses of water, as well as across class and gender. For instance, the quality of water would depend on the particular need in question: water for drinking would have to be of a higher quality than water for cleaning purposes, since health-related problems could arise not only due to insufficient water, but also due to problems in water quality such as fluoride contamination and arsenic poisoning. Questions of quantity, quality, access, and affordability are also inter-related. For instance, not being able to afford an official source of safe water might result in a household having to use water from polluted streams and rivers (Mehta and Canal, 2004).

Unit for Calculating Quantity

There is also the question of the unit at which provision of water for basic needs is calculated – the individual or the household. An important point to keep in mind in this regard is that there may be a difference between the unit to which a right is assigned, and the unit of implementation, which in turn has implications for equity. In South Africa for instance, the Free Basic Water Policy that guarantees 6000 litres per capita per month without cost, has been calculated using a household size of eight, and a per capita per day

provision of 25 litres of free water. This, in turn, tends to disadvantage larger and poorer black families (Langford, 2005). In general, whenever the unit of implementation is the household, the amount of water per household ends up being calculated on the basis of the average size of a household, which in turn means that larger families are implicitly penalised.

Provisioning

Another important dimension (which would apply not only to basic needs but is particularly critical in this context) is the question of who would actually be in charge of the various functions involved in the provision of water, or in other words, the institutional mechanisms would be put in place to undertake delivery of various water services. If water for basic needs is to be guaranteed to all, does it necessarily imply that only the state must undertake this function, and that none of the specific tasks involved in providing water to people can be delegated to any private body (which is the stand taken by some campaigns against water privatisation)? Or does it mean that only critical tasks such as tariff-making should be retained by public bodies, and/or that private bodies should be subject to regulation by the state with a view to ensuring access to water for basic needs to all? The peculiar characteristics of water, such as a high degree of natural monopoly, high capital intensity and the presence of sunk costs, the multipurpose and hydrologically interconnected nature of the water resource itself, as well as the perception that public provision is the best way to guarantee universal access, have traditionally lent support to the delivery of water services by state or state-owned enterprises.

The ongoing water sector reforms in India seek to introduce a drastic change in the area of provisioning of water. A set of processes is slowly being put in place in the rural and urban drinking water sector that are euphemistically called 'Sector Reforms'. Provision of domestic water supply has, for a long time, been supply-driven, that is, based on centralised modes of funding and decision-making, focused on exploiting additional water resources, with emphasis on norms and targets and on construction and creation of assets. Consequently, management and maintenance of the facilities built, equitable distribution of the available water, the question of water quality, or the sustainability of the source, has not received much attention. The resulting problems have led to a number of changes in the domestic water sector in recent years of which, perhaps, the most important one is the shift from supply-side projects to demand-side projects based on the principles of demand responsiveness, decentralised mode of management, and cost recovery (usually 10% of the capital costs and 100% of the Operations and Maintenance (O&M) costs).

The implementation of the idea of full cost recovery often results in the exclusion of those without adequate resources, unless local-level measures such as an explicit provision of waiver for poorer households are taken. Sampat's (2007) study of the working of the *Swajaldhara* scheme in Rajasthan brings out, for instance, that people either had to take loans in order to make the payment, or else that a new contractor class emerged that bore these costs on behalf of villagers, putting in place new kinds of patron-client relationships (a finding that is also corroborated by studies in other locales). In general, a blanket implementation of the cost-contribution clause is likely to violate the affordability criteria that any right to water for basic needs would need to meet. It also contradicts one of the cornerstones of the right to water, that is, universality.

Other reform measures that have been encouraged include commercialising or corporatising of institutions, unbundling/re-bundling of functions, various forms of private sector participation, and public-private partnerships, especially in the urban areas. In the rural drinking water arena, sector reforms began formally with the Sector Reform Programme of 1999, which was upscaled to *Swajaldhara* in 2002. Similar programmes have also been undertaken by individual states using a variety of funding sources.

In the urban context, reforms have typically formed the 'condition' for receipt of funds from the central-level Jawaharlal Nehru National Urban Renewal Mission (JNNURM) and the Urban Infrastructure Development Scheme for Small and Medium Towns (UIDSSMT). There are also guidelines on specific issues (such as the 2004 Guidelines for Sector Reform and Successful Public-Private Partnerships of the Ministry of Urban Development and Poverty Alleviation) which have fed into the reform process.

It is not possible to delve here into the vast amount of literature on the subject, or to discuss the pros and cons of different modes of providing water. Instead, we argue that whatever be the mode of provision, there should be certain non-negotiables. There could be provision of a certain amount of water to meet basic needs, and precise details of the conditions of such supply can be included in the legal instruments governing the working of the concerned public or private body, such as contracts and Acts of Parliament. In addition, in order to actually ensure the right to water, there should be clear mechanisms for redress in case of violation of the non-negotiables. Hence guidelines are needed for fixing: which body would be responsible for judging violations, who would be penalised in case of violations and how, and whether a system of compensation for those without water for basic needs, can or, should be put in place.

Note, that a position of flexibility in terms of who actually undertakes delivery of water is consistent with a number of international discussions about the right to water. The latter gives states the freedom to choose their system of water delivery, while at the same time emphasises that non-state actors should take necessary steps to realise the right to water, (or at least not thwart it); in addition, the need for regulation by the state is also emphasised (see, for instance, UNESCO, 2002 and UNESCO, 2005). At the same time, *we would like to highlight that the non-negotiables mentioned above would effectively preclude many kinds of privatisation options currently being undertaken, and underscore the ultimate responsibility of the state.*

Institutional Reforms

Setting up of state-level, independent water regulatory authorities has been an important feature of water sector reforms in India since the last decade. Many states have passed a law for this purpose. Independent regulatory authorities (IRAs) have, at least in theory, the potential to subject private providers to certain performance requirements, including the provision of water for basic needs. While actualising this is not an easy process, the problem in the Indian context is even more fundamental. The IRAs, or variants thereof, that have been put in place in a number of states in the country, do not even have such an undertaking in their mandate. The question of regulation is also complicated by the fact that large populations depend on informal water providers, often paying excessive prices, and being subject to uncertainties. While some forms of regulation and monitoring of such informal providers can be put in place, ensuring water for basic needs may require the current users of informal water supply systems to gain access to formal water supply systems.

Another institutional issue relevant in the context of water basic needs is the implementation of decentralisation and participation in the water sector. These principles have been a core component of reforms in the water sector in India since the last two decades, particularly in the drinking water and irrigation sector. The way these principles have been implemented in the drinking water sector however, raises concerns in the right to water context.

Firstly, even in the drinking water schemes such as *Swajaldhara*, which purportedly rest on principles of social inclusion and governance, there were no mechanisms to actually ensure that the schemes were designed by all sections of society (Ahmed, 2005). Secondly, no instruments were explicitly included to enable marginalised sections of the population to participate in the decision-making processes at the micro-level; this is

true even when quotas came to be formally earmarked for such groups in local committees. Hence, the possibility that this approach would help in overcoming existing inequities is very remote. Thirdly, the goal of participation in these projects is itself very limited, viz., to get local people to contribute labour as well as costs. There is no emphasis on understanding what their priorities are, at any given time.

Ideally, according to the logic of demand-based projects, if people are uninterested in house connections or modern systems of supply, there should be an openness towards providing low-cost water through standpost supplies and/or improving the water sources within the village (Reddy, 1999), but in practice this is often not the case.

A Tentative ‘Model’ for Provision of Water for Basic Needs

At the level of conceptualisation, a rights-based approach offers the most useful tool to think about basic needs. However, given the complexities in the different dimensions of water for basic needs, as outlined earlier, instead of posing discussions in terms of a fixed allocation of water (along with particular standards of quality, accessibility, and affordability), it might be more useful to focus on the principle of equality and capability to pay or participate (as elaborated in the capabilities approach of Sen and Nussbaum). This would translate into the idea that people all over the world should have access to safe, adequate, and affordable water in a manner that ensures a basic level of healthy functioning and well-being (Mehta, 2003). But while this would automatically allow scope for inclusion of cultural and other kinds of differences in the ambit of the right to water, it also means that more context-specific interventions become critical.

How then, would such an approach be operationalised? A tentative ‘model’ of one possible approach is outlined below, drawing on the experience of other countries – such as South Africa – which have tried to implement the right to water.

One of the first questions to grapple with in terms of ensuring the provision of basic water needs for all, is the question of whether such a right needs to be formalised as an independent right (and the form that such formalisation should take), or whether the current interpretation under the right to life is sufficient. An important consideration here is the fact that water is primarily a state subject in India, so it would be difficult to enact central-level legislation and guarantee its implementation across the country. But if the option of greater formalisation is chosen, one approach might be to undertake a constitutional amendment that explicitly incorporates the Right to water, as in the case of the Right to Education (RTE) under Article 21-A of the Constitution. Such a constitutional provision can also be accompanied by an explicit provision for a right to water (at least, in order to meet basic needs) either in the National Water Policy, or in a separate ‘basic water policy’ adopted for this purpose. This last option has been adopted in South Africa, where an explicit right to water in the Constitution is supported by a ‘Free Basic Water policy’ that aims to provide a supply of 6000 litres of safe water per month to all households, free of charge. The constitutional provision as well as the policy document could then form the basis for holding the government accountable for the provision of water for basic needs.

Secondly, what the right implies, for the different dimensions mentioned earlier, would need to be clarified. Given the fact that water is primarily a state subject, and given the importance of decentralisation and the need to allow space for context-specific variations, the power to delineate the precise content of each dimension would need to rest with the state and/or with local bodies. However, the need for some kind of broad guidelines at the central level, remain.

Below, we attempt to provide a tentative outline for these broad guidelines. It is crucial that the process of making guidelines, (about various dimensions of basic needs at a more centralised level), as well as the process of deciding more precise rules and norms at lower levels, be democratic and transparent. In fact, explicit provisions for this purpose must be included in the institutional structures of decision-making, although the precise modalities of this process are not discussed here.

In order to lay down the guidelines for water as a basic need, it might be useful to think of two different categories of water for households – lifeline water (which could cover water required for drinking, cooking, washing, hygiene, sanitation, etc); and luxury water (water used by households for purposes which are not strictly essential, e.g. water for washing cars, maintaining lawns, private swimming pools, etc.). Only lifeline water would be included in basic needs. This distinction between lifeline and luxury water is important as luxury water also attains the status of ‘basic needs’ under the rubric of domestic water. If we take the luxury water component out of the ‘basic needs’ then the quantum of water required to meet basic needs could be brought down and parity can be established in rural and urban water norms and, also help in reducing water diversion from rural and agricultural use to urban use. This distinction also gives flexibility in pricing. For example, lifeline water could be priced at affordable rates, including a part of it being given as free water, and the luxury water component could be priced at full cost recovery. Such a distinction can serve the larger goal of equity.¹²

Minimum quantity, quality, and physical accessibility norms for lifeline water should be laid down at the Central level. State Governments and local bodies would be free to adopt higher quantity or quality norms in order to deal with varying requirements in different contexts. Water for basic needs should be defined on a per capita basis rather than on a household basis, even though the actual supply may happen at the unit of the household. For administrative expediency, it might be necessary to use an average figure for the number of members per household. However, the average figure could vary across different areas (districts or states) to ensure that it is a reflection of the actual situation in a given area, and to prevent the implicit penalisation of larger households.

12 In the earlier version of this paper a three-way categorisation of domestic water use was made – lifeline water (which could cover water required for drinking and cooking; water over and above lifeline water or lifeline plus water (which would cover uses of water that are necessary for maintaining a decent life such as washing, hygiene, sanitation, etc); and luxury water (water used by households for purposes which are not strictly essential e.g., water for washing cars). Only lifeline and lifeline plus categories of water would be included in basic needs. However since most of the participants in the workshops felt that a three-way categorisation makes it very complicated and water required for hygiene and sanitation also needs to be considered as part of lifeline water we decided to go for a two-way categorisation.

There should also be explicit clauses (possibly, in the constitutional amendment, the National Water Policy, as well as state and sub-state norms) that guarantee provision of basic water to all residents (temporary or permanent) of a locality at any given time, irrespective of the legality or otherwise, of their domicile status (or possession of relevant documents thereof). These would include (but not be restricted to) new migrants and refugees from other regions, whether within or outside the state/country in question, as well as those who have been alienated from their earlier source of water for basic needs or the source has been rendered unusable due to reasons such as displacement, pollution, and so on. No one should be denied basic water on the grounds that they have not paid for a legal water connection, or are yet to be allocated such a connection, or have defaulted on payment of their water dues or other dues.

Any individual who does not have access to basic water should have the right to approach the body in charge of providing water in that area, to demand that arrangements for providing basic water – whether temporary or permanent – be made within a fixed time period. If such provision is not made within the stipulated period, then recourse could be made either to an existing body or a new body created explicitly for this purpose. Similar provision for redress should also be available in case of actual or potential violation of any of the non-negotiables specified in terms of provision of water for basic needs (such as norms about quantity, quality, accessibility, pricing and so on).

Whatever the method of provisioning adopted, local bodies must have adequate finances to provide water for basic needs. Here again, the South African experience has useful lessons. One of the major problems that the local bodies in South Africa (especially smaller ones) faced in implementing the right to water, was the lack of adequate finances, especially given that fiscal conservation measures resulted in reduction in grants and subsidies to local municipalities and city councils. Apart from limiting the amount of funds available, this also meant that the kind of institutional arrangements that resulted, i.e. partnerships between public bodies and the private sector in the realm of water, had a mixed impact, especially in terms of equity. One can anticipate similar issues arising in the Indian context, given the thrust on self-sufficiency and balancing of budgets in the course of both the rural and urban reforms being implemented in recent times (in demand-oriented schemes such as *Swajaldhara* in the rural sector and JNNURM and UIDSSMT in the urban sector). This, in turn, implies that there should simultaneously be an emphasis on strengthening the financial resources available to rural and urban local bodies, both by state and central governments. Similarly, some proportion of funds could be ear-marked and made available to local

government authorities (whether raised by them or given/lent to them by central or state governments or other private or bilateral/multilateral organisations) to meet the right to water for basic needs. This is important because, very often, the ‘inadequacy’ of finances is often ‘created’ by wrong choice of investment priorities.

One more factor is worth emphasising in the context of availability of finances. In contrast to the current trend of making each sector and sub-sector self-sufficient in terms of finances, the possibility of financing a particular use of water (in this case, water for basic needs) from other water or non-water arenas, i.e. through a cross-subsidy, must be kept open. Finally, it might be worth having an explicit legal provision to the effect that no government authority can cite ‘lack of availability of finances’ and/or other constraints as reasons for non-provision of water as a basic need. This would mean that the provision of lifeline water is non-negotiable. In fact, there is already judicial support for such a provision in the Indian context; for instance, some judicial judgements hold that the state cannot claim insufficient funds as a reason to not carry out its duties (Upadhyay and Upadhyay, 2002)¹³. However, such a legal provision should be laid down more explicitly.

Conclusion

The right to water for basic needs while less controversial than the right to water for livelihood or ecosystem needs, or socio-cultural needs, nevertheless involves a number of dimensions, not all of which are straightforward or involve an easy consensus. The current context of reforms in the water sector, which has implications for many of these dimensions, is a further complicating factor. The propositions put forward in the tentative ‘model of water provision for basic needs’ can be used as a starting point to come up with more specific norms in particular, concrete settings. But, in general, a basic rule of thumb seems to be that guidelines or norms of water provision and/or policy changes in the realm of water (be it about pricing, reducing leakages, participation, or others) need to be evaluated against the framework of a right to water, or more specifically, with respect to the question: Would putting in place a particular policy ensure that, access to water for basic needs improves, for at least some people (if not all), and in particular, for marginalised groups in society?

¹³
See e.g., *Municipal Council Ratlam v Vardhichand*, AIR 1980 SC 1622.

References

- Ahmed, Sara (2005), 'Why is gender equity a concern for water management?' in Sara Ahmed (ed.) *Flowing Upstream: Empowering Women through Water Management Initiatives in India*, Ahmedabad: Centre for Environment Education.
- Anonymous (2005), 'The clearance process', Down to Earth, 15 September, Available at, <http://www.downtoearth.org.in/node/10076>
- Bates, Rebecca (2010), 'The Road to the Well: An Evaluation of the Customary Right to Water', *Review of European Community & International Law*, Vol. 19(3), pp. 282-293
- Bluemel, Erik B. (2004), 'The Implications of Formulating a Human Right to Water', *Ecology Law Quarterly*, Vol. 31(4), pp. 957-1006
- CESR (2003), 'Why a Human Right?', Right to Water Fact Sheet No. 2, Brooklyn: The Center for Economic and Social Rights.
- Cullet, Philippe, (2006), 'Water Law Reforms: Analysis of Recent Developments', *Journal of the Indian law Institute*, Vol. 48(2), pp. 206–231.
- Cullet, Philippe (2010), 'Water Sector Reforms and Courts in India: Lessons from the Evolving Case Law', *Review of European Community and International Environmental Law*, Vol. 19(3), pp. 328.
- Cullet, Philippe (2011), 'Realisation of the Fundamental Right to Water in Rural Areas: Implications of the Evolving Policy Framework for Drinking Water', *Economic and Political Weekly*, Vol. 46(12), pp. 56-62.
- Cullet, Philippe (2013), 'Right to Water in India – Plugging Conceptual and Practical Gaps', *The International Journal of Human Rights*, Vol. 17(1), pp. 56-78.
- Cullet, Philippe and Sujith Koonan (eds.) (2011), *Water Law in India: An Introduction to Legal Instruments*, New Delhi: Oxford University Press.
- Dufaut, Annie (1988), 'Women Carrying Water: How it Affects their Health', *Waterlines*, Vol. 6(3), pg. 23.
- Gol (2002), National Water Policy, New Delhi: Ministry of Water Resources, Government of India.
- Gol (2009), 'Movement Towards Ensuring People's Drinking Water Security in Rural India: Framework for Implementation 2009-2012', New Delhi; Ministry of Water Resources, Government of India.
- Joy, K.J., Priya Sangameswaran, A. Latha, Shripad Dharmadhikary, M.K. Prasad, K.P. Soma (2011), 'Life, Livelihoods, Ecosystems, Culture: Entitlements and Allocation of Water for Competing Uses', position paper by the thematic subgroup on Water Entitlements and Allocations for Livelihood Needs and Ecosystem Needs, Forum for Policy Dialogue on Water Conflicts in India, SOPPECOM, Pune.

Koonan, Sujith and AH Khan (2010), 'Water, Health and Water Quality Regulation', in Philippe Cullet et al (eds.), *Water Law for the Twenty-First Century - National and International Aspects of Water Law Reform in India* Routledge (Routledge)

Langford, Malcolm (2005), 'The United Nations concept of water as a human right: A new paradigm for old problems', *Water Resources Development*, Vol. 21(2), pp. 273-282.

Mehta, Lyla and Oriol M. Canal (2004), 'Financing Water for All: Behind the Border Policy Convergence in Water Management', IDS Working Paper No. 233, Brighton, England: Institute of Development Studies, University of Sussex.

Mehta, Lyla (2003), 'Problems of publicness and access rights: Perspectives from the water domain', in Inge Kaul, Pedro Conceicao, Katelle Le Goulven, and Ronald U. Mendosa (eds.) *Providing Global Public Goods: Managing Globalisation*, New York: Oxford University Press.

Nussbaum, Martha C. (2000), *Women and Human Development: The Capabilities Approach*, Cambridge: Cambridge University Press.

Reddy, Ratna V. (1999), 'Quenching the Thirst: The Cost of Water in Fragile Environment', *Development and Change*, Vol. 30(1), pp. 79-113

Salman, Salman M.A. (2014), 'The Human Right to Water and Sanitation: Is the Obligation Deliverable?' *Water International*, Vol. 39(7)

Sampat, Preeti (2007), 'Swajaldhara or Pay'-jal-dhara: Right to Drinking Water in Rajasthan', *Economic and Political Weekly*, December 29, pp. 102-110.

Sangameswaran, Priya and Roopa Madhav (2009), 'Institutional Reforms for Water' in Philippe Cullet, Alix Gowlland-Gualtieri, Roopa Madhav and Usha Ramanathan (eds.), *Water Law for the 21st Century: National and International Aspects of Water Law Reforms in India*, pp. 138-159, Abingdon: Routledge.

Sangameswaran, Priya, (2009), 'Extending the Security Discourse to the Environment and Water', in Arpita Basu Roy (eds.), *Paradigms of Security in Asia*, New Delhi: Manohar Publishers, 2011, pp. 61-73.

Seaforth, Wandia (2001), 'Why Water is a Women's Issue', UNCHS Habitat, *Habitat Debate*, Vol. 7 (1).

Sultana, Farhana and Alex Loftus (2012), 'The right to water: prospects and possibilities', in Farhana Sultana and Alex Loftus (ed.) *The Right to Water: Politics, governance and social struggles*, London and New York: Earthscan.

Swaminathan, Padmini (1997), 'Work and Reproductive Health: A Hobson's Choice for Indian Women?', *Economic and Political Weekly*, Vol. 32(43): WS53.

UNESC (2003), 'Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural rights', General Comment No. 15, United Nations Economic and Social Council, Geneva, Available at, <http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1dbbd713fc1256cc400389e94?Opendocument>.

UNESCO (2005), 'Realisation of the Right to Drinking Water and Sanitation', Report of the Special Rapporteur, El Hadji Guissé, United Nations Economic and Social Council, Geneva, also available at http://www2.ohchr.org/english/issues/water/docs/SUB_Com_Guisse_guidelines.pdf.

UNESCO-WWAP (2003), 'Water for People, Water for Life', The United Nations World Water Development Report, UNESCO and Berghahn Books, Barcelona.

United Nations (2003), "General Comment No: 15 Right to Water (Arts. 11 and 12 of the Covenant", adopted at the 29th Session of the Committee on Economic, Social and Cultural Rights, on 20 January, 2003, Office of the High Commissioner for Human Rights.

Upadhyay, Sanjay and Videh Upadhyay (2002), '*Handbook on Environmental Law Volume III: Environmental Protection, Land and Energy Laws*', LexisNexis, New Delhi.

WHO (2003), 'Right to Water', World Health Organization, France, available at http://www.who.int/water_sanitation_health/rightwater/en/

Annexure

Important insights from the consultative workshops

The Forum and WaterAid India, in collaboration with local organisations, organised nine state/ regional workshops on right to water and sanitation over the last four years (2011 to 2015). The workshops covered the states of Kerala, Tamil Nadu, Karnataka, Andhra Pradesh, Telangana, Maharashtra, Gujarat, Rajasthan, Madhya Pradesh, Chhattisgarh, Uttar Pradesh, Uttarakhand, Himachal Pradesh, Jammu & Kashmir, Bihar, Jharkhand, Odisha and the Northeastern region of India. A thematic workshop on 'RTWS in the context of floods and arsenic affected areas' was also organised. These workshops provided a platform for a very extensive consultation and more than 400 persons, drawn from civil society, academia, donor community, media and bureaucracy participated and provided their inputs.

Some of the key insights and suggestions emerged from these workshops are given below.

State, citizens, laws and right to water

- Right to water should be explicitly recognised in India's constitution as an independent right. It should be the responsibility of the Government to ensure that the basic services of water are provided to every citizen.
- State cannot be considered only as a service provider as it will reduce the consumers' rights. The State should guarantee that the rights of the citizens are met.
- The idea of free water is very important, as free water implies water available through public stand-posts. Schemes like JNNURM attempt to demolish these free water sources and are moving towards profit-making. However, approaching water from human rights perspective will imply that water accessibility cannot be left open to the market forces.
- We should demand for right to water. The moment this right is granted, our relationship with the state changes. Citizens shall become the right holder and the State becomes duty bound to fulfil the right.
- Right to water is currently included as a provision under Article 21. Considering the present scenario of the water sector and the growing demand for water for various uses, there is a need for a separate right.
- Management of water can be left to the communities, but it is the duty of the state to conserve the water resources and make water available to the public. The responsibility of dealing with technical details lies with the State.
- The issue of demand needs to be seen from the perspective of legitimacy as well as shortages and scarcity; community strategies for exercising the rights needs to be further explored.
- There is no shortage of water to meet the basic needs. The shortage is mainly due to lack of prioritisation of water use. It is observed that other rights are prioritised over the fulfilment of basic needs. Supply-side solutions are not

required under right to water; means of privatising and ensuring a service delivery is not an effective supply-side solution as it aims at only maximising profits of the private partners.

- Does right to water impinge on other rights? For example, water may be needed to be stored in dams to meet right to water which might go against the rights of Adivasis, especially their right to life and livelihoods as they would be displaced by the same dams. Choosing what is appropriate may not be an easy decision, but one has to look at various perspectives and options for fulfilling both the rights. There are development strategies that need to be explored for a win-win situation, which may not be a complete solution to resolve these kinds of conflicts, but these are to be accepted as a minimum option.
- Laws come into picture, when people do not get the resources, which is rightfully theirs. The current neo-liberal policies are ensuring that all the public resources get privatised. However, formulation of laws is not enough to secure rights, a social ownership of these resources is required.
- The existing water bodies are dying slowly and there is no serious awareness about the role water plays in meeting our different uses. We need to bring the significance of water in larger processes like political processes. There is somewhat a compromise on the new arrangements for water and we have stopped asking questions about larger issues.
- Rights should exist in the legalised form, so that we have better ways of securing our rights. The implementing agencies shall then have an obligation to provide equal water to all.

Norms and allocation of water supply

- No differentiation should be made on the quantitative norms of water supplied to the urban and rural areas. A common standard for allocating equal water to both the rural and urban areas need to be developed at the Central level, allowing flexibility at the State level to allocate water as per availability and agro-climatic conditions of the region.
- The norms should be sensitive to exclusions and should be contextualised in terms of geographical area, topography and cultural diversity.
- Considering that the livelihood needs is going to increase in the future and that agriculture will not be sufficient to meet livelihood needs of the rural population, certain industries are required. These industries require water for the production. However, a framework is required to allocate water to industries and certain non-negotiable, under which water can be provided to them. One of them can be the compulsory treatment of effluents from the industries.
- While allocating water under Right to water, water for livestock and the eco-system needs should be kept in mind.
- Community rights are important for determination of water security in the country. Allotment of water to an area and its management should be based on the needs of the community.

- There are no norms for controlling the water withdrawn from the groundwater and it is observed that only people from the upper echelons of society from borewells.
- In many parts of the country, water is still allotted on the basis of caste. The legal authority has been unable to stop this discrimination due to political weakness. Although efforts are made to revive the traditional systems, the caste system still persists.

Quality of water supply

- Equitable distribution of water which is safe and potable is to be an important component of right to water.
- Groundwater pollution (usually invisible) is a rising issue. Methods for easy sampling and testing should be made available at village level and larger awareness about health impacts of fluoride, arsenic, salinity is required among the public.
- The officials from Public Health Engineering Department (PHED) can report about the fertilizers causing pollution of water bodies, but the decision to ban these fertilizers is up to the higher authorities. The health department can only raise awareness about these issues.
- In situations like floods, there is no data made available to the general public about the pollutants and contamination of the drinking water sources.
- Water testing kits should be made available at village level along with training and capacity building. This is crucial especially in the flood regions.

Water pricing and its affordability

- While revising the water tariff, state needs to consider the affordability of the people below poverty line. People need to be made aware as how to seek accountability and transparency from the concerned institutions.
- The lifeline plus water should be charged with a minimum tariff. However, the poor may not be able to afford even that. Water for maintaining basic hygiene should be a provided free of cost up to a certain quantity.

Groundwater

- Most of the states in India have groundwater laws. But groundwater is related to the ownership of land, which has resulted in its larger extraction. Traditional practices could be used to conserve the depleting groundwater sources and avoid its pollution.
- Extensive groundwater extraction takes place for industrial use and also to meet the drinking water needs. The Chhattisgarh Government has circulated a notice to close down public wells, without giving prior notice or any consultation. Thus, the poor sections of the society, dependent on borewells for their basic needs, are deprived of their rights.
- 90% of the drinking water is supplied from groundwater. Further, groundwater is

widely recognised as a common pool resource, which also means that it should be made accessible to all. So we need to have a stronger articulation around the governance of groundwater for its equitable distribution and these needs to be clearly highlighted in the content of right to water.

- Existing farming practices are responsible for reduction in the groundwater tables. Use of chemical fertilizers has reduced the percolation capacity of the soil, making it difficult to recharge groundwater. Better agriculture practices have to be explored.
- A special section on groundwater is required in the content of right to water.

Privatisation

- Public-Private-Partnership (PPP) and community ownership need to be treated as separate entities at all levels. One cannot talk about PPP in the context of basic needs. Private sector is driven by profit motive. It is therefore the responsibility of the Government to monitor and ensure that the basic services of water are provided to all.
- PPP mode should be rejected as private partners do not contribute to the fullest. Services of water to be delivered through users' collectives and not private entities.
- No water source should be privatised; however, the service delivery could be entrusted to the private entities in the absence of users' collectives, and that too certain non-negotiable.
- As per PPP mode, the private sector plays the role of provision, distribution of water services and collection of water tariff, whereas the government plays the role of regulation. Does this mean that the government is moving away from its responsibility? Better options like participatory community managed water supply schemes need to be experimented, especially in the rural areas. Similarly, reform within the institutions is required for a better governance and management of the system.
- Privatisation comes with a basket of amazing solutions to solve water infrastructure problems and hence many people see it as attractive. Privatisation is gaining legitimacy due to lack of protests.
- One of the arguments in favour of privatisation was the expectation that it would bring in capital for investment in the sector. However, this has not happened. For example, in the proposed PPP project in Khandwa, 95% of the investment is being made by the Government. A sort of monopoly is being created as part of PPP, as all other competing water provisioning systems are banned.
- There are other notions too about PPP. For example, it is said that the Government does not have money for O&M costs, and that the private company would raise the resources to do so. Is O&M not done because the public is not paying taxes? Or is the public not giving money because they know that this money would not be put to good use? So, the important factor here is to reform the government system, rather than depend on the private sector to provide the service.

- There are many micro-level initiatives taking place through community participation. Efforts need to be made to upscale them.
- In the PPP model, it is observed that the private party has been selective for supplying water; they supply water to the areas where profit is ensured and this is experienced even globally. The responsibility of the Government is to then regulate this in order to ensure that no inequity occurs in the distribution of water.
- PPP model can be a good model if the resource is not privatised, but the services are sometimes and people are willing to pay for these services.

Institutional Changes and Governance

- There are a myriad of institutions in the water sector, often confusing the role, each institution plays. Clarity in the roles and better coordination are required to ensure that the water services are provided to all.
- Regulatory bodies (for example, in Maharashtra) have come up in some of the states like Maharashtra and Uttar Pradesh. Issues like water entitlements, allocations, etc., should remain with the political system, which is elected by the people, and the role of the regulatory bodies should be limited to monitoring and regulation.
- Panchayati Raj Institutions (PRIs) should be included in the decision-making process. Making public hearings effective without government imposing their decision on the public is necessary.
- There are many institutions in the country (like the Pollution Control Board), but the challenge is to make the institutions take up their responsibilities and perform their duties.
- More authorities/departments are not required; all the water related authorities/ departments can work together and function better through community involvement.

Suggested model for Right to water

- Lifeline and lifeline plus should be integrated, as with drinking water, water for maintaining personal hygiene is equally important.
- In the proposed model, an additional category, termed as 'commercial water' should be included that specifically accounts for water used by industries for their profit.
- Water required for constructing houses is increasing. Under which category of the proposed model, this use can be placed? Also, under each category of use the quality of water needed should be highlighted. For example, grey treated water can be used for gardening or washing cars.
- Water for livelihood required, but there is no measuring system present to calculate the amount of water drawn by various farmers. Rich farmers have the capacity to invest in the pipe system and supply water to their farms, but that may not be the case of poor farmers.

- In the name of governance, even water used for luxury is subsidised. Can we develop a framework that can cull out the water required for luxury from the basic domestic needs?

The current model of development

- The development taking place in the country benefits only the privileged class. Constitution clearly indicates that industries do not have a right to water per say, but they are given assurance of receiving ample water. There is a need to find ways to decipher the profits gained by the industries and politicians and make the voices from the weaker sections of the society heard.
- The pseudo-development deprives the weaker sections to benefit from the development schemes. To ensure a sustainable development, a) oppose and protest against the 'profit-making' development and b) ensure that the 'commons' is not 'capitalised/ privatised'.
- Development is measured in quantifiable terms than in qualitative form. Qualitative indicators should be developed to measure development.

Redressal system

- A grievance redressal mechanism should be made available, which is hassle free and allows the citizens to put forth their problems. Moreover, it should be ensured that the grievances are met within a stipulated time-frame.

Data

- One cannot rely on the data provided by the Government. These often lead to wrong policies and schemes. Independent bodies should be formed to generate as well as analyse data.
- Documentation on water and the way Government tracks it, depends on the allocation of funds. Access to this data is a problem and hence, strategy should be devised to get this data into the public domain for easy access and this shall further strengthen the campaign.
- Tracking data which is easily accessible is very important as it is the basis for formulating better policies.
- Maintaining a database of information regarding the infrastructure for drinking water supply and sanitation is important, as there are many data gaps in the Government's data.

Forum Publications

Books and Reports

- Water Conflicts in India: A Million Revolts in the Making (Routledge)
- Life, Livelihoods, Ecosystems, Culture, Entitlements and Allocations of Water for Competing Uses
- Water Conflicts on India: Towards a New Legal and Institutional Framework
- Linking Lives-Reviving Flows: Towards Resolving Upstream Downstream Conflicts in Chalakudy River Basin.
- Water Conflicts in Odisha: A Compendium of Case Studies
- Floods, Fields and Factories: Towards Resolving Conflicts around Hirakud Dam
- Agony of Floods: Floods Induced water Conflicts in India
- Water Conflicts in Northeast India: A Compendium of Case Studies
- Conflicts around Domestic Water and Sanitation: Cases, Issues and Prospects
- Drinking Water and Sanitation in Kerala: A Situation Analysis
- Reform Initiatives in Domestic Water and Sanitation in India

Policy Briefs

- Water Entitlements and Allocations for Basic Needs, Environment, Livelihoods and Socio-cultural Needs: a Framework for Preventing and Managing Water Conflicts
- Towards a New Legal and Institutional Framework around Water: Resolving Water Conflicts in Equitable, Sustainable and Democratic Manner
- Resolving Upstream-Downstream Conflicts in River Basins
- Right to Sanitation: Position Paper of Right to Sanitation Campaign in India
- City Makers and WASH: Towards a Caring city
- Sanitation Rights and Needs of Persons with Disabilities
- Adivasis and Right to Sanitation
- Right to Sanitation: A Gender Perspective
- Dalits and Right to Sanitation