WATER LAW AND POLICY IN INDIA: REFORMS AND CAPACITY BUILDING

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<tr>
<td>anganwadi</td>
<td>a government sponsored child-care and mother-care centre</td>
</tr>
<tr>
<td>command area</td>
<td>area around the dam where the benefits of the irrigation project reach</td>
</tr>
<tr>
<td>common law</td>
<td>law developed by judges through decisions of courts and similar tribunals</td>
</tr>
<tr>
<td>dalit</td>
<td>people traditionally regarded as ‘untouchables’</td>
</tr>
<tr>
<td>gram (or village)</td>
<td>village council</td>
</tr>
<tr>
<td>panchayat</td>
<td></td>
</tr>
<tr>
<td>gram sabha</td>
<td>a body consisting of persons registered in the electoral role relating to a village comprised within the area of a panchayat at the village level (Article 243(b) of the Constitution)</td>
</tr>
<tr>
<td>groundwater</td>
<td>water located beneath the ground surface</td>
</tr>
<tr>
<td>panchayat</td>
<td>institution of self-government constituted under Part IX of the Constitution</td>
</tr>
<tr>
<td>riparian right holders</td>
<td>landowners whose property is adjacent to a body of water having the right to make reasonable use of it</td>
</tr>
<tr>
<td>SC</td>
<td>scheduled castes</td>
</tr>
<tr>
<td>ST</td>
<td>scheduled tribes</td>
</tr>
<tr>
<td>surface water</td>
<td>includes rivers, lakes and streams</td>
</tr>
<tr>
<td>taluka (or kshetra)</td>
<td></td>
</tr>
<tr>
<td>panchayat</td>
<td>comprises of the duly elected presidents of a certain number of villages in an area</td>
</tr>
<tr>
<td>zilla (or district)</td>
<td>comprises of all the presidents of taluka panchayats in the district</td>
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This primer is a response to address a need felt by the activists and various civil societies at grass root level in dealing with legal issues related to water laws. Water laws in India have never been a comprehensive legislation rather there has been a number of various water laws along with various government agencies dealing with it. Hence to provide a basic understanding of water laws, this primer has encapsulated water laws of India, current water law reforms; their impacts and issues for further advocacy.

Environmental Law Research Society deeply acknowledges Arghyam, Bangalore for the financial assistance for the ongoing water law and capacity building project of which this primer is a part. Special thanks are due to Ms. Lovleen Bhullar for her continuous effort in copy editing and bringing this work in this form. The primer would not have been possible without the constant guidance and encouragement by Dr. Philippe Cullet. His vast and deep understanding of water laws has given right direction as well as focus to this work. Last but not least, sincere thanks are also due to the ELRS team - Vyom Raghuvanshi, Jessy Thomas and Mohd. Asim – worked on this primer in various capacities.

Sujith Koonan
Programme Coordinator
INTRODUCTION

Water is indispensable to sustain life. Its availability, access and quality are crucial factors deciding the quality of life of not only human beings but also all other living beings. Water is also unavoidable for overall economic development of the human society. This is clear from the fact that water is a very basic necessity for food production. Water is also needed for various other industrial and commercial activities. Thus, water also plays a critical role in poverty eradication.

Historically, water was seen as plenty and thus, its availability, access and quality were not major problems faced by the human society. This is not the situation anymore. Problems related to availability and quality of water are not surprising news. People standing in front of water tankers or women walking long distance to collect to drinking water have become casual news. The controversial issue of water based industries over-exploiting groundwater (eg Plachimada Coca-Cola) gives another example wherein over-use by one person affects life and livelihood of a community. The continuous fight between states over sharing key rivers in the country sometimes even leads to violent fights between people (eg Cauvery River dispute). Instances of water and water related problems are too many to describe. Hence, these new situations and problems demand water laws to tackle all these issues.

There is no comprehensive water legislation in India. This is partly because the Constitution of India gives power to the state governments to make water laws. The water sector in India is thus governed by a number of laws at the state level. The existence of a number of laws in various states and the technical nature of law makes it difficult for practitioners, activist and other stakeholders to understand and use law for the benefit of the society and environment.

The aim of this booklet is to introduce the water law and policy framework in India, with special emphasis on rural drinking water supply and sanitation, to members of the public, civil society organisations, and government representatives. It is hoped that the contents of this paper will lead to more questions being raised about the ongoing reform process, which will facilitate dialogue and a better understanding of the problems plaguing the sector, and eventually result in more effective and equitable solutions.

The readers who are interested in a more detailed account may take note that this primer is derived from the following books:

- Philippe Cullet, Alix Gowlland-Gualtieri, Roopa Madhav & Usha Ramanathan (eds.), *Water Governance in Motion: Towards Socially and Environmentally Sustainable Water Laws* (New Delhi: Cambridge University Press, 2010),
I. WHAT IS WATER LAW?

Water law is the area of law dealing with ownership, access and control of water. It is also concerned with the inter-state and transboundary dimensions of water, the division of powers between the Government of India (or the ‘Central government’), states, local bodies (such as municipalities in urban areas and panchayats in rural areas), the public and private actors, as well as the issue of water quality together with its environmental and health implications.

In popular usage, the term ‘laws’ refers to the whole body of rules relating to one subject, or emanating from one source. In the context of water laws in India, the term ‘law’ includes:

- the Constitution of India
- laws or acts
- decisions of the Supreme Court of India, High Courts, district courts and nyay panchayats
- common law or law developed by English judges through judicial decisions, as applied in India
- customary norms or rules of behaviour that may be unwritten but established by long practice or usage. However, they can be trumped by a law passed by the Parliament.

I.1 WHAT ARE THE OBJECTIVES OF WATER LAW?

The following are the main objectives of water law:

- Allocation of water for different uses;
- Setting up of priorities among different uses of water;
- Conservation of water resources;
- Implementation of the fundamental human right to water;
- Maintain the quality of water sufficient for its various uses;
- Ensure water for human survival and poverty eradication;

II. WHAT ARE THE KEY FEATURES OF WATER LAW?

II.1 FUNDAMENTAL HUMAN RIGHT TO WATER

Over the past couple of decades, the existing legal framework concerning water has been complemented by a human rights dimension. The core message is that all human beings are entitled to equal and non-discriminatory supply of a sufficient amount of water. This has led to the demand for legal recognition of the right to water and corresponding changes in water related laws and policies of countries.
In India, the fundamental right to water has been confirmed by the courts. In these cases, the right has been asserted on the basis of fundamental rights under the Constitution (Articles 14, 15(2), 17 and 21). In some cases courts have made it clear that the government has an obligation to provide water [Box A].

### Box A: Human Right to Water and the Courts in India

**Supreme Court**

- *Subhash Kumar v. State of Bihar* (1991): the right to life ‘includes the right of enjoyment of pollution free water and air for full enjoyment of life’ [para 7]
- *Narmada Bachao Andolan v. Union of India* (2000): ‘Water is the basic need for the survival of the human beings and is part of right of life and human rights as enshrined in Article 21 of the Constitution of India’ [para 244].

**High Courts**

- *F.K. Hussain v. Union of India* (1990): The right to life is much more than the right to animal existence and its attributes are many fold, as life itself. A prioritisation of human needs and a new value system has been recognised in these areas. The right to sweet water, and the right to free air, are attributes of the right to life, for, these are the basic elements which sustain life itself [para 7].
- *Shajimon Joseph v. State of Kerala* (2006): the government ‘is bound to provide drinking water to the public’ and that this should be the foremost duty of the government. Additionally, the judges ruled that the failure of the state to ‘provide safe drinking water’ to citizens amounted to a violation of Article 21 of the Constitution [para. 3].

Besides court judgments, there is relatively little in the legal framework making the fundamental a reality. In fact, key documents like the National Rural Drinking Water Programme (NRDWP) only speak of a ‘basic need’ rather than a ‘fundamental right’. Similarly, the National Water Policy, 2002 calls water a ‘basic human need’ rather than a ‘basic human right’ (para 1.1). Also, while a large number of laws have been passed regarding water and water-based resources, they pay scant attention to the implementation of the fundamental right to water. Owing to this obscurity, it is not clear whether the government can be held legally liable for the failure to respect, protect and fulfil the fundamental human right to water.

Therefore, civil society organisations must play a central role in raising awareness about the fundamental human right to water and finding new and innovative means to ensure that the right is safeguarded. They can introduce capacity building programmes for individuals and communities to improve their access to the right to water, protect the right (especially vulnerable communities) and manage water resources; engage with governments on key issues; and adopt the role of a watch-dog to facilitate monitoring and surveillance (Khurana & Sen 2009: 21).
It may be useful in this context to look at the constitutions of some other countries which have gone further than India and expressly included access to water as a fundamental human right.

- South Africa: right to have access to sufficient water
- Uruguay: access to potable water and access to sanitation

The existence of a human right to water has also been supported in several international documents [Box B]

**BOX B: RIGHT TO WATER IN INTERNATIONAL DOCUMENTS**

- General Comment (No. 15) on the right to water adopted by the United Nations Committee on Economic, Social and Cultural Rights in 2002 states that the human right to water “entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.
- Convention on Elimination of Discrimination Against Women, 1979: Article 14(2)(h) explicitly mentions about provision of water and sanitation to women
- Convention on the Rights of the Child, 1989: Article 24 (2) (c) mentions right to safe drinking water of a child from a non-polluted source

### II.2 SOURCE BASED AND USE BASED EVOLUTION OF RULES

The development of different rules for different sources and uses of water forms a distinct feature water laws in India. Hence, the rights of individuals and powers of government are different in the case of different sources and uses of water. Different rules for different sources are explained by taking the example of surface water and groundwater in the table below.

**Table 1: Source Based Rules**

<table>
<thead>
<tr>
<th>Powers of the State</th>
<th>Surface Water</th>
<th>Groundwater</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government exercises predominant control over all surface water sources and is responsible for their allocation.</td>
<td>Individuals have controls over groundwater.</td>
<td></td>
</tr>
<tr>
<td>Individual’s rights</td>
<td>The link between access to surface water and land rights is recognised and the principle of riparian rights is applied. So, landowners do not own but can use surface water passing through or bordering their lands for private use.</td>
<td>Groundwater is part and parcel of the land and there is no separate title of ownership over groundwater. So, the landowner has the right to collect and dispose of all the water under his land.</td>
</tr>
</tbody>
</table>

The development of use based rules can be best explained with the examples of irrigation and drinking water. For instance, one can see a number of irrigation laws at the state level (eg Bihar Irrigation Act, 1997 & Assam Irrigation Act, 1983). In the case of drinking water there is no specific law, but one can see a
number of drinking water specific policies and other initiatives at the national and state level (e.g., Draft Guidelines for Preparation of Legislation for Framing Drinking Water Regulations, 2007; National Rural Drinking Water Programme, 2010 & Karnataka Urban Drinking Water and Sanitation Policy, 2003).

**WATER AS A SUBSTANCE UNDER THE CARE OF THE GOVERNMENT (PUBLIC TRUST)**

In an attempt to move away from government control over water, the Supreme Court brought in the idea that the relationship between water and the government should be redefined. The Court used a legal construct known as ‘public trust’ which states that government is not an owner but a trustee of water and as such is responsible for protecting and preserving water for and on behalf of the beneficiaries or the public. This requires the government to manage and develop water without depriving any individual or group from accessing or significantly affecting ecosystem needs. As a result, neither the government nor individuals can exercise absolute rights over water.

The public trust doctrine is now a part of water law. It has been discussed extensively by the Supreme Court [Box C].

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**BOX C: PUBLIC TRUST DOCTRINE IN INDIA**

(M.C. Mehta v. Kamal Nath (1997))

A private company Span Motels had built a motel on the bank of the River Beas on land leased by the Government of India in 1981. Span Motels had also encroached upon an additional area of land adjoining this area, which was later leased out to Span Motels. The motel used earthmovers and bulldozers to turn the course of the River Beas, create a new channel and divert the course of the river to save the motel from future floods.

The ruling of the court was based on the Public Trust doctrine. The court first observed that: “[t]he notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land.” The court then concluded (in para 34):

“Our legal system - based on English common law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.”

This means that natural resources cannot be used for private, commercial or any other purpose unless it is necessary, in good faith, for the public goods and in public interest. Subsequently, the doctrine was affirmed in other cases, including M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu (1999), Intellectual Forum v. State of Andhra Pradesh (2006) and Karnataka Industrial Area Development Board v. Kenchappan (2006).
The application of the public trust doctrine may influence the type of rights and privileges that can be claimed over surface water. However, the applicability of the doctrine to all sources of water is not yet clear.

II.3 Inter-Sectoral Allocation

Inter-Sectoral allocation is another major feature of water law and policies. The term Inter-Sectoral allocation means the way in which the available water resources are allocated for different sectors or uses such as drinking, irrigation and industrial. Most importantly, it involves the priority allotted to each sector or use in the time of water scarcity. The National Water Policy and mostly state water policies also contain a priority list in which drinking water comes first and irrigation second. All other sectors such as industrial use or navigation come only after that. However, there is nothing that binds any state government to adopt a different priority list. In fact, the state of Maharashtra has adopted a water policy in which industrial use is second in the priority list and irrigation comes only after that in the third position. This is the context in which the argument for a priority list as a law gets strength. Such a law should ideally give top priorities to drinking water and irrigation by respecting the human rights dimensions. Further, the power to modify the priorities should also be limited by this human right dimension.

The indicative list of priorities envisaged under the National Water Policy, 2002 and other few selective states are provided in the table 2.

**Table 2: Inter-sectoral Prioritisation under Water Policies**

<table>
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<tbody>
<tr>
<td>1.</td>
<td>Drinking water</td>
<td>Drinking water</td>
<td>Drinking water</td>
<td>Domestic use for drinking, cooling, hygiene and sanitation needs including livestock</td>
</tr>
<tr>
<td>2.</td>
<td>Irrigation</td>
<td>Irrigation</td>
<td>Irrigation</td>
<td>Industrial, commercial use and agro-based industrial use</td>
</tr>
<tr>
<td>3.</td>
<td>Hydro-power</td>
<td>Aquaculture</td>
<td>Hydro and Thermal Power</td>
<td>Agriculture and hydropower</td>
</tr>
<tr>
<td>4.</td>
<td>Ecology</td>
<td>Agro-industries and non-agricultural industries</td>
<td>Agro-industries non-agricultural industries</td>
<td>Environment and recreation uses</td>
</tr>
<tr>
<td>5.</td>
<td>Agro-industries and non-agricultural industries</td>
<td></td>
<td>Navigation and other uses</td>
<td>All other uses</td>
</tr>
<tr>
<td>6.</td>
<td>Navigation and other uses</td>
<td></td>
<td></td>
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</tbody>
</table>
II.4 Urban-Rural Divide

The development of urban specific and rural specific policies is another key feature of the water laws in India. This feature is more prominent in the case of drinking water and sanitation policies. Examples are:

**Rural**
- National Rural Drinking Water Programme, 2010
- Total Sanitation Campaign Guidelines, 2007

**Urban**
- Jawaharlal Nehru National Urban Renewal Mission Guidelines, 2006
- National Urban Sanitation Policy, 2008

II.5 Water Rights Determined by Land Rights

Water rights are closely linked to land rights. Traditionally, water rights were determined by land rights. For instance, the development of principles such as riparian doctrine which gives water rights to those who have land sharing borders with a river or streams is a good example to demonstrate this feature. Even now, this is an important feature of water law. This is evident in the case of groundwater where rights of landless people are almost out of question. Similar feature can be seen in new irrigation laws where only land owners can become a member of user associations.

III. Why are Reforms Introduced?

III.1 First Reason: Water Needs to be ‘Managed’ in an ‘Efficient’ and Financially Sustainable Manner

Traditionally, water resource management and development and water supply are sectors dominated by government through its various departments such as irrigation department and public works department. Major strategy followed by the government was to build more and more infrastructures such as irrigation canals, dams and water treatment plants. This is generally known as supply oriented approach, which means the focus is on providing more and more supply with the belief that it will satisfy the needs and achieve progress as well.

This approach is under attack for at least two decades. The new approach, which is known as demand oriented approach, argues that the focus should be on controlling the demand for water. This means, water is not simply a resource to be collected and supplied. Instead, it is a natural resource with economic value and therefore, its demand and use need to be managed. The term ‘management’ indicates the ways such as pricing of water through which it is expected that wastage of water can be prevented. This agenda, in turn, is influenced developments at the international level. For instance, the key outcomes of the International Conference on Water and the Environment 1992, namely the Dublin Principles expressly promote this approach [Box D].
BOX D: DUBLIN PRINCIPLES

1. Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment;
2. Water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels;
3. Women play a central part in the provision, management and safeguarding of water;
4. Water has an economic value in all its competing uses and should be recognized as an economic good: Within this principle, it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price. Past failure to recognize the economic value of water has led to wasteful and environmentally damaging uses of the resource. Managing water as an economic good is an important way of achieving efficient and equitable use, and of encouraging conservation and protection of water resources.

The main implication of this economic perspective is that it makes local institutions and communities responsible for water supply and environmental sanitation with community participation and capital cost sharing, and the application of water pricing, including full-cost recovery principles and trading of water rights, to water law reforms. While water pricing is expected to reduce waste and pollution and lead to efficiency in water use, the principle of full-cost recovery allows the water service providers to pass all costs of production and services onto water consumers. The latter is expected to ensure the financial viability and sustainability of the scheme.

III.2 SECOND REASON: LAW AND POLICY CHANGES ARE RELATED AND PARTLY DICTATED BY GLOBAL INFLUENCES

In the water sector, several State governments have received loans from International Financial Institutions, such as the World Bank and the Asian Development Bank. These institutions take advantage of their bargaining power throughout the negotiations of structural adjustment loans to impose modifications to core domestic laws and policies of states in exchange for the disbursements. This practice is known as conditionality and the adoption of new laws is often linked to the implementation of projects. The World Bank’s 2004 Strategy does not promote law conditionality but it has indirectly justified and fostered its use in Bank loans as a way to ensure that borrowing countries implement the proposed reforms. For instance, the World Bank’s Uttar Pradesh Water Sector Restructuring Project required the State government to set up a Water Tariff Regulatory Commission and prepare a draft legislation specifying the functions and responsibilities of the Regulatory Commission. Other examples are included in Box E.
The imposition of law conditionality in India has led to the introduction of new rules or laws or amendment of existing rules by states. The State governments may also be required to engage the services of consultants that are approved by international financial institutions. These consultants may be involved from the stage of drafting of new laws until their implementation. For example, the World Bank tried to push for the international firm, Price Waterhouse Coopers, for the Delhi Water Supply and Sewerage Project despite technical failures.

External assistance on project basis has also influenced policy development at the national level, such as the National Water Policy, 2002. The Eighth Five-Year Plan (1992–1997) emphasised the need to manage water as a commodity; adoption of a demand-driven approach for the provision of rural water supply and sanitation services; decentralization, user participation and private sector involvement; and local management of operation and maintenance with emphasis on financial sustainability.

### III.3 Third Reason: Domestic Push for Reforms – Water Law is Often Outdated and/or Incomplete

The existing water laws are characterized by a number of different principles, rules and laws for the different uses and different bodies of water. This has led to a situation where there is no comprehensive water law in India. Instead, there are separate laws to regulate water for the different uses and different sources of water. A comprehensive water law common to the whole territory of India is very difficult given the fact that the state governments have the power to make laws.

The need to update the existing water laws is demonstrated by their outdated nature. The existing irrigation laws are based on pre-independence laws. The traditional land rights-based framework for granting rights to surface and groundwater is also unsuitable for the present situation. For example, in the present day context, it may not be proper to hold the view that only land owners or occupiers have the right to access water, be it a river or groundwater.
Further, the existing water laws are insufficient to deal with the new challenges. For instance, the availability of mechanized pumping devices and the resulting dramatic increase in the use of groundwater have contributed to groundwater depletion and contamination. In fact, the level of groundwater contamination in some parts of India is alarmingly high. This situation poses huge danger to the public health. Therefore, it could be said that giving landowners the uncontrolled right to extract groundwater is an outdated approach. Hence, there can be a legitimate argument in favour of changing the legal framework to make it suitable to the contemporary situation and challenges.

Further, the existing water laws emphasises the regulation of water use for economic growth. Other dimensions of water, such as use of water for drinking/domestic purposes are sidelined. The need to introduce new laws can also established by the neglect of the principles adopted by the Supreme Court, such as the recognition of a human right to water, under the existing water laws.

IV. WHAT ARE THE BASES FOR REFORMS?

IV.1 WATER AS AN ECONOMIC GOOD

The most influential aspect of the ongoing water sector/law reforms is the principle that views water as an economic good. This principle envisages use of water as a commodity. It comes from the criticism against the traditionally following practice that views water as a free natural resource that needs only to be collected from a source and supplied. The criticism further says that the system of free water leads to the wastage of the resource. On the contrary to this, the economic good approach advocates a system of well defined private property rights over water resources. That means, for example, there will be a pre-fixed quantity of water that an individual can use. And in case that person is not using it, he can sell that water. It is a highlighted advantage of this system that it will result in a more productive use of water. For instance, it is expected that a rural person may find it economically profitable to sell water to an industry or for urban purpose rather than using it for a potentially non-profitable cultivation.

Another argument is that, it will be an incentive for farmers to divert their cultivation to low water intensive crops. It was not a concern when water was provided by the government almost free of cost or at a nominal cost. This shows a shift from water as a public trust that cannot become a private property to water as a tradable commodity. The term tradable commodity in this context means, rights in water can be transferred from one person to another person for money. This view was adopted, for example, in Swajal, the Sector Reforms Pilot Projects, as well as the Swajaldhara Programme and the World Bank-assisted projects for rural drinking water supply reforms.

IV.2 SHRINKING THE ROLE OF THE GOVERNMENT

Traditionally, the government has focused mainly on the development of water infrastructure such as dams, irrigation canals and water treatment plants. The Government of India has spent a huge amount of money on water supply and
other related infrastructure. In the first several decades of independence, the major focus was on enhancing supply. For instance, in the case of irrigation, more and more dams and canals were built. In the case of sanitation, the government emphasised on providing subsidy to build toilets.

Water law reforms recommend a change in this approach of the government, that is, the government’s role as supplier, regulator, financier and engineer. In this regard, the ongoing reforms seek to transfer several of the existing functions of the government to new bodies at the local and State level. This includes the setting up of Water User Associations (‘WUAs’) to manage irrigation at the local level and the setting up of new water regulatory authorities, such as the Uttar Pradesh Water Management and Regulatory Commission. In the case of urban water supply sector, the ongoing reforms seek to entrust works such as infrastructure construction, operation and maintenance and billing to private companies. Altogether, the ongoing reforms target at minimising the role of the government to ‘regulator’ and aiming to let all other functions to be carried out by user groups or private parties.

IV.3 DECENTRALISATION AND PARTICIPATION

Decentralization and participation are other two major bases of water law reforms in India. Decentralisation and participation, in the context of water law reforms, indicate transferring of the duties and responsibilities of water resource management and allocation to the local level. It further indicates the involvement of the users. The idea of decentralisation and participation means the withdrawal of the government from major functional responsibilities and transfer of responsibilities upon users, private companies, NGOs and local governing bodies such as panchayats and municipalities. However, the ongoing reforms adopt a limited understanding of these terms. For instance, decentralisation in the context of irrigation law reforms means formation of water user association. It does not mean giving more powers and resources to democratically elected/constituted bodies such as panchayat and gramsabha. In the same way, participation means participation of land owners. It seems to avoid landless people.

IV.4 PRIVATIZATION

The reforms have encouraged private sector participation, particularly in urban water supply. It is believed that private sector participation would ensure more efficient management and delivery of water services, and would provide the necessary investment.

In the water sector, privatisation can take the form of:

(i) Transfer of water supply responsibilities to private companies.

(ii) The public utility starts behaving like a private company (in urban areas) by introducing cost recovery. This means pricing the actual cost of water supply.

(iii) Privatisation of water resources, such as flowing surface rivers. For instance, the State of Chhattisgarh permitted a private company to build a dam over the river Sheonath to provide water to users and assert rights over fishing in the area close to its dam. The issue became controversial as
the company began to stop farmers living near the river from pumping water from the river.

**PUBLIC-PRIVATE PARTNERSHIPS (PPPs)**

Ongoing water sector reforms use the term ‘public-private partnership’ instead of ‘privatisation’? This may be due to the strong public sentiment against the idea of privatisation of water. This may be the reason why new names are being used such as public-private partnership or private sector participation. As the new names indicate, it is slightly different from what we understood as privatisation. Here, services or some works related to services are delivered by the private sector while the ownership and major responsibilities rests with the government.

A number of policy documents have been prepared to promote and to provide basis for private sector participation in water supply in particular and all other municipal services generally. Some of the policy bases are provided in Box F.

**BOX F: POLICY BASIS**

**National Water Policy, 2002**

13. Private Sector Participation

“Private sector participation should be encouraged in planning, development and management of water resources projects for diverse uses, wherever feasible. Private sector participation may help in introducing innovative ideas, generating financial resources and introducing corporate management and improving service efficiency and accountability to users. Depending upon the specific situations, various combinations of private sector participation, in building, owning, operating, leasing and transferring of water resources facilities, may be considered”.

**Jawaharlal Nehru National Urban Renewal Mission (JNNURM) Guidelines**

Private sector participation is a major component of the JNNURM that is being implemented across in India. To illustrate, it is one of the mission strategy that “Private Sector Participation in development, management and financing of Urban Infrastructure would be clearly delineated (Para. 3. iii)”. It has been specifically mentioned that “projects with private sector participation will be given priority over projects to be executed by Urban Local Bodies/Parastatals themselves, as this will help leverage private capital and bring in efficiencies (para. 14.4)”. The optional reforms that needs to be implemented at the state level and at the level of para-statal agencies include “encouraging Public Private Partnership (para. 2.10)”.

**Model Municipal Law**

(drafted by the Ministry of Urban Development and Poverty Alleviation)

47. (1) Every Municipality shall-

(a) provide on its own or arrange to provide through any agency the following core municipal services:-

(i) water supply for domestic, industrial and commercial purposes.
167. Notwithstanding anything contained elsewhere in this Act, but subject to the provisions of any State law relating to planning, development, operation, maintenance and management of municipal infrastructure and services, a Municipality may, in the discharge of its functions specified in section 47, section 48, and section 49, -

(a) promote the undertaking of any project for supply of urban environmental infrastructure or services by participation of a company, firm, society, trust or any body corporate or any institution, or government agency or any agency under any other law for the time being in force, in financing, construction, maintenance and operation of such project of a Municipality irrespective of its cost

The Government of India has defined a ‘Public Private Partnership’ project to mean a project based on a contract or concession agreement between a Government or legal entity on the one side and a private sector company on the other side, for delivering an infrastructure project on payment of user charges. In recent years, the urban local bodies in several cities have directly entered into partnerships with private companies to undertake some or all of the functions involved in the provision of drinking water. For an example from the State of Tamil Nadu, see Box G.
**BOX G: PPP IN THE TIRUPUR WATER SUPPLY AND SANITATION PROJECT**

The Tirupur Water Supply and Sanitation Project, which was implemented in Tamil Nadu in 2005, is the first experiment in PPP in the water sector in India. The Government of Tamil Nadu, along with the Tamil Nadu Corporation for Industrial Infrastructure Development Limited and the Tirupur Exporters Association, approached the Infrastructure Leasing and Financial Services, a non-banking financial services company, for assistance to raise finances for the project to develop infrastructural facilities relating to water treatment and supply and sewage treatment in order to enhance their productivity and export potential.

The Government of Tamil Nadu and the Tirupur Municipality jointly granted a contract to the New Tirupur Area Development Corporation Ltd. (NTADCL) to develop, finance, design, construct, operate, maintain and transfer on strictly commercial principles, on an integrated basis, the water treatment and supply facilities and sewage treatment facilities including the right to draw water from the river Cauvery.

Following an international competitive bidding process, NTADCL selected a consortium comprising of the Mahindra Group, Bechtel Enterprises and the United Utilities International, UK for the design and construction of the project facilities and their operation and maintenance.
V. WHAT ARE THE KEY ASPECTS OF WATER LAW REFORMS?

V.1 DRINKING WATER – FROM ‘SUPPLY’ TO ‘DEMAND-LED’ PARADIGM

V.1.1 Rural Water Supply

Evolution of Policy Framework for Domestic Water Supply in Rural Areas

Over the past few decades, there has been substantial evolution of the national level policy framework governing water supply in rural areas. Accelerated Rural Water Supply Programme (ARWSP) was the major programme from 1972 to 2009. Over the past decade, efforts at introducing significant reforms led to the introduction of a number of changes of which the Swajaldhara Guidelines, 2002 were a key component. As of now, the whole programme has been renamed and is now known as the National Rural Drinking Water Programme (NRDWP).

Sector Reforms and Swajaldhara

Drinking water supply policy framework has changed dramatically over the past decade. This change has resulted in a complete overhaul of the principles in place since the 1970s. Reforms have unfolded in different ways since the mid-1990s. They have included changes in the policies of the Government of India, adoption of new policies at the union and state level, as well as development projects such as World Bank projects.

ACCELERATED RURAL WATER SUPPLY PROGRAMME GUIDELINES

With regard to policies followed by the Government of India, the first major sign of the desire to introduce reforms can be found in the revision of Accelerated Rural Water Supply Programme Guidelines in 1999-2000. The revised guidelines aim to introduce a number of changes:

- People’s participation in operation and maintenance of water supply.
- A change from water as a ‘social right’ to water as a ‘socio-economic good’.
- The idea of user’s fee which requires people to pay for operation and maintenance. The sector reforms put in place required all state and district authorities to impose at least 10% capital cost payment by villagers.

THE SWAJALDHARA GUIDELINES

The Swajal project and related initiatives were taken in the late 1990s. This eventually led to the formulation of the Swajaldhara Guidelines which extended during the 10th plan the key ingredients of the Swajal project to the whole country. 20% of funds allocated to the ARWSP were directed to reform projects under the Swajaldhara Guidelines during this period. The Ministry of Rural Development spearheaded the introduction of Swajaldhara through the adoption of the Guidelines on Swajaldhara.
The main features of the Swajaldhara Guidelines were:

- The programme adopts community participation based on empowerment of villagers to ensure their full participation in the project through a decision making role in the choice of the drinking water scheme, planning, design, implementation, control of finances and management arrangements.
- Full ownership of drinking water assets is handed over to the panchayat.
- The panchayats/communities have the powers to plan, implement, operate, maintain and manage all water supply and sanitation schemes.
- The community is required to contribute at least 10% of the capital costs in the form of cash/kind/labour/land or a combination to benefit from the scheme.
- The Central government provides 90% of the project cost as grant.
- The users are 100% responsible for operation, maintenance & management costs of the schemes constructed under the programme, including recurring costs like salary of operators, electricity charges as well as cost of periodic repair and renewal.
- The shift in the government’s role from direct service delivery to planning, policy formulation, monitoring and evaluation, and partial financial support.

**National Rural Drinking Water Programme - Policy Framework for the Eleventh Plan**

The implementation of rural drinking water supply reforms has faced several difficulties and setbacks. On the one hand, government agencies engaged in the implementation of drinking water supply policies were not completely ready to give up the powers they had. At the same time, some of the reform changes were found to be politically unattractive for state governments, as in the case of villages surveyed in Badwani district of Madhya Pradesh that were implementing Swajaldhara projects did not actually follow the Swajaldhara principles. This is not surprising in view of the fact that Swajaldhara sought to impose a part of capital costs on villagers. The overall assessment of the Swajaldhara years was thus mixed and this explains why between 2007 and 2009 significant policy uncertainty underlined the future of reforms in the eleventh plan.

Eventually, an entirely new policy framework was proposed for the eleventh plan, now known as the National Rural Drinking Water Programme (NRDWP). Some of the major features of the NRDWP are:

- Promotion of a conception of drinking water in a broader context. This linking drinking water schemes with other schemes such as sanitation, health policy, education and the National Rural Employment Guarantee Scheme.
- The programme proposes to move from a fixed minimum quantity of water needed for individual in a day to the concept of drinking water security at the household level which in effect replaces the earlier specific individual measure of 40 litre per capita per day as constituting the minimum level of access to which the government committed with a vaguer concept which lacks any specific per capita measurement.
- Increased focus on the need to provide water on a sustainable basis. This means:
  - Ensuring availability of water – source sustainability.
  - Optimising the cost of production of water and capacity building - system sustainability.
  - Cost recovery of ‘at least’ 50% - financial sustainability.
• Emphasis on water quality standards.

V.2.2 Urban Water Supply

Urban Water Supply Scenario in India

Urban India is growing at a fast rate. A study reveals that “[U]rban India contributes more than 50% of the country’s GDP at present, although it accounts for less than one-third of its population. It is estimated that by 2025, more than 50% of the country’s population will live in cities and towns”. Given the way cities are growing in India, there would be a strong need to upgrade infrastructural facilities and basic services. Of which, water supply and sanitation perhaps would be the foremost one.

Indeed urban water supply has been improving or developing over the years. The importance given to urban water supply (and water resource development in general) can be seen from the huge amount of money allotted under every five year plans for improving drinking water supply. It is also evident from a number of policy options and documents adopted by the government from time to time. Available statistics also says that water supply coverage has been improved over the decades. A 2006 report prepared by Planning Commission’s Working Group says that “about 91% of the urban population has got access to water supply and 63% to sewerage and sanitation facilities as on 31.3.2004”. Studies conducted by experts also confirm this improvement in water supply coverage. For instance, a study published in 2006 finds urban water supply coverage in India as around 90%.

The 90% coverage statistics does not mean that all urban individuals or households except those 10% get water in sufficient quantity, good quality and on a regular basis. The criteria of quantity, quality and regularity vary from cities to cities and also vary from different places within a city. Understandably, the sufferers are vulnerable groups – poor, women and children. This situation makes, ‘equity’ a serious issue that needs to be addressed. That means everyone should get water according to his needs, not according to where he/she stays or what is the nature of land rights or the capacity to pay.

Law Relating to Urban Water Supply

Urban water supply (UWS) comes within the purview of the State Governments. This does not mean that the State Governments are duty bound to provide water supply to everyone. This merely indicates the Constitutional position that state governments are authorised to make laws on UWS and the role of the central

government in this regard are minimal or nil. However, in practice, the state government are not directly involved in UWS. It is in the domain of the urban local bodies (ULBs) such as municipality and corporation. In the case of some big cities there are separate agencies looking after water and sanitation (for instance Delhi Water Board). The powers, functions and duties of the ULBs are based upon the concerned municipal acts. Therefore, the existing law in India applicable to UWS is those numerous municipal acts. Almost all municipal acts contain more or less similar provisions regarding water supply. This mainly consists of a chapter on water supply and sewerage. These provisions generally says what the ULBs can do such as power to lay infrastructures related to water supply, conditions to be followed in using water supplied by the ULBs, power to collect water charges etc. Beyond this, municipal law talks about the functions of the ULBs. Functions are categorised into obligatory functions and discretionary functions. The obligatory functions include water supply also. Thus, it is the legal duty of the ULBs to provide water supply for all purposes in the concerned area.

However, the nature and extent of this ‘obligation’ of ULBs have hardly been questioned or examined. In practice, the so called ‘obligation’, in the water supply context at least, of the ULBs has never been talked in terms of rights and duties. That means, the position of legal responsibility of the ULBs to provide water supply and the legal right of the people to get water supply has not been addressed in earnest. The situation is further worsened by the lack of proper provision dealing with the quality and quantity of water to be supplied. Wherever there are provisions, it is of ambiguous and minimal nature in the form of words such as ‘adequate’, ‘reasonable’, ‘pure’, ‘wholesome’ and ‘fit for human consumption’. These expressions in law have proved to be ineffective. This is so unclear that it can have different meaning and scope.

HENCE, THE FOLLOWING QUESTIONS NEED TO BE ASKED:

- Whether a case can be filed against a ULB for not providing water supply of good quality and sufficient quantity?
- Whether it is possible to legally challenge the situation of water supply in some part of a city and at the same time supply is not availability or insufficient in some other parts?

V.2 WATER QUALITY REGULATION – TOWARDS STRONGER REGULATION

V.2.1 What is Water Quality Regulation?

Water quality regulation aims to ensure the quality of water for various purposes such as drinking and irrigation. The term ‘quality’ covers quality from various angles such as biological, chemical and physiological. In this regard, the regulatory framework prescribes maximum limit for various undesired pollutants and characteristics. For example, the water quality standards prescribe the maximum allowable limit for arsenic in drinking water. Beyond that level, such waters need to be considered as dangerous to health or not fit for human consumption. Likewise, the regulatory framework sets limit for various other
things such as chemicals, bacteria, smell and colour. Water quality regulatory framework further addresses institutional and procedural aspects such as water frequency of sampling and testing, equipments to be used for water sampling and testing, establishment of water testing laboratories and establishment of water treatment plants.

V.2.2 Law and Policy

Water quality regulatory framework in India consists of a number of instruments with varying status in law. Major features of the existing framework are:

- There are statutory frameworks at the central level addressing the quality of water at the source point such as river, streams and lakes. This mainly includes the Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986. The focus of these laws is the maintenance of the quality of water at its source point such as rivers and streams. This is done mainly by controlling release of effluents to such water resources. Central and state pollution control boards play crucial roles in this regard. However, the regulation of water quality at the consumption point is not a direct focus of this statutory framework even though the regulation of water quality at the consumption point is very crucial given the chances of water contamination during transportation.

- Another major statutory framework is the municipal laws. Almost all municipal laws contain some form of reference to water quality standards. Mostly this concern is reflected in the rudimentary and vague expressions such as ‘fit for human consumption’ and ‘pure and wholesome’.

- There are some instruments at the national level which are legally not binding. This includes various instruments such as Manual on Water Supply and Treatment by Central Public Health and Environmental Engineering Organisation and Drinking Water Quality Standards IS: 10500 by Bureau of Indian Standards. These documents prescribe limits for various contaminants and prescribe procedural issues such as water sampling and testing frequency. Though these documents are legally not binding, various government agencies directly or indirectly dealing with water quality issues quite often refer to these documents.

V.2.4 Issues for Further Advocacy

- Water quality regulation, in a strict legal sense, is still in an early and rudimentary stage. The existing framework consists of a number of laws, guidelines and institutions. Hence, there is a need for advocating a water quality standards and procedures applicable all over the country. This can preferably be part of a framework drinking water law at the central level.

- Water quality assurance should be a continuous activity. Therefore, institutions at local should be entrusted with mandatory duty of regular monitoring of water quality both at the source point and at the consumption point. This can have the shape of water supply agency doing the regular monitoring and a higher agency (such as pollution control boards) exercising a supervisory role.
- Establishment of water quality testing laboratories at the local level needs to be emphasised.
- To make water quality monitoring effective and sustainable, participation of local people with special consideration for women may be advocated.

V.3 Sanitation: Increasing Emphasis

V.3.1 What is Sanitation?
Sanitation is increasingly becoming a concern of high priority at the international and national level. The link between sanitation and almost all other development goals (such as public health, gender justice and right to education, employment security) makes sanitation one of the most important concerns of the government.

With the growing concern over sanitation, the meaning of the word sanitation has also changed. Earlier, the word ‘sanitation’ indicated only the disposal of human excreta by different means such as cesspools, open ditches and pit latrines. It is no longer limited to the disposal of human excreta in the modern context. Today, it is a comprehensive concept which includes liquid and solid waste disposal, food hygiene, and personal, domestic and environmental hygiene. This wider meaning or definition can be seen in all the recent key policy documents on sanitation. For example, Total Sanitation Campaign Guidelines, 2007 and National Urban Sanitation Policy, 2008 follow this wide definition.

V.3.2 Does the Existing Law Cover/Address Sanitation?
The legal regime related to sanitation in India is multifaceted. There is no specific exclusive law on sanitation in India. Instead, sanitation is covered under different laws and policies. Adding to that, there are a number of government agencies having some role to play in sanitation.

Following are the sanitation related laws in India.

- As per the Constitution of India, the state governments have the authority to make law on sanitation. However, the central government plays a prominent role regarding sanitation in the form of providing funding, assistance in capacity building and facilitating information, education and communication. Another constitutional provision relevant in this context is the 73rd and 74th amendments to the constitution which sets the goal of devolution of powers and responsibilities regarding sanitation to local authorities.

- Most of the municipal acts contain a chapter dealing with ‘water supply and sanitation’ which, in fact, makes sanitation and water supply an obligatory function of these local authorities. Judiciary in India also endorsed this duty of the local bodies in some cases.

Law in the case of metropolitan cities such as Delhi and Calcutta and cantonment areas is further distinct with separate law and authorities. For example, Calcutta Metropolitan Water and Sanitation Authority Act, 1966, Delhi Water Board Act, 1998 and Cantonments Act, 2006.

There are decisions by the Supreme Court of India and various High Courts declaring sanitation as a part of fundamental right to life under Article 21 of the Constitution of India. [Box H]

**BOX H: RIGHT TO SANITATION CASES**


“…preservation of the sanitation and environment falls within the purview of Article 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked.”

“It will not be out of place here to mention that Chapter VI deals with three of duties of the Municipality namely, primary duty, secondary functions and special duty. Cleaning public streets, places and sewers, and all spaces, not being private property which are open to the enjoyment of the public, whether such spaces are vested in the Board or not, removing noxious vegetation and all public nuisances are the primary duties of the Municipality. Furthermore, it provides that it is the primary duty of the Municipal Council to remove filth, rubbish, night-soil, odour or any other noxious or offensive matter. The primary duties will have to be performed by the Municipal Board and there cannot be any plea whether the funds are available or not; whether the staff is available or not. It is for the Municipality to see how to perform the primary duties and how to raise resources for the performance of that duty. In the performance of primary duty no excuse can be taken and can be directed also as it is primary, mandatory and obligatory duty to perform the same.”

“…If the Legislature or the State Government feels that the law enacted by them cannot be implemented then the Legislature has liberty to scrap it, but the law which remains on the statutory books will have to be implemented, particularly when it relates to primary duty.”

V.3.3 Law Remains Intact and Making Changes Through Policies

**RURAL SANITATION - TOTAL SANITATION CAMPAIGN**

In the light of the failure of the Central Rural Sanitation Programme (CRSP) launched in 1986 to achieve the objective of sanitation coverage, the Government of India restructured the CRSP and introduced the Total Sanitation Campaign (TSC) (‘Sampoorna Svachta Andolan’) in 1999. The TSC is a demand-driven, participatory, people-centred programme to ensure sanitation facilities in rural areas with broader goal to eradicate the practice of open defecation. The Central government’s objective is to achieve open defecation-free villages by 2012. In order to facilitate implementation, the Ministry of Rural Development issued
guidelines in 2004, which were revised in 2007. The CRSP was completely phased out by March 2002.

**MAJOR FEATURES OF THE TSC ARE**

- The idea of subsidy has been almost discarded. The rural poor households are only given a nominal subsidy (upto Rs. 500) for construction of toilets.
- Information, Education and Communication (IEC) campaigns are used to create awareness and generate demand for sanitation facilities. Capacity Building and Hygiene Education campaigns are introduced for effective behaviour change among people.
- Community participation is considered essential for implementation. It also gives important roles for panchayat raj institutions, co-operatives, women’s groups, Self Help Groups, Community Based Organisations (CBOs) and Non-Governmental Organisations (NGOs).
- Incentive schemes are made a part of the TSC. Panchayat raj institutions that achieve 100% sanitation coverage of individual households and schools, freedom from open defecation and environmental cleanliness are eligible for an award – Nirmal Gram Puraskar. In addition, individuals and organizations, who have been the driving force for effecting full sanitation coverage in their respective geographical areas, are also eligible. (*See Annex III*)

**V.3.4 Implementation**

The states/union territories draw up a TSC Project for the selected districts to claim assistance from the Central Government. The TSC operates through district projects of 3-5 years duration, jointly financed by Central and State governments with contribution from beneficiary households. The joint finance is in the ratio of 65 (central): 25 (state): 15 (users). Zilla Panchayats, Taluka Panchayats and Gram Panchayats are involved in implementation of the TSC at their respective levels. The institutions involved in the implementation of the TSC are the Village Water and Sanitation Committee and Panchayat level supporting committees, the District Water and Sanitation Committees, the State Water and Sanitation Missions and the Communication and Capacity Development Units.

Currently, the TSC is being implemented in 593 rural districts, spanning 30 states and union territories. The total outlay of the programme is Rs. 17,885.54 crore [Rs. 11,094.02 crore (GOI) + Rs. 4,775.74 crore (State Governments) + Rs. 2,015.76 crore (community contribution)] (DDWS 2009). According to the Government of India, the TSC has led to an increase in the sanitation coverage among rural households (of 2001 Census) in India from 21.9 % in 2001 to 27.3 % in 2004 to 63.91 %, as on 20 May 2009. Over 5.56 crore toilets have been provided for rural households and the number of households being provided with toilets annually increased from 24.41 lakh in 2002-03 to 98.7 lakh in 2006-07.

**URBAN SANITATION LAW AND POLICY**

There was no scheme at the beginning of the Tenth Plan to assist the states in the sanitation sector and the Plan recommended an enhanced scope for the Accelerated Urban Water Supply Programme (AUWSP) to include sanitation. The AUWSP, which has been subsumed in Urban Infrastructure Development Scheme
for Small and Medium Towns (UIDSSMT), now includes funding for sanitation also. Sanitation accounts for 19.19% (66) of the total number of JNNURM projects. Adequate emphasis to sanitation is also ensured while approving the City Development Plan for the Mission cities. Out of the 662 projects approved under the UIDSSMT, 94 pertain to sewerage with a total estimated cost of Rs. 2900 crore. Funds to the tune of Rs. 600 crore have been released for implementation of 56 projects. A scheme for creation of urban infrastructure including sanitation in satellite towns of the 35 cities with more than 10 lakh residents is also under finalisation.

The growing importance given to sanitation is clear from the recent National Urban Sanitation Policy, 2008 to comprehensively deal with the challenges in urban sanitation. Its vision is that “all Indian cities and towns become totally sanitized, healthy and liveable and ensure and sustain good public health and environmental outcomes for all their citizens with a special focus on hygienic and affordable sanitation facilities for the urban poor and women”. Some of its important features are highlighted in Box I.

**BOX I: NATIONAL URBAN SANITATION POLICY 2008 – KEY FEATURES**

- Each State will prepare its State Urban Sanitation Strategy within a period of 2 years and formulate State Reward Schemes. A State-level apex body will monitor the implementation of the State strategy, and a nodal agency will be appointed for planning and implementation.
- Cities will prepare and implement their City Sanitation Plans (CSP) to operationalise the State strategy. The template for the CSP prescribes the formation of a City Sanitation Task Force which will ensure the participation of the community in the creation and maintenance of sanitation infrastructure.
- Each State and its cities would need to devise effective institutional arrangements at the city level. However, the ULBs (or their equivalent structures) must be at the centre of all urban sanitation activities.
- Assistance will be provided for the preparation of Detailed Project Report (DPR) as per the CSP upon receipt of requests for funding.
- Public-private partnerships will be promoted in respect of key projects/activities identified in the CSP.
- States and cities will receive technical assistance and support for awareness generation and capacity building.
- Periodic rating of all Class 1 cities (423) will be carried out in respect of various sanitation-related parameters and the best performers will be presented with a National Award (the Nirmal Shahar Puraskar).
- The Ministry of Urban Development will convene a broad-based and representative National Advisory Group on Urban Sanitation to assist in the implementation of the National Policy.

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**V.3.4 Sanitation as a Basic Right– SACOSAN - III**

The Third South Asian Conference on Sanitation (SACOSAN III) was held in Delhi in 2008. The Government of India reaffirmed previous SACOSAN agreements and set out new commitments in the Delhi Declaration. The Declaration adopted at SACOSAN III recognises that access to sanitation is a basic right and it should be accorded national priority. The commitment to
achieve the national and MDG on total and sustainable sanitation in a time-bound manner was also affirmed.

In order to operationalise these commitments, the following must be considered:

- Recognition of human right to sanitation and specific initiatives for its implementation.
- National priority to sanitation.
- Capacity building of local government institutions.
- Integration of sanitation and health policies and plans.
- Mainstreaming sanitation across sectors and ministries – adoption of convergence initiatives.
- More attention to financing of sanitation services.
- Establishment of a monitoring mechanism.

V.3.5 Issues for Further Advocacy

- Advocate for defining and implementing sanitation in a comprehensive manner with special emphasis on women, SCs/STs, children and other vulnerable sections.
- It is possible to force local bodies to do its mandatory duty related to sanitation. A citizen can approach the court for this purpose.
- The idea of sanitation as a basic right as envisaged under the Delhi Declaration needs to be advocated vigorously.

V.4 Irrigation Law – ‘Decentralisation’ Through Water User Associations

Irrigation laws are of primary importance in the regulation of water as most of the surface and groundwater in India is used for irrigation. The major change introduced by irrigation law reforms is the idea of Participatory Irrigation Management (PIM). This means greater participation of water users in the management of irrigation systems. This is a significant change from the previous practice where government does all works such as construction and maintenance of irrigation canals and allocation of water to farmers.

The states of Andhra Pradesh, Rajasthan, Orissa, Madhya Pradesh, Tamil Nadu, Maharashtra and Chhattisgarh have passed specific ‘Farmers’ Participation in Management of Irrigation Systems’ laws that transfer some responsibilities of irrigation management from government agencies to Water User Associations (WUAs) at the primary level of the canal system.

V.4.1 Salient Features of WUA Laws

- There is a three-tier structure for WUAs (or farmers’ organisations) – the WUA or pani panchayat, the distributor committee and the project committee.
- The criteria for deciding the boundary of the command area as a water user area is based on hydraulic basis.
- A WUA is established for every water user area and it consists of all water users who are landowners in the area as members.
A WUA is meant to be governed and controlled by people that both pay for the services the association offers and receive benefits.

WUAs will benefit from a more assured water supply and more control over water allocated to them. They also have the right to use groundwater in their command area on top of the entitlement they receive from canals.

The WUAs are required to perform a number of functions such as the regulation and monitoring of water distribution among WUA members, the assessment of members’ water shares, the responsibility to supply water equitably to members, the collection of service charges and user charges, the carrying out of maintenance and repairs to the canal system and the resolution of disputes among members.

WUAs have to be financially independent and therefore need to receive an income that is sufficient to allow them not to go bankrupt.

As of 2007, 55,501 WUAs covering an area of 10,230,000 hectares had been formed in India, of which 2,279 WUAs are in Karnataka and only 24 WUAs are in Uttar Pradesh (Planning Commission 2007: 15). However, these reforms fail to comprehensively address all issues related to irrigation. It focuses on the management of water infrastructure by landowning farmers instead.

### V.4.2 Shortcomings of WUA Laws

- Decentralization in the context of irrigation laws ought to reflect the 73rd constitutional amendment, which seeks to endow panchayats with control over minor irrigation schemes as well as more general water management and watershed development. In practice, irrigation law reforms do not follow this constitutional aspiration because PRIs are considered unsuitable for taking up the task of decentralization of irrigation management. Instead, decentralisation has formed the basis for the transfer of part of control of irrigation systems to WUAs at the local level that do not fall within the jurisdiction of the panchayats.

- The ownership of water resources continues to vest in the State government and the WUAs are not involved in the decision-making process. As a result, WUAs have little say about many aspects that are relevant for local-level decision-making such as the allocation of water across different uses in surface water sources. They are also not permanent and stable as their existence depends on decisions taken at a higher level.

- There are also concerns regarding the accountability of the WUAs. WUAs are responsible for resolving disputes among members. There is a danger that the decisions may end up favouring the rich and powerful members.

- Water law reforms attribute the failure of irrigation schemes to administrative centralization and therefore seek to reduce the role of the government in irrigation. However, in most cases, WUAs remain subject to regulatory control by the State. For instance, under the Maharashtra Water Resources Regulatory Authority Act, 2005 (MWRRA Act), the regulatory authority has the power to determine the command area of an irrigation project for which a WUA must be constituted. The Authority has also the power to amalgamate or divide existing WUAs on a hydraulic basis. The authorities at higher level, therefore, exercise immense control.
WUA laws provide for the involvement of farmers in the management of irrigation infrastructure at the local level in order to improve its efficiency and to reduce government costs. However, their understanding is limited to participation in management issues, such as ensuring the collection of water rates from farmers and passing on the backlog of maintenance works onto WUAs. The farmers are also responsible for the recovery of operation and maintenance costs.

The WUAs’ membership criterion fails to provide for adequate gender or minority representation. WUA laws only include landowners and land occupiers as members and reservation for women or scheduled castes and scheduled tribes is provided for in exceptional cases only. These laws have other gender implications as well since landowners are the recipients of rights and they are mostly men.

**V.4.2 Issues for Further Advocacy**

- The current WUA membership criterion does not reflect the true representation of the society. In the present scenario only landowners are members. This affects the representation of landless people. Hence a better understanding and implementation of participation is required.
- The ongoing reforms undermine the role of democratically elected bodies at the local level such as panchayat. Therefore, a better implementation of the idea of decentralisation is needed.
- For a fair functioning of a WUA, its accountability is imperative hence through the use of Right to Information Act, 2005 the stakeholders & civil society can keep themselves informed about the various activities undertaken by a WUAs.

**V.5 Groundwater – New Legislation Based on ‘Old’ Principles**

**V.5.1 Why Groundwater Regulation?**

Groundwater is an important source of freshwater in India. The dependence upon groundwater has been increasing tremendously over the last couple of decades. A 2007 planning commission report estimates that groundwater accounts for around 58 % of the total irrigated area and groundwater satisfies around 80 % of drinking water need.4

Owing to the indiscriminate exploitation, depletion and contamination of groundwater has become a serious problem in almost all parts of the country. Groundwater in India suffers from a number of quality related issues such as high level of fluoride, arsenic, mercury, heavy metals such as lead and cadmium and

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salinity.\textsuperscript{5} Groundwater depletion is also a critical issue. A study conducted by the Central Groundwater Board says that out of the 5723 assessment units assessed jointly by the State Groundwater Departments and the Central Groundwater Board (CGWB), 4078 are safe (71%), 550 are semi-critical (10%), 226 are critical (4%) and 839 are over-exploited (15%).\textsuperscript{6}

Hence, there can be hardly any disagreement as to the need for legal regulation of groundwater to prevent further depletion and contamination. This can be helpful to augment the resource and to restore the quality.

\textbf{V.5.2 Was There Any Law on Groundwater in India? – Common Law Rule}

It is evident from the previous section that groundwater resource in India is under the threat of depletion and contamination. In this context, it may be worth to raise two questions:

- Was there any law to regulate groundwater use?
- If yes, in what manner law has reacted when the quality and quantity of a precious natural resource were deteriorating dangerously?

The answer to the above mentioned questions takes us to the fact that independent India has followed the British tradition. That means, the legal principle evolved by the British Courts, which is known as common law principle, was followed in India. Beyond that, there was no law in India exclusively to regulate or control groundwater use.

Common law considered groundwater as part and parcel of the land. The legal consequence of the common law rule is that the owner of the land could dig well(s) in his land and extract as much groundwater he can or wants. The land owner was not legally liable for any damage caused to water resources of his neighbour as a result of his over extraction. It was not a matter even if he has over-exploited groundwater with an intention to cause injury to neighbours’ wells. This legal principle could be seen in some laws dealing with land rights, for instance, the Indian Easements Act, 1886 [BOX J]. This principle was also endorsed by courts during pre-independence period.

Common law principle is still a part of groundwater law in India. It will remain as a part of groundwater law until and unless state governments make separate groundwater laws. The applicability of common law principle on groundwater is being discussed even now. A best example is the plachimada Coca-Cola case decided by the Kerala High Court. The issue is not yet resolved the appeal against the Kerala High Court decision is pending before the Supreme Court [BOX K].


\textsuperscript{6} Central Groundwater Board (CGWB), Dynamic Groundwater Resources in India (Faridabad: CGWB, 2006).
7(g) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

**Box K: Common Law Principle on Groundwater**

*Kesava Bhatta v. Krishna Bhatta:* Chandra Shekhar Aiyar J. held that: “the general rule is that the owner of a land has got a natural right to all the water that percolates or flows in undefined channels within his land and that even if his object in digging a well or a pond be to cause damage to his neighbour by abstracting water from his field or land it does not in the least matter because it is the act and not the motive which must be regarded. No action lies for the obstruction or diversion of percolating water even of the result of such abstraction is to diminish or take away the water from a neighboring well in an adjoining land.

**Box L: Plachimada Coca-Cola Case**

The Plachimada panchayat, which had granted an exploitation license to the Coca Cola Company, decided not to renew it because of the lowering of the water table and decreasing water quality. The Panchayat also ordered the closure of the plant on the ground that over-exploitation of water by the Company had resulted in acute shortage of drinking water. The company challenged the authority of the Panchayat before the High Court of Kerala. The major legal issue was the right of a landowner to extract groundwater from his land and the power of the Panchayat (or local bodies in general) to regulate the use of groundwater by private individuals.

The Single Judge observed that even without groundwater regulation, the existing legal position was that groundwater is a public trust and the state has a duty to protect it against excessive exploitation. The judge also made a link between the public trust and the right to life and thus recognised that a system which leaves groundwater exploitation to the discretion of landowners can result in negative environmental consequences. However, on appeal, the Division Bench asserted the primacy of landowners’ control over groundwater in the absence of a specific law prohibiting extraction. The issue is now pending in the Supreme Court.
V.5.3 Should the Common Law Rule be a Dominant Part of Groundwater Law in India?

No, it should not be, because:

- The common law rule was evolved in a time when the knowledge of groundwater hydrology was minimal or nil. Since the mechanisms for tapping groundwater was not much improved, the chances of extraction of too much groundwater was not in existence and it was unlikely to cause any serious social problem which requires legal regulation. Both these reasons have now become obsolete.
- The right to pollution free water is a part of fundamental right to life under Article 21 of the Constitution of India. Over-exploitation by one person is likely to affect the availability of groundwater for another person in quality and quantity. Therefore, the continued application of the common law might result in the violation of the right to life under Article 21.
- The common law rule does not consider the landless people whose number is huge in India. It would be an injustice to deny the landless people the right to use groundwater.

V.5.3 What are the Major Changes Happening? – New Groundwater Laws

As per the Constitution of India, state governments are responsible for the regulation and control of groundwater resources, including their use, conservation, management and development. However, no state government has taken effort to make a groundwater law until recently.

The central government has been pushing the state governments to make groundwater laws at least since 1970. Following are the major efforts in this regard:

- Central Groundwater Authority was constituted by the Ministry of Water Resources under Section 3(3) of the Environment (Protection) Act, 1986
- National Water Policy, 1987 and 2002

Perhaps due to the continuous push from the central government, some state governments have come forward to make separate groundwater law. The states of Andhra Pradesh, Goa, Himachal Pradesh, Karnataka, Kerala, Tamil Nadu, Uttar Pradesh and West Bengal, and the Union Territories of Lakshadweep and Pondicherry, have introduced laws to regulate and conserve groundwater resources.

V.5.4 How does the New Groundwater Law Regulate Groundwater Use?

- Setting up of a groundwater authority, under the direct control of the state government, for the proper and effective implementation and enforcement of the law;
Groundwater authority can even control or prohibit groundwater use.

Groundwater authority will recommend the state government to notify some areas where regulation of groundwater use is necessary;

Users in notified areas shall get permit/certificate of registration from the Groundwater Authority;

Permit/certificate of registration may contain terms and conditions and users are duty bound to follow those terms and conditions.

**V.5.5 Issues for Further Advocacy**

- Argue for the disapproval of the land ownership based groundwater rights;
- Declaration of groundwater as a public trust which would prevent groundwater becoming a natural resource in private control;
- Follow the decentralisation principle by constituting groundwater authorities at the local level;
- Enhanced role for PRIs;
- Community participation in groundwater management. [Story of successful groundwater management with community participation in Box M.]

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**BOX M: GROUNDWATER MANAGEMENT WITH COMMUNITY PARTICIPATION – ANDHRA EXPERIENCE**

In 2006, the Water and Sanitation Management Organisation (WASMO) in Gujarat sponsored a project to develop a plan for 163 villages and towns of Abdasa taluka. Supported by Sahjeevan and ACT, 12 Para Water Professionals of the region set up an organization called ‘PARAB’ to service the Panchayats/Pani Samitis, to develop their water plans and help them implement it. The village is provided with complete information about the aquifer, the water demand and the cost of the project. A community radio program regularly reports on the panchayats that have developed their water sources.

Nalia town, the taluka headquarters of Abdasa taluka, has a population of 15000 people. As their wells had gone saline, families were buying drinking water from the private operators; or alternately, the Panchayat provided water by purchasing water from a nearby company that had installed a reverse osmosis plant. Inspired by the campaign to develop their own drinking water source, the Gram Panchayat developed a recharge structure on their old, saline wells. Within a year the water quality improved. Today the Panchayat supplies rationed drinking water to the whole town and it has initiated a growing confidence that decentralized local drinking water source solutions, owned and managed by the local governance mechanisms, is not only appropriate, and possible, but in fact the only sustainable way (MoRD 2007: 93).
V.6 NEW WATER INSTITUTIONS – TAKING AWAY POWER FROM THE GOVERNMENT

V.6.1 Independent Water Regulatory Authorities

The Independent Regulatory Agencies have been established in various sectors such as Securities and Exchange Board of India (SEBI), State Electricity Regulatory Commissions such as Delhi Electricity Regulatory Commission, Uttar Pradesh Electricity Regulatory Commission and Telecom Regulatory Authority of India. Independent Regulatory Agencies are autonomous and independent of the Government in their day to day administration and yet they remain accountable to the government and ultimately to the State Legislature. These independent regulatory authorities are entrusted to balance the interests of the users and interest of the market. The Independent Regulatory Agencies though in a nascent stage, have become an important part of our governance system.

Past decade, the country has seen a cluster of key changes in the institutional framework of water sector. Among this the establishment of state level water regulatory authorities constitutes a key change. The basic idea of independent water regulatory authority is to de-politicize, keep it free from vested political interest and to allocate water to various sectors such as industries, agriculture, domestic use etc.

Andhra Pradesh Water Resources Development Corporation Act passed in 1997 was the first of its kind in the country. However, the corporation was headed by the people from the ministries. In this regard, it cannot be considered as a complete de-politicisation of water regulation. The major reform in terms of independent water regulatory authority was the establishment of Maharashtra Water Resources Regulatory Authority (MWRRA). Similar kind of laws is becoming a general feature of water laws in India. Andhra Pradesh decided to revise its legislation by introducing Andhra Pradesh Water Resources Regulatory Commission Bill, 2009. Arunachal Pradesh and Uttar Pradesh have already adopted laws - Arunachal Pradesh Water Resources Management Authority Act, 2009 and Uttar Pradesh Water Management and Regulatory Commission Act, 2008 respectively. Gujarat Water Regulatory Authority is also under the pipeline.

V.6.2 Powers and Functions of Water Regulatory Authorities

- establishing a regulatory system for the water resources of the state, including surface and groundwater, to regulate their use and apportion entitlements among different uses of water;
- promoting the ‘efficient’ use of water, minimize wastage and fix ‘reasonable’ use criteria;
- allocating specific amounts to specific users or groups of users according to the availability of water;
- establishing a water tariff system to fix the criteria for water charges. This is to be done on the basis of the principle of full cost recovery to cover management, administration, operation and maintenance expenses;
laying down criteria for the issuance of water entitlements.

The authority has significant latitude in determining priorities of use among the main uses since the legislation generally does not include specific guidelines;

setting up of criteria for trading in water entitlements or quotas (in the case of Maharashtra).

V.6.3 Implications

Water allocation is an important public interest issue. The complete depoliticization of such issues may limit the scope of the representation of the common people. It is pertinent to mention here that such representation may bring some valuable inputs in the decision making system related to water.

These water regulatory authorities may go away unaccountable and unscrutinized by the public since they are not a part of electoral process.

The water regulatory authority may get influenced by external factors such as powerful land owners, industrialists, large scale farmers etc. in allocation of water which may be against the interest of the poor and disadvantages groups.

V.6.4 Maharashtra and Uttar Pradesh Acts in Comparison

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<td>1. It does not define the term ‘licence’ and ‘licensee’.</td>
<td>UPWMRC Act, 2008 defines the term ‘licence’ and ‘licensee’. It empowers UPWMRC to regulate the procedure and conditions for granting and revocation of licences.</td>
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<td>2. MWRRA does not include the definition of the term ‘Groundwater entitlements’. It only mentions the extraction of groundwater from a command area of a dam project as per Section 2(z).</td>
<td>UPWMRC Act defines the term ‘Groundwater entitlement’ and regulates the groundwater exploitation through ‘licensing’ mechanism.</td>
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<td>3. MWRRA’s role is limited to implementation of Integrated State Water Plan.</td>
<td>UPWMRC is empowered to approve the Integrated State Water Plan.</td>
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<td>4. The offenders are punishable with imprisonment for a term not exceeding more than 6 months or fine which may extend to ten times of the annual water charges, or both.</td>
<td>UPWMRC have a stricter penalty provision. It gives offender imprisonment which may extend upto one year or a fine which may extend to one lakh rupees, or both.</td>
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V.6.5 Issues for Further Advocacy

- Water Regulatory Authorities are entrusted primarily with a duty to ensure judicious and equitable allocation of water in various sectors. However, the criterion of equitable sharing is not defined in the legal provisions. Hence, it is important to advocate on the issues of equitable sharing of the water.

- Although water regulatory authorities do not have legal provisions for creation of water markets but there is every possibility of trading of water entitlements.

- Since all major functions of the Water Regulatory Authorities implicate life, livelihood, and environment, decisions and measures taken by the authority should be subjected to proper prior public consultation.

- Although the provisions related to water regulatory authorities do mention water quality and its conservation, a clear mandate is missing.

VI. WHAT ARE THE IMPACTS OF ONGOING LAW REFORMS?

VI.1 WATER IS TURNED INTO A TRADABLE PROPERTY

Most of the ongoing water law reforms are based on the view that water is a tradable private/economic good. This has led to the introduction of several forms of privatisation into the water sector and the concepts such as water rights and entitlements, and user charges for cost recovery. This could lead to the denial of access to water for those who lack the financial capacity to pay for water or the weaker sections of society.

BOX N: CREEPING PRIVATIZATION IN DELHI

The World Bank’s Delhi Water Supply and Sewerage project proposes the establishment of the Water and Wastewater Regulatory Commission in order to restructure the Delhi Jal Board. This could take the form of setting up a private company taking over the whole DJB and becoming a monopoly supplier or several companies taking up separate tasks or separate areas of Delhi (section 17 of the Delhi Water and Wastewater Reforms Bill 2004). The latter form can be described as creeping privatisation. This project was dropped due to public protest against privatisation of water.

VI.2 DISCONNECTION BECOMES A BASIC FEATURE OF WATER LAW

Water sector reforms view water as an economic good. The authorities are, therefore, given the power to disconnect private water supply in case of non-
payment of bills. While this can facilitate the implementation of water reforms by bringing in revenue and ensuring the financial sustainability of operations, the possibility of disconnections raises concern in the context of the human right to water [Box O].

**BOX O: DISCONNECTIONS AND THE HUMAN RIGHT TO WATER**

In the UK, the Water Industry Act, 1991 used to specifically provide for the possibility to disconnect a service pipe to an occupier who failed to pay the charges due to the operator. A number of households were disconnected as water bills increased significantly. Following a legal challenge, Parliament adopted amendments to the law in 1999 that specifically prohibit disconnection for non-payment of water charges to someone’s main home.

Thus, disconnection from water supply is a violation of the human right to water. This is particularly significant in India, where many villages are dependent on groundwater for their drinking water supply and tube-wells have become necessary in response to a rapid fall in the water table. In these villages, disconnections would lead to denial of access to water. Further, a reduced role for the government in the water sector will lead to situations where the government will not be investing, and in some cases withdrawing, existing infrastructure that provides public access to water. As a result, future disconnections will have a more severe impact on the affected individuals.

**VI.3 PROVISION OF DRINKING WATER REDUCED – PUBLIC SOURCES OF WATER ARE GRADUALLY DISAPPEARING**

The rural drinking water schemes, such as Swajaldhara, provide for private water connections as well as public stand posts. However, public stand posts are usually closed soon after the completion of the scheme either because the fees for the same had repeatedly not been paid or because it is a decision of a more political nature. The closure may be caused by the desire to promote membership of the schemes that grant some rights and impose several responsibilities on the water users.

In the course of implementing urban water sector reforms, and in order to reduce revenue losses, the JNNURM and UIDSSMT schemes also envisage the phasing out of public stand posts. This includes the phasing out of hand-pumps in cities like Agra and Mathura where respectively 70% and 90% of the urban poor rely on groundwater for their drinking water needs. However, the reforms do not provide alternatives to ensure access to water, especially for the poor.
VI.4 **WEAKER GROUPS ARE SOMETIMES NEGATIVELY IMPACTED, IN PARTICULAR THE POOR, WOMEN AND CHILDREN, DALITS, SCs & STs**

The water law reforms have led to differential, and often discriminatory, treatment of certain groups of people. Drinking water reforms in India provide a good example. The Swajaldhara Programme, which is being implemented in Karnataka and Uttar Pradesh, is based on a demand-led approach and the cost recovery principle, which assumes that individuals possess the financial capacity to pay for access to water. The absence of provisions that favour the socially and economically backward sections of society may accentuate the existing socio-economic inequalities in access to water because the richer beneficiaries/users of the existing services will be entitled to further benefits because they can afford to pay for the new infrastructure.

Poor and marginalised people, often including persons belonging to scheduled castes or scheduled tribes, who cannot make the 10% upfront capital contribution are excluded from the schemes and thus only have access to existing public sources of water supply that are gradually disappearing. Amongst this group, the women and children, who are usually responsible for the collection of water, tend to suffer greater neglect. Further, the villages that suffer from the most severe water scarcity may have to pay more than other better-off villages, if water tariffs are fixed at the *panchayat* level. Their access to water is also reduced as they bear the burden of operation and maintenance costs.

Similarly, in the case of irrigation water reforms, the membership of WUAs is usually restricted to landowners only and reservation for women or members of scheduled castes and scheduled tribes is only made in exceptional circumstances. Even otherwise, as the WUA laws are only concerned with the allocation of water among its members, the interests of the poor and/or landless farmers are not considered.

Urban water supply reforms may also reinforce the socio-economic inequalities in access to water to the poor and/or those residing in areas with a lower water table. For example, in certain cities, such as Delhi, more than one legal regime applies to drinking water supply. But if drinking water is a fundamental human right, the differential treatment of people residing in different parts of the same city, especially where the new water laws favour the areas that already benefit from higher per capita availability of water is clearly unjustified.

In some cases, urban water supply reforms can provide access to water to individuals who are otherwise excluded. This can occur where private companies that enter the water sector as a result of the reforms agree to provide water services to slums/jhuggis/settlements that have been refused access by the government on ground of non-regularisation. In Delhi, there have been cases where politicians have used their allotted quotas to supply water to slums, which fall outside the jurisdiction of the Delhi Jal Board. However, such cases are simply the unintended by-product of reforms and the reforms do not remedy lack of regularisation. Overall, water sector reforms continue to exert a negative effect on the weaker sections of society.
VI.5 Limited Understanding of Decentralisation and Participation

Decentralization is generally defined as the transfer of authority from a central to a local government in the context of a constitutionally defined system of governance. In the water sector, the National Water Policy, 2002 provides a framework for decentralising decision making to the lowest level and allowing beneficiaries and other stakeholders to be involved from the project planning stage (para 6.8). Decentralisation in the case of water sector reforms involves the creation of user groups at the local level and the devolution of certain functions to them. WUA laws focus on the participation of landowners in the management of existing irrigation infrastructure rather than transferring control over all aspects of irrigation to people at the local level. Under the rural drinking water schemes, community participation translates into few rights and several new obligations and responsibilities.

The human rights understanding of participation incorporates a broad-ranging right which extends from project planning and design to its implementation and management of water infrastructure, as well as to the preparation of plans, policies, and legally binding instruments. Participation also includes everyone’s right to have access to information, which constitutes a condition for effective participation, and the right to have access to justice, which can ensure accountability in the participatory process.

Water sector reforms and the resulting water law reforms that have been undertaken in India only focus on participation at the tail end of the process. The beneficiaries of the new drinking water schemes (such as Swajadhar) are the ‘users’ and this category includes only the people who pay part of the capital costs of the scheme. Therefore, it represents only a segment of the general public. This does not give equal rights to all people.

VI.6 Conservation is Only a Front for Reforms that are not Environment Friendly

Concerns regarding the increasing scarcity of water and the recognition of the need to conserve and protect water have provided the justification for the water sector reforms’ emphasis on management. To this extent, environmental issues have certainly served as the starting point for water sector reforms. Unfortunately, environmental issues have received very little consideration in the implementation of the reforms. So, principles of environmental law, such as the precautionary principle, have not been included in the reform process.

Instead, water sector reforms are primarily concerned with access to, and control of, water resources. The ongoing reforms give importance to economic aspects such as financial sustainability of water supply utility and cost recovery. Further, the focus on water as an economic good may actually result in higher water use because private actors may encourage water users to use more rather than less water where the capital costs of investments are to be recovered through user charges.
VI.8 DEMOCRATIC IDEALS ARE NOT FULLY REALISED

The ongoing water law reforms suffer from a serious deficit inasmuch as they have failed to incorporate key democratic procedures. These include:

- access to information regarding the proposed reforms
- public participation in the decision-making process concerning the reforms
- access to courts for the public.

The principles of water sector reforms have been accepted as the basis of water law reforms in India. This has meant that neither Parliament nor state legislatures have engaged in developing appropriate laws and policies for the domestic context. For instance, people’s democratically elected representatives had limited say in the development of WUA laws. Similarly, the Maharashtra Water Resources Regulatory Authority Act was passed by the Maharashtra State Assembly in April 2005 following limited debates. One of the few provisions that were amended by the Assembly before adopting the Bill was a section calling for restricting access to water for farmers with more than two children. This was an important issue but by far not the central issue of the Bill.

Usually, the government/legislature is responsible for the drafting of new laws. Here, it is often international financial institutions that have driven the development and adoption of water laws in India. This has meant that state governments are more concerned about implementing law conditionalities imposed by these institutions than determining the needs and requirements of the public. For example, Uttar Pradesh Water Management and Regulatory Commission Act, 2008 was adopted as part of the World Bank’s Uttar Pradesh Water Sector Restructuring Project (UPWSRP).

In some cases, private consultants are involved in the drafting of water laws for the state governments. The Delhi Water and Wastewater Reforms Bill, 2004, which was drafted by Price Waterhouse Coopers, the World Bank’s preferred consultants, as part of the water sector reforms for Delhi is an example (Manthan 2007: A-42). In another case, the Bill that gave legal basis to the Madras Metropolitan Water Supply and Sewerage Board (Metrowater) was drafted by consultants, introduced in the State legislature in January of 1978, approved in April, and passed in June. This casts doubts over the level of debate and discussion that has preceded the finalisation of these new water laws.

Some of the significant reforms are being implemented through policies. In the rural drinking water sector, the Swajaldhara Programme and later the National Rural Drinking Water Programme have provided the framework for completely restructuring drinking water supply. Both these documents are government instruments adopted without a specific parliamentary mandate, and without discussing the appropriateness of the mechanism with the elected representatives of the public.
VII. AN AGENDA FOR FUTURE ACTION

VII.1 ENFORCING THE RIGHT TO INFORMATION, TRANSPARENCY AND ACCOUNTABILITY IN THE WATER SECTOR

Water sector reforms suffer from lack of transparency and accountability. This is ironical as one of the reasons for the introduction of water law reforms, such as WUA laws, was the lack of accountability of the government in delivering irrigation benefits to farmers. Private sector participation in urban water supply reforms has also been marred by lack of transparency and accountability, as was illustrated in the World Bank project to privatise Delhi’s water supply. Here comes the importance of right to information as a weapon to fight against the lack of transparency and accountability in the ongoing water reforms.

The Right to Information Act, 2005 provides citizens the right to access ‘information’ that is already held by or is under the control of a ‘public authority’. ‘Information’ is defined as any material in any form and includes information relating to any private body which can be accessed by the public authority under any law in force. However, the right is not absolute and certain categories of information are exempt from disclosure, unless the information sought by the applicant is in public interest. The procedure for obtaining information is as follows:

- The application should be made to the designated Public Information Officer of the public authority. The particulars can be found on the website of the public authority or the RTI portal (www.rti.gov.in).
- The applicant is only required to provide his/her name and complete postal address in the application and not the reasons for seeking the information.
- The application should be in writing (in Hindi, English or the official language of the area) and it can be sent by post or through electronic means or personally delivered to the office of the public authority.
- The application must be accompanied by the application fee (prescribed by the State governments), which is payable in cash or through a demand draft or a banker’s cheque or an Indian Postal Order payable to the Accounts Officer of the public authority. However, no fee is to be paid by applicants below the poverty line or if the information is provided after the prescribed period of thirty days.
- The applicant may be required to pay further fee for providing the information.

In the context of the ongoing water law reforms, the right to information has been invoked by citizens to seek information that can draw attention to the external pressures that are shaping the reform agenda. The Delhi Right to Information Act, 2001 was used by activists, led by a NGO called Parivartan, to seek information about a World Bank project for the Delhi Water Supply and Sewerage Project. This led to disclosure of information about the involvement of the World Bank in appointment of Price WaterhouseCoopers as consultant. Faced with intense public criticism, the Delhi government had to withdraw its loan application to the World Bank and the project has been on hold.
In Sathyamangalam village in Tamil Nadu, the members of the Bhavani river water, potable water and groundwater conservation movement filed RTI applications on the extent of river pollution. The villagers used the information received from the State Pollution Control Board to file complaints with various government departments regarding the discharge of untreated effluents into the river by paper and pulp factories in the region. This led to the suspension of power supply to some factories (Khurana & Sen 2009: 16).

Thus, any proposed water law framework must enshrine the right to information and ensure transparency and accountability of the actors involved in the water sector. This is necessary to safeguard procedural human rights and realise democratic ideals. The devolution of power to local bodies, as envisaged by the 73rd and 74th constitutional amendments, is critical. In rural areas, a case can also be made for further devolution of powers to Gram Sabhas, which are the local bodies most closely linked to the villagers. This will result in greater transparency and accountability and ensure that the benefits of rural water reforms are reaped and grievances are aired by the public and addressed by the concerned local bodies.

VII.2 Ensuring the Implementation and Enforcement of the Fundamental Human Right to Water

The right to water is recognised as a fundamental human right by the Supreme Court and various high courts. While this development is very important, this is not sufficient to guarantee water to every individual irrespective of caste, gender, land rights and financial ability to pay. Therefore, there should be express legal provisions that define human right to water. There should be sufficient opportunity and knowledge for individuals to approach the judiciary to enforce their fundamental human right to water.

VII.3 Towards a Drinking Water Legislation

The regulation of drinking water in India is presently based on a patchwork of rules, policies and schemes. These are not legally enforceable and their existence is subject to government discretion. In the absence of a drinking water law, it is not possible to ensure the implementation and enforcement of the fundamental right to water. Critics may point to the non-implementation of existing laws and argue that a drinking water law will not provide the solution. However, the very existence of a drinking water law can check the dismantling of the drinking water policies that were introduced by the government before the beginning of the reform process; and counter the negative impacts of some of the water law reforms that are being introduced in India.

The Government of India is considering the regulation of drinking water by making suitable provision in the integrated Food Law Bill or through a separate law. The DDWS has issued draft guidelines for drinking water regulations. In either case, the law must provide for capacity building, human resource development and strengthening the existing infrastructure for drinking water control and surveillance. Hence, the advocacy works need to emphasise the need for a drinking water legislation.
VII.4 Ensuring that States Effectively Devolve Power Recognised in the Constitution to Democratically Elected Local Bodies

The water sector reforms do not implement the 73rd and 74th constitutional amendments that envisage greater devolution of powers in respect of drinking water supply and sanitation to local bodies. In order to promote effective regulation of water resources, it is imperative that the State governments must devolve functions, finances and functionaries instead of engaging in limited and ineffective devolution of some powers and several responsibilities to the institutions at the local level. A successful example of devolution from Porto Alegre, Brazil is discussed in Box P.

**Box P: Devolution of Powers to Local Bodies: Porto Alegre, Brazil**

The city council of Porto Alegre transformed its water department into the Departamento Municipal de Agua e Egosto (DMAE) or the Municipal Department of Water and Sanitation Sewage. Although DMAE is wholly owned by the municipality, it has operational autonomy and financial independence. This means that DMAE is a separate entity from the municipal government and it can make its own decisions on how to invest the collected revenues. Also, DMAE does not receive subsidies from or makes payments to the municipality except for services provided by other public departments. DMAE can also borrow money without involving the municipality.

DMAE’s accountability is ensured through a well-defined management structure. Additionally, DMAE is subject to audit and it is expected to reflect the popular will on the allocation and reinvestment of its revenues. Further, all decision-making processes are open and transparent and the management is accountable to civil society groups.

The trend of creating new institutions, such as para-statals and VWSCs, which are distinct from the democratically elected local bodies, also needs to be addressed. If such institutions must be established, their members should be selected from within the democratic governance framework envisaged by the Constitution of India.

VII.5 Ensuring an ‘Integrated’ Perspective on Water that is Centred Around People and the Environment

The understanding of water as an economic good is a recurring theme in water sector reforms. At best, lip service is paid to the other dimensions of water, including the social and environmental aspects, which formed the basis for the
introduction of water reforms but are missing from the reforms that have been actually implemented. The absence of an integrated perspective, which takes into account these various aspects, has meant that the integrated water resources management model proposed by the reforms is incomplete and insufficient to meet our present requirements. In order to address these shortcomings, water law reforms must

- integrate all dimensions of water,
- prioritise water uses,
- reflect development in other areas of law such as environmental law, and
- contribute to the implementation of the human right to water and other human rights dependent on water.

It is also important to remember that human and ecosystem needs are linked. For instance, the implementation of the human right to water is dependent on the human right to a clean environment. Therefore, a certain percentage of existing water should be kept in reserve for environmental conservation and to ensure the sustainability of water flows.

- decisions on irrigation water use should be based on environmental law, including allocation based on social needs, prioritisation of subsistence crops and crops meant for the local population and selection of crops according to environmental considerations.

There is some recognition of this requirement within policymaking circles. For instance, before the commencement of the Eleventh Five-Year Plan, the Government of India asked the State Governments to sign a Memorandum of Understanding (MoU) in order to, inter alia, set up a mechanism for convergence of programmes for conservation of water and groundwater recharge. However, none of the states have signed the MoU so far. The NRDWP Guidelines also call for the formulation of a coordinating mechanism through convergence of related programmes at the field level, for example, National Rural Health Mission (NRHM), Mahatma Gandhi National Rural Employment Guarantee Scheme etc. As a result, recently, guidelines have been introduced for convergence of water conservation/irrigation works taken up under Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and the programmes of the Ministry of Water Resources. The Ministry of Rural Development has also emphasised the potential for convergence between the schemes of the various government departments, which have a strong sustainability component, at district levels.

**VII.6 Advocate for Participatory and Democratic Way of Introducing and Implementing Water Law and Policy Reforms**

The process of water law reforms has not followed democratic procedures and their implementation has also paid scant attention to democratic ideals. This highlights the need to advocate water law and policy reforms that recognise the human rights context of participation and promote decentralisation that leads to the effective devolution of power to local bodies, as envisaged in the Constitution. Hence, following points need to be advocated:

- Greater involvement of the public/civil society from the early stages of the reform process;
• Free flow of information about the proposed/ongoing reforms by the government;
• Discussion and debate among the elected representatives of the people before the adoption and implementation of any water law reforms.

VII.7 ADVOCATE FOR HUMAN RIGHT TO SANITATION

A number of efforts are in an ongoing stage in India to improve sanitation scenario. The government has been (and is spending) considerable amount of money in this regard. Almost all these efforts are being implemented through various policies and schemes. One major weakness of the present approach is it does not recognise sanitation as a basic right. Even though India had morally committed to recognise it after the SACOSAN-III Delhi Declaration, hardly any serious effort or debate in this regard is happening. In this background, the need for the recognition of sanitation as a basic right should be in the priority list of the advocacy work.
ANNEXES

ANNEX I: HISTORICAL DEVELOPMENT OF WATER LAWS

Pre-colonial period (before British rule)

<table>
<thead>
<tr>
<th>Laws of Manu</th>
<th>water pollution and its impacts on health</th>
<th>Little emphasis on formal water law - water was generally not perceived as a scarce resource</th>
</tr>
</thead>
</table>
| Arthashastra | • water users had to pay a water tax for cultivation even for a surface water source  
                 • reservoirs, embankments and tanks could be privately owned                     |                                                                                          |
| Muslim rule  | water was a common resource and everyone was entitled to free access and use            |                                                                                          |

Colonial period (before Independence)

- The British government’s initial interest in water laws was based on the need to control irrigation water for economic reasons.
- The Northern India Canal and Drainage Act, 1873 regulated irrigation, navigation and drainage in Northern India. It asserted the government’s right to control water use for the benefit of the broader public. Ponds or other collections of water created by humans were excluded.
- The Madhya Pradesh Irrigation Act, 1931 asserted absolute government control over all surface water.
- Irrigation laws were concerned with the allocation of water among landowners, which created a direct link between land rights and water.
- Common law also linked access to surface water and groundwater with rights over land.
## ANNEX II: DIVISION OF POWERS IN RESPECT OF WATER

<table>
<thead>
<tr>
<th>STATE GOVERNMENTS</th>
<th>CENTRAL GOVERNMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary responsibility for lawmaking in respect of water supplies, irrigation and canals, drainage and embankments, water storage and water power [Entry 17 of List II of the Seventh Schedule of the Constitution of India]</td>
<td></td>
</tr>
</tbody>
</table>

### CENTRAL GOVERNMENT

1. **Power to regulate and deal with inter-state rivers and river valleys [Entry 56 of List I of the Seventh Schedule]**
   - **River Boards Act, 1956**
     - framework for the establishment of river boards by the Central Government to advise state governments concerning the regulation or development of an inter-state river or river valley
     - not been applied in practice and boards have not been established
     - The river boards could not have provided a framework for river basin-wide planning because of their advisory nature.

2. **Power to frame laws on subjects that are not within its powers, if two or more State legislatures decide that the Centre should pass such laws [Article 252]**
   - **Water (Prevention and Control of Pollution) Act, 1974**
     - elaborate administrative scheme through a licensing system to prevent, and protect against, water pollution and maintain and restore the wholesomeness of water
     - The Central Pollution Control Board and the State Pollution Control Boards set standards and regulations for prevention and control of pollution.

3. **Power to frame laws to resolve inter-state water disputes [Article 262]**
   - **Inter-State River Water Disputes Act, 1956**
     - establishment of specific tribunals to adjudicate inter-state river disputes that have not been solved through negotiations
     - used in several cases, including the Narmada Water Disputes Tribunal

4. **Power to frame laws on shipping and navigation on national waterways and to regulate the use of tidal and territorial waters [Article 262]**

5. **States require permission for major irrigation projects under the Environment (Protection) Act, 1986 and notifications issued by the Ministry of Environment and Forests**

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ANNEX III: INCENTIVE SCHEMES - NIRMAL GRAM PURASKAR

In October 2004, in order to strengthen the TSC, the Ministry of Rural Development launched an incentive scheme, the ‘Nirmal Gram Puraskar’ (clean village prize), to promote sanitation in rural India with a cash reward. The main objectives are:

(i) to bring sanitation to the forefront of social and political discourse for development in rural India;
(ii) to develop open defecation free and clean villages that will act as models for others to emulate;
(iii) to give incentive to PRIs to sustain the initiatives taken by them to eliminate the practice of open defecation from their respective geographical area by way of full sanitation coverage; and
(iv) to increase social mobilisation in TSC implementation, by recognising the catalytic role played by organisations in attaining universal sanitation coverage.

PRIs that achieve 100% sanitation coverage of individual households and schools, freedom from open defecation and environmental cleanliness are eligible for the award. In addition, individuals and organizations, who have been the driving force for effecting full sanitation coverage in their respective geographical areas are also eligible. The incentive pattern (in Rs. lakh) was based on population criteria as follows:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Gram Panchayat</th>
<th>Block</th>
<th>District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population Criteria</td>
<td>Less than 1000</td>
<td>1000 to 1999</td>
<td>2000 to 4999</td>
</tr>
<tr>
<td>PRI</td>
<td>0.50</td>
<td>1.00</td>
<td>2.00</td>
</tr>
<tr>
<td>Individuals</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Organisation/s other than PRIs</td>
<td>0.20</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

However, following the 2010 Guidelines, these incentive amounts will only be offered to PRIs and organisations and officials will receive citations and mementos in recognition of their efforts. During 2004-2005, 40 PRIs in six states received the award. This number increased to 769 PRIs in 14 states (2005-2006) and 4,959 PRIs in 22 states (2006-2007) (TARU & UNICEF 2008; TSC 2007). This includes PRIs from Karnataka and Uttar Pradesh although the number of awardees from these two states has been shrinking. So, during the year 2008-2009, only six PRIs from Uttar Pradesh received the Nirmal Gram Puraskar (UNI 2009).

The Nirmal Gram Puraskar and State-sponsored incentive schemes have triggered a healthy competition in rural areas. However, concerns remain over the sustainability of sanitation coverage. The practice of open defecation has resurfaced even in villages that have been awarded. Other problems include poor
demand, clogged toilets due to lack of maintenance back-up and insufficient number of trained masons, no use of the constructed toilets, no behavioural change due to poor social mobilisation and lack of follow-up monitoring. The lack of initiative among the functionaries of the PRIs is also a hurdle.

An example of the problems associated with the sustainability of such awards is village Akka Delari in Munda Pandey block of Moradabad district. Every house has an attached toilet and the village was awarded the Nirmal Gram Puraskar in 2005-2006 for eliminating open defecation (Mustafa 2006). However, due to several of the factors mentioned above, problems have resurfaced (Singh 2007).

ANNEX IV: WATER LAW AND POLICY IN KARNATAKA

Total population: 5.273 crore [2001 Census]
- urban population: 1.792 crore
- rural population: 3.481 crore

Rural water supply & sanitation

The Rural Development & Panchayat Raj Department (RDPR) is the nodal agency for the planning, implementation, monitoring and evaluation of all rural development activities in the State of Karnataka. It was responsible for providing drinking water in over 59,630 rural habitations in conformity with the ARWSP norms as well as the State-sponsored rural water supply schemes, including
- Piped Water Supply scheme (PWS) for villages/habitations with population more than 1000
- Mini Water Supply and Saral Jal scheme (MWS) for villages/habitations with population between 500 and 1000
- Bore Wells with Hand Pumps scheme (BWH) for villages/habitations with population less than 500 (RDPRD 2008: 48).

The RDPRD was also responsible for the implementation of the Sector Reforms Pilot Projects in three districts, namely Mysore, Dakshina Kannada and Bellary, from June 2000 to December 2003. It was also the nodal agency for the implementation of the Central-government sponsored ARWSP, Swajalhara project and RGNDWM, the Sub-Mission projects for rural habitations with water quality problems under the RGNDWM. It is responsible for the State-sponsored rural water supply schemes.

External agencies have played an increasingly important role in the development of rural water supply policies. The RDPRD was responsible for the implementation of the World Bank-assisted Karnataka Integrated Rural Water Supply and Environmental Sanitation Project (1993-2000), which was implemented in two phases and covered more than 1,100 villages in 12 districts (James 2004: 40). Under the project, the beneficiary communities initially shared part of the capital costs of the project (30% of the drainage works) and later took up the full operation and maintenance responsibilities. 89,000 rural household latrines were built during the project period (Saleth & Sastry 2004: 178-180).
Similarly, from 1996 to 2000, the RDPRD implemented the DANIDA-assisted Rural Drinking Water Supply and Sanitation Project (Jalanidhi-2) in 105 GPs in four districts, namely Kolar, Bijapur, Bagalkot and Chitradurga with an outlay of Rs. 51 crore (Rs. 39.60 crore (DANIDA) and Rs. 11.70 crore (State Government)).

In 2001, the Karnataka Rural Water Supply and Sanitation Agency (KRWSSA) was established as the functionally autonomous State Water Supply and Sanitation Mission. It is registered as a society and its primary objective is to improve access to safe sustainable drinking water supply and sanitation services to rural communities. The KRWSSA is now responsible for the implementation of the Centre-sponsored rural water supply programmes, as well as the externally-aided projects. In fact, the agency was established to implement the World-Bank assisted ‘Jal Nirmal Project’ and the Memorandum of Association and rules for the KRWSSA were prepared keeping in view the parameters set by the World Bank. The World Bank-assisted Second Karnataka Rural Water Supply and Sanitation Project (‘Jal Nirmal Project’) is discussed in Box Q below.

**Box Q: World Bank’s Jal Nirmal Project**

- World Bank-assisted project, implemented by the KRWSSA
- Important features
  - changed role of the government from provider to facilitator
  - demand responsive participatory approach
  - strengthening the decentralization process by empowering the lowest level PRIs
  - community capacity building to Plan, Implement, Operate and Maintain the water supply and sanitation facilities
  - devolution of responsibilities to grass root level to ensure sustainable community managed water supply and sanitation systems
- covered 11 districts (Bagalkot, Belgaum, Bidar, Bijapur, Dharwad, Gadag, Gulbarga, Haveri, Koppal, Raichur and Uttar Kannada), 9571 habitations and 209 Gram Panchayats. It was to benefit 1.45 crore people.
- approved in 2001; initially implemented over a 6-year period from January 2002 to December 2007; later extended up to 30 June 2010
- initially approved for Rs.929.67 crore [Rs. 728.57 crore (World Bank) + Rs. 99.76 crore (Government of Karnataka) + Rs. 48.58 crore (Gram Panchayats) + Rs. 52.76 crore (community)]

There is also a proposal before the State Government to establish a board for handling drinking water supply schemes and sanitation in rural areas (like the KUWSDB).

Pursuant to the 73rd constitutional amendment, Karnataka was the first state to enact the Panchayat Raj Act, 1993. The three-tier PRI structure that consists of 29 Zilla Panchayats, 176 Taluka Panchayats, and 5628 Grama Panchayats. Karnataka is also among the few states that has devolved all the 29 functions, including drinking water supply and sanitation services, to the PRIs. Zilla Panchayats are responsible for planning, implementing and monitoring all the developmental
programmes in the district. The Taluka Panchayats liaison between Zilla Panchayats and Gram Panchayats and are responsible for implementing and monitoring developmental works at the taluka level. Gram Panchayats prepare their own plans and implement them after getting approval from the Taluk Panchayats. They are also responsible for fixing the rate for water supply and collecting water charges and for the operation and maintenance of PWS and MWS schemes and hand pumps (Raju et al 2007). In the case of the BWH, TPs continues to provide engineering support for repairs.

The State government has undertaken capacity building programmes for PRIs, as a part of State-sponsored, Central Government-sponsored and/or externally-funded rural water supply and sanitation schemes. An agreement between the State government and the World Bank led to the introduction of the Gram Swaraj Project in 2006, which gives special emphasis to improve the service delivery mechanism of GPs with respect to the management of public resources and the delivery of services that the local people prioritize and decide. Over a five-year period, the project seeks to build capacity of the three-tiers of PRIs by imparting training to the functionaries (RDPRD 2008: 22-24).

In 2003, an effort was made to amend the Karnataka Panchayat Raj Act, 1993 in order to weaken its provisions but this met with fierce opposition. The proposal for amendment was reintroduced in 2007 and the decision is pending (Reddy 2009).

*Traditional sources of water*

The main traditional sources of water used to be community-managed open dug wells, step wells, tanks, ponds, lakes and small-scale irrigation reservoirs. These structures used to form an integral part of water governance in Karnataka (Raju et al 2007). Details of one of these traditional water governance structures – tanks - are provided in Box R below.

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7 Sections 58 (1), 77, 78, 82, 85 and 86 of the Panchayat Raj Act 1993 allow the GPs to perform various functions including construction repairs and maintenance of drinking water wells, tanks and ponds. The GP also has the power to make bye-laws regarding the provisions of water supply; and for conserving and maintaining water supply works either on its own or by annual contract by generating adequate resources.
Box R: Traditional sources: tanks or kere

- principal source of water for 19% of the households in rural Karnataka
- provided water for irrigation, domestic usage, water for livestock, washing clothes, supporting livelihoods of the poor, protecting local environment and sustaining water resources
- one of the earliest expressions of indigenous knowledge systems in rainwater harvesting practices
- significantly concentrated in the Western Ghats and hilly areas; dried up in the plains due to lower rainfall and extraction of groundwater for agriculture and industrial use.
- Reasons for decline:
  - tanks and ponds gradually filled with silt, thus affecting their storage capacity, which indirectly affected groundwater levels.
  - decline in the social values attached
  - inefficiencies in the government in tank management like financial crunch, poor accountability, political interference
  - increased access to alternative source of water
  - changed user expectations from the tanks owing to the increase in emphasis on food production
  - state’s emphasis on major and minor irrigation

The reforms are leading to the passage of new water laws that are abolishing customary norms concerning access and control over water. However, the Government of Karnataka has transferred all the tanks having a command area of upto 40 hectares to the control of grama panchayats with effect from April 2004 (RDPRD 2008: 2). It has also set up a separate and autonomous society called Jala Samvardhane Yojna Sangha (JSYS) as a special purpose vehicle with the power to make decisions faster and even simplify procedures for effective implementation of World Bank projects, such as the Community Based Tank Management Project.

Water quality

There are no defined roles in the RDPR for maintaining water quality by any particular segment. However, the Rural Development and Engineering Department (RDED) is responsible for testing the quality of drinking water samples in rural areas on a massive scale. The RDED tests water quality before installation of the borewell but no regular monitoring is followed upon (Raju et al 2007).

Rural sanitation

The RDPRD was responsible for the implementation of the CRSP. 119,000 rural household toilets were constructed with the financial and technical assistance of UNICEF. In October 1995, the RDPRD implemented the State-sponsored Nirmala Grama Yojana (clean village plan), under which rural households could receive
financial assistance to build latrines (Saleth & Sastry 2004: 178). In 2002, the RDPRD launched the Swachha Grama Yojana (total village sanitation plan) to provide integrated sanitation services. The nature of work includes paving of internal roads/streets in the village and construction of sullage/storm water drains for a length of about 2 kms.; construction of school latrines and individual household latrines; and provision of community compost yards. In 2007, the RDPRD launched the Suvarna Gramodaya Yojane to develop 1,000 villages every year at a cost of Rs. 1 crore each. These villages will be provided with infrastructure and facilities, including water supply and sanitation.

Since 2001, the KRWSSA has been responsible for the implementation of the TSC (or Swabhimaanakaggi Swachhate). Out of the total 27 districts, the TSC was implemented in three pilot districts, namely Mysore, Dakshina Kannada and Bellary from 2000 (under the Sector Reform Pilot Projects) and its implementation commenced in the remaining 24 districts from 2 October 2005. So, all the 5654 GPs in Karnataka are now covered by the TSC. The PRIs are playing a pivotal role in the implementation of the TSC. The beneficiaries are required to bear 20% of the cost of individual/institutional latrines and of Sanitary Complexes for Women; and 10% of the cost of School Sanitation. The status of the coverage of TSC in Karnataka is as follows (WaterAid 2008):

<table>
<thead>
<tr>
<th>Status at Census 2001</th>
<th>TSC Target</th>
<th>Achievement against TSC Target (as on 15.10.2008)</th>
<th>Overall Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total no. of rural households</td>
<td>Households with toilet</td>
<td>Households without toilet</td>
<td>Numbers</td>
</tr>
<tr>
<td>66,87,839</td>
<td>12,05,170 (18.02%)</td>
<td>54,82,669</td>
<td>54,27,370</td>
</tr>
</tbody>
</table>

However, despite availability of funds, the percentage coverage of individual household latrines (IHHLs) in the various districts of Karnataka, as on 31 August 2009, was very poor. Karnataka is in the 19th position in terms of implementation of the TSC with only 40.3 per cent success rate. In order to accelerate the TSC at the state-level, in October 2009, the Karnataka Rural Water Supply and Sanitation Board launched ‘Nyrmalya’, a state-level total sanitation campaign, to ensure that every rural household has a toilet facility by 2012. Like the Nirmal Gram Puraskar, the State Government has also instituted awards for grama, taluka and zilla panchayats that achieve 100 per cent target and give thrust to cleanliness and sanitation.

Urban water supply & sanitation

There are 219 Urban Local Bodies in Karnataka including eight City Corporations (population above 3 lakh), 44 City Municipal Councils (population 50000 to 3 lakh), 94 Town Municipal Councils (population 20000 to 50000), 68 Town Panchayaths (population 10000 to 20000) and five Notified Area Committees.
The Urban Development Department is responsible for urban drinking water supply in the State of Karnataka. The Karnataka Urban Water Supply and Drainage Board (KUWSDB), a statutory body created in 1975, has the mandate for planning, designing and implementation of water supply and sewerage schemes in 208 urban areas (except Bangalore city and seven other urban areas around Bangalore city). It is responsible for the implementation of the centrally-sponsored AUWSP. 45 schemes were sanctioned in Karnataka, out of which 42 have been completed/commissioned/partially commissioned while 3 are under progress, as of 17 November 2008. The Board is also responsible for the Piped Water Supply Scheme for the towns having population less than 20,000 as per 1991 census. The State Government provides grant-in-aid.

Following the National Water Policy, the Karnataka Urban Drinking Water and Sanitation Policy was released in 2002. During 2003-2004, the State Government, through the Directorate of Municipal Administration, launched the Nirmala Nagara Yojana in 32 selected towns to improve access to toilets for urban poor and to promote rain water harvesting practices.

In 2004, the Government of Karnataka and the World Bank launched the Karnataka Urban Water Sector Improvement Project (KUWASIP) to ensure better water supply in urban areas and to make the sector attractive for private players. The project partners are Karnataka Urban Infrastructure Development & Finance (KUIDFC), KUWSDB, the City Municipal Corporations of Belgaum, Gulbarga and Hubli-Dharwad; and CGE and Seureca, Paris, France. The pilot 24x7 water supply scheme project was executed in 27 wards of Hubli-Dharwad, Belgaum and Gulbarga at a cost of Rs 237 crore.

In March 2010, the State Government has decided to extend the scheme to the entire city corporations of Hubli-Dharwad, Belgaum and Gulbarga at an estimated cost of Rs. 735 crore. This project will be implemented on the PPP model. The private operator will invest 50 per cent (Rs 367 crore), the Central Government funds under the Viability Gap Funding would be 20 per cent (Rs 147 crore), the State Government will contribute 20 per cent (Rs 147 crore), and the ULB’s contribution would be 10 per cent (Rs 73 crore) (Prabhu 2010). The State Budget (2010-11) also states that this scheme will be extended to 16 other cities.

The JNNURM and the UIDSSMRT programs cover several towns and cities in Karnataka. The KUIDFC is the state-level nodal agency for the JNNURM. Bangalore was covered by the Centrally-sponsored megacity scheme but now falls under the JNNURM. In addition, the Greater Bangalore Water and Sanitation Project aims at providing water supply and sewerage facilities to eight ULBs around Bangalore (now part of the Bruhat Bengaluru Mahanagara Palike). The water supply project is being financed under an innovative Pooled Finance concept under which Rs.100 crore has been raised through Tax Free Pooled Municipal Bonds from the open market without government guarantee. An element of Beneficiary Capital Contribution has been introduced in funding the project cost. The sewerage part of the project is being funded under the World Bank assisted Karnataka Municipal Reforms Project.
On the lines of the JNNURM, the proposal for the Karnataka Urban Renewal Mission (which will not cover Bangalore) was to be finalised in January 2010 but it has still not been finalised. For Bangalore, the recommendations of the Kasturirangan Committee Report on Urban Governance will apply.

For the ULBs (except Bangalore), the ‘Mukhyamanthri Nagarothana Yojane’ will be started from 2010-11. The State Government will provide Rs.600 crore for the specific development programmes, such as drinking water, sewerage system and road development. The State Government has also committed to provide Rs.304 crore to expand the drinking water supply schemes in 120 fast-growing towns.

Irrigation law

Instead of enacting a new legislation, the Karnataka Irrigation Act, 1965 was amended in 2000 to provide for the formation of WUAs in the jurisdiction of six command area development authority (CADA) regions. The WUAs are registered under the Karnataka Cooperative Societies Act (Hooja 2004). Under a new policy framework, which was prepared by the Karnataka Water Resources Authority (below) in 2009, the WUAs (comprising 51 per cent of the farmers drawing water from the irrigation project) are empowered to develop irrigation infrastructure by availing themselves of institutional finance, and to levy and collect water charges from farmers. A portion of the collected water charges can be retained by the WUAs for the maintenance of canals (Prabhu 2009).

Groundwater

Groundwater is the major source of drinking water for 90% of the rural population in Karnataka. The Karnataka Ground Water (Regulation for Protection of Sources of Drinking Water) Act, 1999 came into force in 2003. It regulates the exploitation of groundwater for protection of public sources of drinking water and prohibits the sinking of borewells within 500 metres of public sources of drinking water without the permission of an appropriate authority. The authority is authorized to avert withdrawal from existing wells or even a watershed area by declaring any area as water scarce to protect drinking water wells. The Act also empowers the local authorities to close down a private borewell, if it is affecting drinking water source, thus, indirectly making farmers to shift to less water intensive crops.

With no stringent regulations on groundwater, the groundwater resources have been overexploited. Recently, the Karnataka Ground Water (Regulation and Control of Development and Management) Bill, 2009, which has been drafted on the basis of the provisions suggested in the Model Bill, has been passed.

Independent water regulatory authority

Unlike the UPWMRC and the MWRRA, which were passed in the legislative assembly, the Karnataka Water Resources Authority (KWRA) was created vide a Government Order in September 2008 and, therefore, it is not a legally constituted decision making body. At present, it is an advisory body that has the potential to become a water regulatory authority in the future (Dharmadhikary 2008).
KWRA comprises of 21 members who include bureaucrats and government representatives and members from civil society including farmer unions and WUAs. However, not only are the latter severely outnumbered, they are yet to be identified. This casts doubts about the objectivity of the authority.

The mandate of the KWRA includes to “propose a water tariff system and fixation of tariff for full cost recovery in a specified time bound manner for different water uses and areas”. Like other IRAs, full cost recovery is likely to undermine KWRA’s independence to bring in social justice parameters. The proposal for the establishment of the Karnataka Urban Water Supply and Sanitation Council, which will regulate the water and sanitation sector, is also under consideration.
ANNEX V: WATER LAW AND POLICY IN UTTAR PRADESH

Total population: 16.61 crore [2001 Census]
- urban population: 3.46 crore in 670 towns and cities
- rural population: 13.15 crore in 97069 habited villages comprising of about 260110 habitations

Rural water supply & sanitation

The Uttar Pradesh Jal Nigam, which was formed pursuant to the Uttar Pradesh Water Supply and Sewerage Act, 1975, is responsible for the development and regulation of water supply and sewerage services and for matters connected therewith. Piped water supply facility has been provided in 28923 habitations. The UP Jal Nigam was responsible for the implementation of the ARWSP and the State-sponsored Rural Water Supply-Sewerage program.

Besides Maharashtra and Karnataka, Uttar Pradesh has been one of the major recipients of external assistance for rural drinking water supply and sanitation projects. The main objective of the World Bank-assisted Uttar Pradesh Rural Water Supply and Environmental Sanitation Project (1996-2003) was to promote a demand-led approach to improve water supply and environmental sanitation services in the State. Other rural water supply projects have also adopted this approach.

Now, the State Water and Sanitation Mission is responsible for the implementation of the Central Government-sponsored programmes and the externally-funded projects. In October 1999, the Government of India initiated the Jal Nidhi Project in five districts of Uttar Pradesh. Subsequently, in January 2002, its management was transferred to the Project Management Unit of the Swajal Project. The Jal Nidhi project was closed on 31 March 2004 and subsequently merged with the Swajaldhara Programme.

In its budgetary outlay for 2009-10, the Uttar Pradesh government has set aside a total of Rs 106.64 crore towards the Rural Drinking Water Programme (RDWP). Of this, Rs 11.56 crore has been ear-marked for setting up new drinking water facilities across the rural areas of the State.

Pursuant to the 73rd constitutional amendment, the Uttar Pradesh Panchayat Laws (Amendment) Act, 1994 amended the Uttar Pradesh Panchayat Raj Act, 1947, and the Uttar Pradesh Kshetra Samiti and Zila Parishad Adhinium 1961. At the beginning of 1999, the three-tiered PRI structure comprised of 83 Zilla Panchayats; 901 Kshetra (or Taluka) Panchayats; and 58,620 Gram Panchayats. The responsibility for implementation of the drinking water supply schemes has devolved to the PRIs. The State government has also undertaken capacity building programmes for PRIs, as a part of State-sponsored, Central Government-sponsored and/or externally-funded rural water supply and sanitation schemes.

Zilla Panchayats are responsible for planning, implementing and monitoring all the developmental programmes in the district. Taluka Panchayats liaison between
Zilla Panchayats and Gram Panchayats and are responsible for implementing and monitoring developmental works at the taluka level. Gram Panchayats prepare their own plans and implement them after getting approval from the Taluka Panchayats. They are also responsible for fixing the rate for water supply and collecting water charges. Gram Panchayats also have the power to frame bye-laws in certain cases, but the State Government reserves the right to make rules in respect of action in regard to water supply and sanitation, as well as the carrying out of functions and duties of the Gram Panchayat etc.

Water quality

The Community Participation Unit (CPU) of the Uttar Pradesh Jal Nigam is implementing works related to “Water Quality Survey” and the National Rural Drinking Water Quality Monitoring & Surveillance Programme.

Sanitation

The Panchayati Raj Department, which was responsible for the implementation of the CRSP in Uttar Pradesh, is now responsible for the implementation of the TSC in the state. The TSC was introduced in four districts in 1999, as part of the Sector Reform Projects, and it is now being implemented in all 70 districts. The State is targeting to become an Open Defecation Free state by the end of the Eleventh Five-Year Plan (March 2012) (TSC 2007: 29). The TSC has led to an increase in the sanitation coverage among rural households in Uttar Pradesh from 19.23 percent in 2001 to 40 per cent in 2007. In order to accelerate the TSC, from the year 2004-2005, the State Government launched a special incentive scheme through the panchayats. Under this scheme, all the BPL families and 10% of the APL families are being given a special incentive.

Urban water supply & sanitation

In 2002, there were 628 urban local bodies in Uttar Pradesh, including 12 Nagar Nigams, 193 Nagar Palika Parishads and 423 Nagar Panchayats. Out of this, 623 towns are covered with piped water supply. Three mega cities receive 150 lpcd, 34 towns with population more than one lakh where sewerage system exists receive 135 lpcd, and 586 other towns get 70 lpcd.

The Centrally-sponsored AUWSP was started in the State in the year 1994-95 and out of the 425 towns having population less than 20,000 as per the 1991 census, the Central Government sanctioned schemes for 390 towns costing Rs. 308.30 crore. The remaining 35 towns had adequate water supply system. As on 17 November 2008, 390 schemes have been completed/commissioned/partially commissioned and the remaining 79 are under progress.

From the year 2003-2004, the State Government has included urban water supply under the District Plan. Although the practice of giving aid to ULBs for implementing water supply schemes was discontinued after the 74th constitutional amendment, it was revived from the year 2005-06. The State government now gives interest free loan from revolving fund to various ULBs on their request for implementation of water supply and sewerage schemes in urban areas.
Further, seven cities - Kanpur, Agra, Varanasi, Allahabad, Lucknow, Meerut and Mathura - have been included under the JNNURM. As metered water supply is mandatory in the approved infrastructure development schemes under the JNNURM, the same has been introduced. The State budget also provides for the UIDDSMT. Pursuant to the National Urban Sanitation Policy, the Urban Development Department of the State of Uttar Pradesh has also prepared the Draft Urban Sanitation Policy, 2009.

Irrigation law

The State Water Policy, 1999 called for the effective and decisive involvement of WUAs in planning, design, development and management of water infrastructure/facilities, including their operation and maintenance. Accordingly, the Uttar Pradesh Participatory Irrigation Management Act, 2009 was passed.

Groundwater law

There is no such law in Uttar Pradesh but a bill has now been introduced, the Uttar Pradesh Groundwater Conservation, Protection and Development (Management, Control and Regulation) Bill, 2010.

Independent water regulatory authority

The Uttar Pradesh Water Management and Regulatory Commission Act, 2008 (UPWMRC Act,) came into force in October 2008 and the independent water regulatory authority, the Uttar Pradesh Water Management and Regulatory Commission (the ‘Commission’), has been established. The Commission consists of an ‘independent’ panel of experts in the field of water resources, water resources economy, drinking water and wastewater management and agriculture/land management and is headed by a retired Chief Secretary of the State Government or Secretary of the Central Government with experience of water resources-related departments.

The Commission has the power to determine the allocation and distribution of water entitlements to different user groups. But in view of the continuing acceptance of the link between land rights and water use, the allocation of entitlements in proportion to the land owned may reinforce the power and control of the dominant landowning group and further disempower the marginalized sections of society. The Commission also regulates the terms, conditions, and procedure for determination of revenues and tariffs. It is required to set tariffs for water use based on the cost-recovery principle with “due consideration to all costs including administration, operation, maintenance, depreciation, and subsidies”. However, the recovery of part of capital costs (as depreciation) can pave the way for privatization in water sector. The provision for recovery subsidy cost from the water tariffs will also impose tremendous pressure on the service providers to

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8 The Act defines entitlement as, ‘any authorization by the Commission to use the water for the specified purpose...’ (section 2 (h)).
reduce the subsidy component of the costs to enhance already limited revenue collected from water tariffs, which will make water less affordable.

However, the Act does not include an explicit provision for the creation of water markets. There is no provision of recovery of return on investments or profits from water tariff either. Once this level of recovery is reached, it is argued that, the water sector will be able to attract more and more private investors since there will be a provision for certain percentage of tariff to be collected as profit for the investors.

The Act also takes a typical ‘utility regulation’ approach (that includes ‘economic’ and ‘service’ regulation) in that the Commission is responsible for the regulation of the procedure and conditions for granting, revocation, and amendment of licenses as well as the determination of standards of services and ensuring reporting on standards from the licensees. The Commission will also approve the planning regime for groundwater and surface water use (the Integrated State Water Plan or the ISWP), which is to be prepared by the State government. This raises concerns of de-politicization of water resource planning.

Although the Preamble of the UPWMRC Act specifically mentions that the Commission shall facilitate and ensure judicious, equitable and sustainable management, allocation and optimal utilization of water resources for environmentally, economically sustainable development of the State, the term ‘equity’ is not defined or mentioned anywhere else in the Act. Insofar as water conservation is concerned, the Commission has the power to penalize polluters to the extent of withdrawal of entitlements.

The Commission is empowered to take key decisions on water tariff and water distribution but it is not directly accountable to the public. In the absence of other avenues, the public can exercise control over the activities of the Commission by ensuring that it follows transparent, accountable and participatory processes. However, the Act does not provide for stakeholder consultation in formulation of tariff regulations; and/or ‘prior publication’ of regulations that will be prepared by respective regulators and rules that will be prepared by the government for implementation of the Act.
<table>
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<tr>
<th>Name of organization</th>
<th>Contact details</th>
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<tr>
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<td><strong>2. Arghyam (Karnataka)</strong></td>
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<td><strong>3. Bharatiya Agro Industries Foundation (BAIF) Development Research Foundation (Karnataka and Uttar Pradesh)</strong></td>
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<td><strong>4. Biocon Foundation</strong></td>
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<td><strong>5. Centre for World Solidarity (Andhra Pradesh)</strong></td>
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<td><strong>11. Naandi Foundation</strong></td>
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<td>36, Green Avenue, Behind Sagar Campus, Chunna Bhatti, Bhopal 462016, Madhya Pradesh; Tel: +91-755-</td>
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<td>Society for Promoting Participative Ecosystem Management (SOPPECOM) (Maharashtra)</td>
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<td>Tarun Bharat Sangh</td>
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<td>16.</td>
<td>WaterAid</td>
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