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NEW POLICY FRAMEWORK FOR RURAL DRINKING WATER SUPPLY

SWAJALDHARA GUIDELINES

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New Policy Framework for Rural Drinking Water Supply: Swajaldhara Guidelines

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This article discusses the central government policy for drinking water supply in rural areas. It examines its evolution from the 1970s onwards and focuses, in particular, on the reforms of the past decade, looking more specifically at the Swajaldhara Guidelines. These reforms are of capital importance because they seek to completely change the rural drinking water supply policy framework.

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The primacy of drinking water supply in water law is undisputed. This is reflected in the recognition of the fundamental right to water whose existence has been repeatedly confirmed by the Supreme Court.[1] This is also reflected in the importance that the central and state governments give to the fulfilment of drinking water needs. Thus, all water policies that prioritise water uses put in principle drinking water as their top priority.

This unchallenged importance of drinking water is surprisingly not carried in legislative enactments. Indeed, in a context where water law has developed in a sectoral manner and includes in each state a number of laws covering a variety of water uses such as irrigation and different water bodies such as groundwater, the absence of a drinking water legislation is very noticeable. This cannot be dismissed as a relic of the past since a host of recent legislations adopted as part of ongoing water law reforms fail to give drinking water the place it deserves.

The absence of drinking water legislation does not imply that the government undertakes activities in this sector without a policy framework. In fact, the recognition of the importance of fulfilling the water needs of the whole population and the perceived slackness of state governments in this area has led the union government to intervene through policy instruments and by way of funding water infrastructure, in particular in rural areas.

This article focuses on the evolving policy framework for drinking water supply in rural areas at the union level. It examines its evolution from the 1970s onwards and focuses in particular on the reforms of the past decade, looking more specifically at the Swajaldhara Guidelines. These reforms are of capital importance because they seek to completely change the rural drinking water supply policy framework.

1 Policy Framework

The law and policy framework for rural water supply includes different elements. The recognition of the existence of a fundamental right to water in the Constitution implies that all drinking water laws and policy frameworks directly fall under this general mandate. The same is true with regard to the decentralisation framework adopted in the context of constitutional amendments. Existing water laws also bear on drinking water supply in direct and indirect ways. This is, for instance, the case of groundwater legislation that specifically exempts from the permit system put in place hand-operated devices. Overall, while there are a number of constitutional or legislative principles and norms that apply,

the documents that really matter in practice are the non-binding policy frameworks adopted by the government.

1.1 Pre-Reform Policy Framework

The provision of drinking water is primarily the responsibility of states. Yet, the union government has played an important role in fashioning the policies that states apply and provided significant funding to ensure access to water in rural areas. The Rajiv Gandhi National Drinking Water Mission (RGNDWM) has been the key institution with regard to the development of policies and the administration of the rural drinking water sector. Among the schemes it implements, the Accelerated Rural Water Supply Programme (ARWSP), which is funded by the government of India and state governments, plays a central role. The ARWSP was first introduced in 1972, and has been a central component of the government's attempts to ensure full coverage of all habitations throughout the country. It continues to provide the basis for the union government's interventions in rural drinking water.

The ARWSP Guidelines provide the core framework used by the RGNDWM in ensuring the provision of drinking water to all habitations in the country.[2] The guidelines provide several key policy elements. First, they define the different levels of coverage. Non-covered habitations are defined as having access to less than 10 litres per capita per day (lpcd). Partially covered habitations are those having access to 10 to 40 lpcd. Covered habitations are defined as having access to 40 lpcd. Quantity is not the only criterion to determine whether a habitation is covered. The source of water also needs to be within 1.6 km or 100 metre elevation in mountain areas. The water should also not be affected by quality problems even though no specific standards for determining quality are included and must thus be indirectly inferred from existing standards. Another criterion is that a given public source of water such as a handpump should not be used to serve more than 250 people.[3]

The minimum level of 40 lpcd is acknowledged by the RGNDWM as a basic level of coverage which should be increased over time. Thus, in states where all habitations have been covered at the level of 40 lpcd, the government of India has approved that the next level of service should be 55 lpcd within 500 metres of the house or 50 metre elevation in mountain areas.[4] Further, some states have long-term objectives which go beyond these minimum. Thus, Gujarat's Vision 2010 envisages, for instance, the supply of 80 lpcd in rural areas, while the draft water policy in Rajasthan suggests 60 lpcd for rural areas in general and 70 lpcd for desert areas.[5]

Over time, the efforts of the union and state governments have made a major difference to crores of people throughout the country. While the government's intervention has not ensured that every individual in the country has access to the minimum defined in the ARWSP, it is not disputed that significant successes have been achieved since the 1970s. The government's intervention was not undertaken on the basis of any act passed by Parliament and the ARWSP Guidelines do not refer to fundamental rights. Yet, the government showed through the policy framework it adopted and its actions in practice a clear intent to fulfil the fundamental right to water.

1.2 Framework for Reforms

The conceptual framework for drinking water policy has comprehensively changed over the past decade. A number of initiatives have been taken in different contexts from the union level to international funding agencies' projects and state level measures. While each can be analysed separately, the pattern which emerges is overwhelmingly consistent. In other words, while there are different problems in different parts of the country and different actors have been involved in policy changes, the response given by policymakers at all levels is substantially the same. This implies that at the level of formal policymaking, there is a general consensus on the basic problems affecting drinking water in rural areas and the basic solutions that need to be adopted.

Changes in drinking water rural policies have been brought in a number of ways. These include changes in the existing policies of the government of India, adoption of new policies at the union and state levels as well as development projects such as the World Bank projects. At the union level, one of the first important noticeable signs of the new conceptual framework is found in the 1999-2000 version of the ARWSP Guidelines. They specifically highlight that one of the reasons for the existence of still uncovered villages includes the non-involvement of people in operation and maintenance.[6] The revision of the guidelines was specifically undertaken with a view to achieve full coverage of all rural habitations during the Ninth Plan (1997-02). Three of the guiding principles stand out: These are the call for an increase in people's participation, the need to treat water as a socio-economic good and the use of 20% of available funds for states promoting reforms along these lines. The revised guidelines make it clear that it is necessary to move away from the perception of water as a "social right" and rather manage water as "socio-economic good" to ensure its "effective use".[7]

The guidelines put a significant emphasis on the need for people participation as a way to move away from supply-led to demand-led schemes. They identify a number of key conditions for the introduction of demand-led projects. These include the ownership of assets and involvement in the setting up of the infrastructure. More significantly, the guidelines recognise that demand-led schemes require an imposition on people to pay for operation and maintenance and the knowledge that the government will not maintain the assets.[8] The message has recently been reinforced with the Eleventh Plan specifically calling for state support to panchayats for operation and maintenance as a "hand-holding support for first few years before the local bodies become self-sustainable"[9].

Sector reforms put in place require all state and district authorities to impose at least 10% capital cost payment by villagers.[10] Additionally, the ARWSP Guidelines clearly lay down that the contribution of people must increase with the level of service provided. Thus, where villages want to increase their supply from 40 lpcd to 55 lpcd, they have to pay at least 20% of the capital cost on top of all operation and maintenance expenses.[11] The form of the contribution has been an ongoing debate. While in certain cases, a choice of cash, labour or materials is provided, some documents suggest a full cash contribution.[12]

Rural drinking water policy reforms have taken place at different levels. Initiatives taken at the union or state level constitute two important elements of the overall reform process. Their effort must nevertheless be understood in the broader context of a string of water-related development projects funded, in particular, by the World Bank. Indeed, not only have World Bank projects been instrumental in pushing forward the new policy agenda, but the World Bank has also been closely associated with the policy changes taken at the state and union levels. It advocated, for instance, already a decade ago that "[s]ubsidised water and highly centralised water management in the rural sector have resulted in poor water service at high cost" and that this undermined efforts to promote a more efficient and sustainable use of water.[13] It further advised the government that cost recovery was the only option to ensure that universal access to drinking water would not remain an "unattainable dream".[14] It also specifically called for the immediate imposition of operation and maintenance to users and the progressive implementation of capital cost recovery with the introduction of a 10% contribution during what it saw as a transition period towards full cost recovery.

Interventions by external agencies have evolved over the past decade. The project that broke away from the previous model of supply-driven, top-down drinking water delivery was the Swajal project that introduced the new framework represented in the ARWSP Guidelines of demand-driven schemes, community participation, and communities bearing part of the capital costs and full operation and maintenance costs. Swajal was a pilot project carried out in two regions of the then undivided Uttar Pradesh, Uttarakhand and Bundelkhand, both facing severe – but different – water supply problems. Its implementation between 1996 and 2002 was instrumental in shaping the policy reforms that are currently under way. By 1999, the union government decided to broaden the Swajal experiment throughout the country. It started the Sector Reform Project (SRP) which sought to implement in 67 districts of the whole country the key principles of the Swajal project.[15] This was then extended to the whole country in the guise of the Swajaldhara Guidelines immediately after the completion of the Swajal project. The World Bank was also generally satisfied with Swajal and this success has led the Bank to implement several other projects based on the Swajal project philosophy in the past few years.

2 The Swajaldhara Guidelines

The Ministry of Rural Development (MORD) spearheaded the adoption of the guidelines on Swajaldhara. The guidelines first set out to demonstrate that while water has been perceived as a social right, this is inappropriate as water should, in fact, be seen as a socio-economic good. Additionally, they aver that the delivery of the social right has been through the government which has not sufficiently taken into account the preferences of users and has been ineffective in ensuring the carrying out of operation and maintenance activities. This calls for a demand-led approach seeing water as an economic good. The second paragraph of the background is even more revealing. It specifically links the transformation of a supply-driven system to a demand-driven system taking into account the preferences of users, "where users get the service they want and are willing to pay for".[16] This is taken one step further by indicating that it is the imposition of full cost recovery of operations and maintenance and replacement costs on the communities which are expected to generate a sense of ownership and ensure the financial viability and sustainability of the schemes.

The Swajaldhara principles display a striking similarity with the framework introduced under the Swajal project. First, Swajaldhara provides for the adoption of a demand-led approach that includes participation of the community from the choice of the drinking water scheme up to its implementation. Second, the guidelines seek a form of decentralisation and request that drinking water assets should be owned by the relevant panchayat and that the communities should have the power to plan, implement and operate all drinking water schemes. Third, the participation and decentralisation elements are brought together in the context of the financial principles which are a compromised version of full-cost recovery. Thus, while users have to bear the entire responsibility for the operation and maintenance of drinking water schemes, their contribution to capital costs is limited. In practice, this was first set at 10% for a service level of 40 lpcd but, in a number of situations, this percentage has already been exceeded. Under Swajaldhara, at least half of the 10% contribution must be in cash. Exceptions have, for instance, been provided for scheduled tribes areas, where the cash contribution was first reduced to one quarter of the community contribution.[17] Subsequently, in 2006 an amendment to the guidelines provided that the contribution in the case of villages where scheduled tribe/scheduled caste (ST/SC) constituted more than half of all habitations could be in any form without any stipulation of a contribution in cash.[18] Fourth, from an institutional perspective, one of the consequences of a demand-led perspective is the rethinking of the role of the government. The guidelines here specifically provide that the aim is to shift the government's role from "direct service delivery" to only supporting a limited number of activities such as planning, policy formulation, monitoring and evaluation.

An important aspect of the Swajaldhara scheme is that it was undertaken at the union level without specific parliamentary mandate. Since water is largely a state prerogative, the states may not have bought into the new conceptual framework. The union thus decided to proceed in two steps. First, it decided to provide full funding for the scheme, a departure from the usual ARWSP norm where the union and the states each share half of the costs. During the Tenth Plan, 20% of funds allocated to the ARWSP were directed to reform projects under the Swajaldhara Guidelines.[19] Second, it proposed that the states interested in taking up Swajaldhara funding should sign up a memorandum of understanding with the union. The intent of the model memorandum of understanding circulated to states was to ensure that the reform principles would be, as far as possible, mainstreamed.[20] Apart from this general commitment to reforms of the drinking water sector, the states were, for instance, also called upon to handover all existing drinking water schemes to gram panchayats for operation and maintenance.

The process of decentralisation and participation takes different forms under ongoing reforms. On the one hand, some of the

proposed measures go towards ensuring that operation and maintenance of schemes is more successful. Thus, panchayats are, for instance, allowed to contract any required person where the government does not make its people available.[21] In principle, this should provide ways to ensure that any bottlenecks in the government do not affect actual operation and maintenance. Villagers complain, however, that only government officials have access to original spare parts and that private traders always provide substandard quality. On the other hand, the same set of reforms proposes measures which are likely to lead to even more widespread inequalities in access to water within panchayats, and particularly within different districts and states. Thus, the proposal seeking to allow panchayats to fix and collect water tariff is fraught with difficulties.[22] If tariffs are fixed at the level of each and every panchayat, the most likely consequence is that villages that suffer the most from water scarcity, for instance, because the water table is very low or water quality is low will have to bear all the costs themselves and will thus pay much more than villages that happen to be endowed with more or better water. Similarly, where costs are fixed within each panchayat without government overseeing, the likelihood is that dalits and other similar communities will be further marginalised because their say in the decision-making process will not only be low as it has been traditionally, but more so because the reforms propose a decision-making process based on the notion of users which excludes most poor people. Experience with the Swajal project shows that where communities are left to collect tariffs themselves, public taps are rapidly switched off. Whether the real reason is the one given by users that money is not being paid or whether it is a decision of a more political nature, the result is the same for people who are denied access to water. Given the nature of water, and drinking water in particular, any policy which does not attempt to redistribute the costs of getting access to water across social classes and across geographical areas is bound to fail from an equity perspective.

2.1 Swajaldhara in Practice

The analysis of the Swajaldhara Guidelines gives an interesting overview of important issues raised by the introduction of the reforms in the drinking water sector. Yet, an analysis of Swajaldhara on the ground is required because the successes and failures encountered in specific villages have important lessons for the development of legal and policy frameworks in years to come. The following analysis is informed by visits to villages in Rajsamand and Bhilwara districts of Rajasthan, Badwani district of Madhya Pradesh and Chitrakoot district of Uttar Pradesh.

The first important finding of meetings in the different districts is that the introduction of demand-led schemes is often welcomed by the richer and more powerful people in the village that understand the benefits they can derive from such schemes. In fact, such schemes may often replace richer people's dependence on their own private sources of water which in many cases are likely to cost more in the long run than a Swajaldhara scheme where the government subsidises 90% of the cost of the infrastructure. Thus, in Galshyapa village of Chitrakoot, the people who could afford to pay the Swajaldhara contributions were keen on this scheme because existing wells in their village were about 15 minutes away and the handpumps provided by the government were largely non-functional. Yet, this bright picture was undermined. Indeed, there did not seem to be any dalits among the users. As a result of this non-participation in the scheme, the dalit inhabitants of this village who have been relying on the local stream (in season) and on water obtained after digging the riverbed (throughout the period when the stream dries out) would carry on getting water in the same way as previously.

The demand-led approach is seen quite differently by poor people. The situation encountered in village after village provides the following general pattern. Whenever poor/marginalised people currently have access to "a" source of water that satisfies their most essential needs, they are satisfied with what they have, however bad the situation may be, especially in summer months. Even where individuals think that better access through a new scheme would be beneficial, they often indicate that since they have not been able to pay the requested 10% contribution, they are thus not part of the beneficiaries. Additionally, people often argue, especially in Rajasthan, that they believe water should be provided free by the government because it is such a basic necessity of life.

Swajaldhara projects thus raise questions of equity within villages since the professed willingness to pay that provides the conceptual justification for demand-led schemes is, in fact, a function of wealth. As a result, the poorest people who most urgently need better access to drinking water are the first to be excluded from the list of beneficiaries. In reform speak, the poor exclude themselves by not paying the 10% contribution but this is a fallacy which is debunked by the reality on the ground. If anything, the ground reality indicates that people pay either when they can clearly afford it or when they are desperate enough to allocate more resources to water, necessarily at the expense of some other basic vital need such as food or health.

The issue of equity in access to water is not a new problem in rural areas. Indeed, caste equations have, for instance, played a major role in differential access to water for centuries. While in formal legal terms, caste-related inequalities have been banned, in practice, they still affect life in many places. Swajaldhara and the demand-led reforms do not affect caste equations directly. However, the problem is that they do not take into account the fact that caste discrimination is still prevalent in direct and indirect ways. As a result, demand-led reforms have the potential to introduce wealth-based inequality in access to water which may reinforce existing inequalities. Two examples of these trends can be given. First, in the village of Bagatpura, Rajsamand district, the dominant Rajput people forced the dalit households to pay through threats even though the latter were economically too weak to afford the contribution. This went to the extent of a handpump being broken by upper caste people to force dalits living there to pay up the 10% contribution. Second, in both Maharashtra and Uttar Pradesh, where villages are big and made of different clusters, the Swajaldhara scheme may never reach the dalit hamlet. This may or may not be a direct consequence of caste equations but the fact that Swajaldhara schemes may lead to such results as a result of a combination of long-standing caste-related issues

together with the economically weaker position of dalits raises questions concerning the rationale of demand-led reforms.

The issue of intra-village equity is deeply rooted in the philosophy of the reforms which want to leave villages to manage their own water schemes. Given the prevailing condition in many parts of the country, it is impossible to expect that the wealthy, powerful and largely high caste members of the village will use the new concept of village ownership as a way to foster less unequal social relations within the village. Indeed, local politics may, in fact, dictate the contrary. Thus, in Sirola-Pithoda, Rajsamand district, people willing to pay the initial contribution were kept out of the scheme because they did not enjoy the favour of the powerful teacher who had initiated the scheme. Similarly, in Jogela-Miyala, Rajsamand district, a family that was willing to pay and whose house was close to the main supply pipe had been denied a connection because they did not enjoy the favour of the sarpanch who was also the committee president. This is particularly problematic when drinking water is the subject matter. Thus, the government's decision to progressively withdraw is likely to create, at least in the medium- and long-term, increased inequalities in access to water.

With regard to the selection of specific schemes, the idea behind demand-led schemes is that users choose the scheme that best suit their needs and finances. In what are by any measure very poor areas of the country such as Rajsamand and Bhilwara districts, one would thus expect the gram sabha to decide in favour of the scheme that is the most cost-effective and delivers benefits to the greatest number of people in the village. It is thus surprising to find that many villages opt for relatively expensive piped water schemes relying on a borewell (and its attendant electricity consumption) and a water tank to deliver benefits to private individual connections and community standposts. Indeed, according to ministry figures, while the average contribution for an individual house connection is Rs 965 and Rs 810 for a community tap, it is only Rs 412 for a handpump.[23] Despite this, the ministry recorded that there were only 3,186 beneficiaries of handpumps and 5,451 for individual piped water connections. While there are a number of places in the country where the water table is either falling fast or has already fallen so low that handpumps may not be a technically viable solution, the relative lack of popularity of handpumps under Swajaldhara cannot be explained only by technical factors. Indeed, in many parts of the country, including a very dry state like Rajasthan, it is the millions of handpumps installed by the government over the past few decades that actually provide access to water for crores of people on a daily basis. Their relevance has never been put in doubt. While schemes are effectively chosen by the users, they often rely on advice given by outsiders, such as non-governmental organisations (NGOs) working as support organisations, since they may not have the necessary technical expertise to evaluate all different options. It is possible that advice provided to communities emphasise the benefits of individual house connections. Whether that is the case or not, the choice of schemes is clearly influenced by village water and sanitation committee (VWSC) membership. Indeed, field observation reveals in village after village that, while the gram sabha is technically the body making the choice, in practice, the committee generally seems to be led by some of the more powerful and wealthier men in the village. This easily explains why so many villages would favour relatively expensive schemes because the decision is in effect taken by those "users" and not by the actual meeting of the whole village. Another surprising observation is that despite the fact that one of the "fundamental reform principles" of Swajaldhara is to promote conservation measures such as rainwater harvesting, none of the villages surveyed had either considered or implemented such structure.[24]

Addressing Democratic Deficit

In institutional terms, the Swajaldhara Guidelines tried to remedy the rapidly apparent democratic deficit arising from the setting up of VWSC besides the panchayati raj institutions proposed under the Swajal project. As a result, all VWSC were set up under the gram panchayat, which in deeply divided communities, is a precondition for any attempt to foster social and gender equity in the schemes taken up. Yet, the basic philosophy of the panchayati raj constitutional scheme is not fully upheld. Indeed, in Uttar Pradesh, all VWSCs are in practice comprised seven members of the gram panchayat water committee and seven members co-opted from among the users. These 14 people in effect constitute the committee that oversees drinking water projects, thus allowing users a controlling say in the decisions of the committee. This is confirmed by the fact that the ownership of public water schemes rests with the VWSCs.[25]

Panchayati raj institutions and their democratic nature also come under attack from a different angle with the original Swajaldhara scheme. Assuming that the gram panchayat wanted to use its own funds to foster access to water, in the case of Uttar Pradesh, it was, in fact, prohibited from doing so. Indeed, panchayats and the state government were specifically prohibited from using any government fund as a substitute for people's contribution.[26] The intent of Swajaldhara to force individuals to pay whether they can afford or not is also clearly stated in the guideline's specific admonition that elected members of Parliament (MPs) and members of the legislative assembly (MLAs) are prohibited from using the funds at their disposal for development work in their constituency to pay the community contribution.[27]

The importance attached to cost recovery under Swajaldhara implies that the costs borne by users are an important element to be taken into account in analysing the scheme from a policy perspective. Two main elements can be distinguished, the contribution to capital costs and the contribution to maintenance and operation costs. The limited contribution to capital costs was found in the ministry report quoted above not to exceed on average Rs 965 for a private connection. In the villages surveyed, the actual figures were much higher. They ranged from a low of Rs 600 in Kansiya, Bhilwara to a high of Rs 7,000 Jogela-Miyala, Rajsamand.[28] These figures do not necessarily represent the actual cost paid by individuals to get a connection. People have to bear the cost of bringing pipes from the main line to their house and where the project design does not take the main line towards their house, their only option is to pay the full cost of their own connection from the main line. Another disturbing feature

observed in a number of villages was that the cost of becoming a "user" of the scheme shoots up for people who have not joined at the outset. The increase could be anything from 60% to nearly 130%. This was usually explained by committee members as being an "interest" that newcomers should pay on the original sum. This is one of the ways in which leaving communities to arrange their own affairs leads to increasing inequalities in favour of a group of people who are most often already the wealthier and politically astute individuals in the village.

The contribution to operation and maintenance raises a different set of issues. With regard to actual amounts paid, there are again significant discrepancies. The report of the ministry finds an average Rs 37 paid for individual in-house connections per month.[29] The village surveys indicate wide variations from Rs 36 to Rs 150. Two important findings emerge from these figures. First, variation seems to be explained mostly by the electricity cost associated with running the pump. The lack of transparency within villages makes it difficult to assess the causes of such differences. They may be ascribed partly to the depth of the water table but are also likely to be influenced by the actual amount of water people take. Indeed, while people generally seemed to be reluctant to share water obtained through Swajaldhara schemes with their neighbours, and thus limit consumption to their individual household needs, some people freely acknowledged using their Swajaldhara connection to water their gardens and in at least one village the individual in charge of the scheme had ensured that he could irrigate his own fields as an indirect benefit of the scheme. Second, the costs paid by people for operation and maintenance never reflected the long-term depreciation of the scheme. In other words, the monthly cost paid by individuals seems to generally reflect the immediate electricity cost. This has immense implications where anything more than minor repairs need to be undertaken. Indeed, when asked the question directly, people are often quick to say that they would not be able to pay anything above the current fees. This is problematic because it indicates that the manner in which the schemes function does not ensure their long-term viability. The emphasis is clearly on ensuring that the schemes start to function, not on ensuring their long-term functioning. In the villages visited, which have been plagued by various types of access to water problems, this was nothing extraordinary. Queries concerning access to water, in case the scheme stopped functioning because the village could not afford repair costs, usually have people simply indicating that in such a situation they would go back to their previous sources of water. Besides the kind of pessimism that may be apparent in such responses, a bigger problem surfaces. Where the main sources of drinking water before Swajaldhara are handpumps or other infrastructure built by the government, "going back" to these sources seems an easy option today. In the future, when all operation and maintenance costs are imposed on villagers, such complacency will not be possible for anyone. In other words, when full cost recovery principles are implemented, villagers will be left with the choice of paying, whether they can afford or not, or not get access to water at all.

As indicated above, the introduction of the reforms is largely premised on the implementation of the constitutional mandate devolving powers to panchayats. While this is laudable in theory, practice indicates that a simple withdrawal of the government in favour of local actors is not progressive unless accountability at the local level is ensured and enforced by higher authorities. Where this is not the case, "decentralisation" is another word for increased concentration of power in the politically savvy and wealthier members of the local community. Two specific issues have come up in this regard in the surveys of Swajaldhara villages. First, in no village were accounts available. The usual excuse was that they had been sent to auditors. Second, in most villages people paid money but rarely got receipts. Even where receipts were obtained, they were never provided information as to the use of this money.

Subversion of Scheme

The lack of external supervision is what allows the subversion of different aspects of the scheme by enterprising people. Thus, in some areas, contractors discovered in Swajaldhara a good business opportunity. They can pay the 10% capital cost contribution on behalf of the community, and in return, get the government to pay 90% of their costs. Subsequently, they can run the scheme according to their own preferences. On paper, the community has paid and the scheme is operated at the local level. This satisfies the basic principles of the reforms. In other villages, different ways to work around the scheme's principles were found. In Ker Kheda, Bijoliyan block, Bhilwara district, the sarpanch and chairman of the Swajaldhara scheme had paid the whole community contribution himself and had probably been paying the electricity bill as well. Two likely reasons explained this generosity. First, the whole village was dependent on his borewell – the only in the village – when other sources of water dried in the summer. The new scheme thus likely reduces his own direct costs of providing water in summer months. Second, water was identified by villagers interviewed as a major concern and everyone seemed extremely pleased with the new sources of water provided through this new scheme. This was likely going to strengthen his position politically in the village. This is not particularly surprising since similar outcomes were already reported a decade ago in the early attempts to impose cost recovery on villages.[30]

A last feature is the issue of disconnections. In principle, there is no link between demand-led schemes and disconnections. Yet, two disturbing features are apparent. In a situation where operation and maintenance is a monthly feature, the payment of the electricity bill is a precondition for actual access to water. Even where the amounts appear small, the users may not be able to pay. Thus, in Mukund Puriya, Bhilwara, despite making use of the pump only 30 minutes in the morning and 30 minutes in the evening, individual user's share was about Rs 100 a month. Since most people could not pay this amount, the village ended up within about a year and a half after commissioning the scheme with an unpaid electricity bill of Rs 12,000 which led to their connection being disconnected. This raises important questions with regard to disconnection of water supply. In a context where disconnections have been confirmed as unacceptable even after full privatisation in the United Kingdom, there is little doubt that disconnection from water supply is a violation of the human right to

water. In the case of Indian villages, the additional difficulty is that it is not water per se which is disconnected but the means of accessing it. Yet, in a country where an ever-increasing share of drinking water comes from groundwater and where the water table falls so fast in so many places that tubewells are a necessity in an increasing number of villages, disconnecting electricity amounts to stopping people from having access to water. It is thus imperative to look at water supply in a broader light and do exactly the contrary of what some of the reforms urge us to do. Instead of disintegrating systems in separate units to make them all individually cost-effective, what is, in fact, required is to consider systems in their broader context. Separating electricity consumption from access to drinking water is thus a complete misnomer in an increasing number of villages in India.

3 Lessons from Ongoing Reforms

The evolution of Swajaldhara indicates that existing reform principles are likely to evolve further in years to come. This is illustrated by the hesitation that characterised the fate of Swjaldhara under the Eleventh Plan. In the first place, its discontinuation was suggested at the end of the Tenth Plan. This was meant to reformulate the reform principles in view of perceived shortcomings, while maintaining the gist of the scheme. The idea was not to abandon the reforms but to repackage them and address some of the identified problems such as difficulties in collecting the community contribution.[31] Following different suggestions on ways to move the reforms forward, it was eventually decided to carry on the experiment of allocating 20% of ARWSP funds for Swajaldhara projects during the Eleventh Plan. This indicates that the time is not yet ripe for mainstreaming Swajaldhara to all ARWSP projects, but also shows a strong commitment to reforms, as illustrated by the report of a meeting of state secretaries on rural drinking water stating that from 2008 onwards, "the Swajaldhara scheme is going to be expedited drastically".[32]

In a context where reforms will likely remain a central feature of drinking water supply policy for many years, it is very important that they be closely analysed and debated. The need for the participation of elected representatives in the formulation of drinking water supply policies is necessary because they have not been consulted yet and because the reforms do not build on an existing drinking water legislation. The task at hand is thus either to bring the reforms to MPs and MLAs or to allow the legislature the space to develop a comprehensive drinking water legislation that is specifically geared towards meeting the needs of everyone in the country, with a priority on the rural poor.

The need to involve Parliament or legislative assemblies also stems from the fact that a number of water law reforms are currently ongoing and proposed. The fact that all these different laws can be drafted and adopted on such varied subjects as groundwater, water user associations or institutional reforms clearly indicates that elected representatives can also address drinking water. What is surprising is that drinking water has not been the first law reform introduced. This can nevertheless be explained by the fact that ongoing reforms do not emphasise as the first priority the realisation of the human right to water for all but rather focus on improving management of water in different sectors.

As illustrated in this article, drinking water supply reforms have evolved over the past decade. Thus, after the experience of the Swajal project that was in part distrustful of panchayati raj institutions, a shift towards acknowledging the constitutionally sanctioned role of panchayats in this field is noticeable. Yet, the fundamental premise of Swajal and Swajaldhara that emphasises individuals defined as "water users" over all other individuals in a given panchayat indicate that a lot more work needs to be done to ensure the full implementation of the constitutional framework adopted in the 73rd constitutional amendment.

As indicated above, the government implemented for several decades drinking water supply policies that reflected an understanding that it was under a duty to realise the human right to water for all rural residents of the country. In this context, ongoing reforms are a study in contrast. Principles for reforms are, to a large extent, in direct opposition to the principles that guided governmental action for the previous several decades. This is of no concern in itself since evolving conditions often require policy changes to address evolving challenges. There is, however, an additional issue that arises where a fundamental human right is concerned. While the government is at liberty to adopt different policies to realise its constitutional obligations, in the case of a fundamental right, it is the ultimate protector of human rights. This is not denied in ongoing reforms since even a draft memorandum of understanding between the union and the states for the Eleventh Plan states that there is a constitutional obligation to provide access to safe drinking water to the rural population.[33] This is in keeping with the case law, which recognises that the state has the responsibility to provide unpolluted drinking water.[34]

One of the central points of the now "old" policy framework is that the government acted under the perception, it was its duty to provide free water to its citizens. The government has also acknowledged that unserved villages should be given priority over villages where supply is already provided as per the minimum norms in force.[35] This reflects its concern to ensure the realisation of the minimum core content of the human right to water for all before providing enhanced coverage to people already provided with water. In other words, the government has attempted to progressively realise the right to water as per the stipulations of the International Covenant on Economic, Social and Cultural Rights (ICESCR) that imposes on member countries to take measures that contribute to the realisation of the rights over time.

In the context of the present reforms, one of the most sensitive points related to the ICESCR is that it specifically prohibits the introduction of measures that would curtail any gains made towards the full realisation of a human right. The new policy principles conceive water as an economic good, contemplate imposing on each individual community an increasingly important burden of their own water supply, and generally, conceive of a reduced role for the government and a concomitant increase of the role of the private sector in delivering drinking water. The implementation of these new policies will lead to outcomes that are at least in some cases unacceptable from the point of view of established measures of equity and will directly or indirectly lead to violations of the human right to water. While the demand-led paradigm benefits a segment of the rural population, it affects the poorest by bypassing

them, it creates increased inequalities in access to water, and in the long run, the imposition of operation and maintenance costs to each village individually will lead to reduced access to water in villages less well-endowed with water.

Such policies need to be reversed because water is far too fundamental for human life. The imposition of operation and maintenance costs on rural communities does not seem to be based on rational justifications. As indicated in documents for the Eleventh Plan, one of the major policy concerns is that high operation and maintenance costs lead to the closure of water supply schemes because the government is not in a position to maintain and monitor assets. It is estimated that only 20% of the required funds for operation and maintenance are available at present.[36] In a situation where the government is unable to muster the necessary resources for operation and maintenance, it is highly unlikely that rural communities will be able to take on the job and do better than the government.[37] If at all they do better than the government, it will be out of desperation because nobody can survive without water. The implication will be that other vital needs will suffer since this will likely imply a transfer of resources within already tight budgets.

On the whole, ongoing reforms need to be thought afresh because they do not primarily ensure a better realisation of the human right to water for the poorest people with least access to water, and only partially, implement the constitutional framework for decentralised democratic governance. Additionally, the replacement of social equity as a premise for drinking water supply policy with economic efficiency neither ensures that the poorest and socially most disadvantaged individuals in a given village are preferentially targeted nor that the regions of any individual state that need special attention for hydrological or social reasons are preferentially targeted. Whereas the "old" framework has been in need of changes to ensure better delivery of what the government seeks to achieve, ongoing reforms do not appear to be the answer that will effectively address the needs of the poorest and most marginalised.

NOTES

1 Example, *Subhash Kumar vs State of Bihar,* AIR 1991 SC 420.
2 Government of India, Accelerated Rural Water Supply Programme Guidelines (1999-2000) (ARWSP Guidelines).
3 ARWSP Guidelines ss 2(2)(3) and 2(3).
4 Rajiv Gandhi National Drinking Water Mission – Department of Drinking Water Supply, Submission to the National Advisory Committee (2005).
5 Raju et al (2007) and Rajasthan State Water Policy (Draft) 2008, s 1(2)(3).
6 ARWSP Guidelines s 1(3).
7 ARWSP Guidelines s 3(1).
8 ARWSP Guidelines s 3(1).
9 Planning Commission – Government of India, *Eleventh Five-Year Plan 2007-12*, Volume II, Social Sector (New Delhi: Oxford University Press), 2008, p 166.
10 Planning Commission, Report of Working Group on Tenth Plan for Drinking Water Supply and Sanitation 2002-07, p 4.
11 ARWSP Guidelines s 2(3)(1).
12 E g, Rajiv Gandhi National Drinking Water Mission – Department of Drinking Water Supply, Submission to the National Advisory Committee (2005) s 2(2). Note that below the poverty line, SC and ST families are excluded.
13 World Bank, India – Water Resources Management Sector Review – Initiating and Sustaining Water Sector Reforms (Report No 18356-IN, 1998), p 25.
14 World Bank, India – Water Resources Management Sector Review – Rural Water Supply and Sanitation Report (Report No 18323, 1998), p viii.
15 World Bank, Implementation Completion Report – Uttar Pradesh and Uttaranchal Rural Water Supply and Environmental Sanitation (Swajal) Project (Report No 27288, 2003), p 4.
16 Ministry of Rural Development, Guidelines on Swajaldhara 2003, s 1(2).
17 Lok Sabha, Unstarred Question No 2451, Swajaldhara Yojana, answered by Minister of State in the Ministry of Rural Development (Shri A Narendra) on 18 March 2005.
18 Government of India, Department of Drinking Water Supply, Office Memorandum – Amendment to Swajaldhara Guidelines, Doc No W-11021/2/2003-TM.IV (SW), 15 May 2006.
19 Ministry of Rural Development, Guidelines on Swajaldhara 2003, s 15(1).
20 Draft Memorandum of Understanding between the State Government of ___ and the Department of Drinking Water Supply, Ministry of Rural Development, Government of India (2003) s 5.
21 Ibid, s 20.
22 Ibid, s 8(vii).
23 Ministry of Rural Development, All India Evaluation Study – Sector Reforms Projects in Rural Drinking Water Supply (2005).
24 Ministry of Rural Development, Guidelines on Swajaldhara 2003, s 3(1)(vi) and P Sampat, "Swajaldhara or 'Pay'-jal-dhara: Right to Drinking Water in Rajasthan", (2007) 42/52, EPW, p 102.
25 Uttar Pradesh State Rural Drinking Water Policy, s 5(1).
26 Ministry of Rural Development, *Annual Report 2002-03*, p 130.
27 Ministry of Rural Development, Guidelines on Swajaldhara 2003, s 5(4). See p 2 for some of the changes proposed in the meantime.
28 Sampat (n 24 above), p 107.
29 Ministry of Rural Development, All India Evaluation Study – Sector Reforms Projects in Rural Drinking Water Supply (2005), p vii.
30 A Behar, "Revitalising Panchayati Rajs: Role of NGOs" (1998), 33/16, EPW, pp 881-82.
31 Lok Sabha, Unstarred Question No 1550 – Slow Pace of Swajaldhara Yojana, Answer of Minister of State in the Ministry of Rural Development (Shri Chandra Sekhar Sahu), 9 March 2007.
32 Minutes of the State Secretaries' Conference on Rural Drinking Water and Sanitation held on 13 and 14 May 2008, Surajkund, Haryana, p 4.
33 Memorandum of Understanding between State Government of ___ and the Department of Drinking Water Supply, Ministry of Rural Development, Government of India (2007), s 2.
34 *Hamid Khan vs State of Madhya Pradesh,* AIR 1997 MP 191 (High Court of Madhya Pradesh, 1996).
35 Ibid, p 5.
36 Rural Water Supply and Sanitation, Eleventh Five-Year Plan – Approach Paper (2006), p 5.
37 Concerning the paucity of revenues raised by panchayats, e g, M Govinda Rao and U A Vasanth Rao, "Expanding the Resource Base of Panchayats – Augmenting Own Revenues" (2008), 43/4, EPW, p 54.