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# **DRINKING WATER REGULATION**

## **RETHINKING THE RIGHT TO WATER**

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## INTRODUCTION

Drinking water supply has been a major policy concern of successive governments for several decades. This can be explained easily by the immediate link between water and human survival. At the broadest level, the legal framework also recognises the importance of drinking water. This is in particular visible in the higher judiciary's repeated confirmation of the existence of a fundamental right to water, whose primary content is drinking water.

The importance given to drinking water in policy and legal terms is well established at a general level. Yet, there are significant gaps between the strong assertion of a fundamental right to water by the Supreme Court and the reality experienced by crores of people. There are multiple factors that explain why the right to water is not yet fully realised for everyone. Among these factors, some are directly linked to the law and policy framework related to the right to water: Firstly, the higher judiciary has done no more than defining the right to water in broad terms and a legislative framework would be necessary to give it content that is applied universally. This does not exist at present and local laws that simply allocate rights and responsibilities to local bodies do not fill this gap. Secondly, the non-existence of a drinking water legislation setting out principles has left a gap, which has been filled in part by various administrative directions of the central government. This can be problematic for issues related to fundamental rights that would be best addressed by the legislature.

The fundamental right to water is virtually not disputed anymore. This is an excellent sign. At the same time, this does not give clarity concerning its content and it is partly this lack of specificity that allows everyone to gather around a single relatively amorphous concept. Yet, the right to water is a question of life or death for the overwhelming majority of the population on a daily basis. As a result, it is necessary to look in more detail at all aspects of the right to water. This paper looks at four issues that stand out in today's policy context and the reality of implementation on the ground:

- Firstly, there are issues concerning the universality of the entitlement. While nobody disputes the principle of the universality of the right defined in judicial decisions, implementation does not currently reflect this basic point fully.
- Secondly, the higher judiciary has clearly stated that the right to water imposes on the state a duty to provide for its realisation. This was in principle a settled position but recent policy instruments have tended to move away from the courts' defined framework.
- Thirdly, drinking water or the means to access it has been provided free to the majority of the population for decades. In the past decade, policy instruments and policy makers have started to argue vociferously against free water, concurrently with similar changes at the international level. The provision of an amount of free water is a key dimension of the right to water and other fundamental rights and needs to be given the central place it deserves.
- Fourthly, the right to water was originally conceived as a derivative right of the right to life like some other related fundamental rights. Despite this close connection, the right is often not conceived as part of continuum that includes such rights as the rights to food, health, sanitation and the environment. These links need to be made much more explicitly.

This paper explores these four issues that are fundamental for the realisation of a fundamental right to water that makes a real difference to people's lives.

## I. LAW AND POLICY FRAMEWORK OF THE RIGHT TO WATER

Courts have taken a lead in filling the gap left by the absence of the specific recognition of the fundamental right to water in the Constitution. They have repeatedly asserted the existence of a right to water. The Supreme Court and the high courts have on various occasions read the right to water into the right to life. Thus, in *Subhash Kumar v State of Bihar*, the Supreme Court asserted that the '[r]ight to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life'.<sup>1</sup>

Some decisions have linked the right to water to Article 47 of the Constitution.<sup>ii</sup> In *Hamid Khan v State of Madhya Pradesh*, the government was sued for not taking appropriate precautions to ensure that the drinking water supplied through handpumps in Mandla District was free from excessive fluoride.<sup>iii</sup> The Court ruled that under Article 47, the State has the responsibility to ‘improve the health of public providing unpolluted drinking water’.<sup>iv</sup>

Judicial decisions have also outlined some of the general parameters that must guide the realisation of the right. Thus, in *Vishala Kochi Kudivella Samarkshana Samithi v State of Kerala*, the court specifically provided that the government ‘is bound to provide drinking water to the public’ and that this should be the foremost duty of the government.<sup>v</sup> Additionally, the judges ruled that the failure of the state to ‘provide safe drinking water’ to citizens amounted to a violation of the right to life.<sup>vi</sup>

## **A. Legislative Framework Concerning Drinking Water**

The importance given to drinking water through the case law related to the fundamental right to water is supplemented by a variety of legal instruments focusing directly or indirectly on drinking water.

The first characteristic of existing legislation is that it neither makes the link directly nor provides the broad context and principles within which the right is implemented. There are thus gaping holes at the core of the legal framework since, in effect, existing legislation fails to address the right to water directly. Seen from a different viewpoint, water law fails to comprehensively address drinking water, one of the core dimensions of the right to water. Indeed, no state has dedicated comprehensive drinking water legislation. Further, existing legislation fails to provide some of the basic terms for water supply. Thus, while quality standards have been defined in different contexts,<sup>vii</sup> these standards are not binding on anyone supplying water because they are not referred to in legislation.

The legislation that exists in a number of states is generally not water specific and only addresses water supply as part of other issues. This is, for instance, the case of legislation regulating public services in urban areas and panchayat legislation. These acts have in common that they address themselves to specific tasks, such as determining which entity has the responsibility for water supply, without either referring to the right to water or to a set of broader principles.

## **B. Administrative Directions for Drinking Water Supply in Rural Areas**

The limited legislative framework highlighted in the previous section concerns legislation at the state level. At the union level, the absence of additional legislation can be explained in part by the fact that the Constitution does not give it a specific mandate in this area.<sup>viii</sup> At the same time, the union can and has taken the initiative when it wanted to. Drinking water supply has been an area of policy and political concern for decades. As a result, the union government has attempted to make its mark in this area through non-legislative means, such as programmes and schemes backed by financial incentives to induce states to comply with proposed principles.

One of the main areas of intervention of the union government has been in the context of rural drinking water supply. The first major programme, the Accelerated Rural Water Supply Programme (ARWSP) was introduced in the early 1970s. The ARWSP Guidelines provided until 2009 the core framework used to foster the provision of drinking water to all habitations in rural areas.<sup>ix</sup> They introduced several important criteria, starting with a cut-off level of 40 litres per capita per day (lpcd) as representing the basic minimum level of supply deemed sufficient for each individual.

The overall success of the ARWSP notwithstanding, the government started a comprehensive process of reform of its water supply policy as part of broader water policy reforms in the late 1990s. This eventually led to the adoption in 2009 of a completely new policy framework now known as the National Rural Drinking Water Programme (NRDWP).

The NRDWP is based on the new water policy principles that propose a much-reduced role for the government in the water sector. This builds on the policy framework tested from 2003 onwards in the context of the Swajaldhara Guidelines.<sup>x</sup> From a right to water perspective, the striking feature of the NRDWP is that it ignores the existence of the right to water. This could be simply an oversight and a legally inappropriate choice of language. The fact

that the NRDWP consciously evacuates the language of fundamental rights is, however, confirmed by a comparison of the two different versions put out respectively in 2009 and in 2010.

The NRDWP goes further than simply evacuating the language of fundamental rights. In fact, it operates a complete break with the policy followed since the 1970s by suggesting that measuring drinking water provision in terms of a quantity of water per capita per day is inappropriate. The NRDWP suggests moving from a fixed minimum to the concept of drinking water security. This is not given a specific definition but is opposed to the per capita norm followed earlier. Indeed, the NRDWP specifically states that it is necessary to ‘move *ahead* from the conventional norms of litres per capita per day (lpcd) norms to ensure drinking water security for all in the community’.<sup>xi</sup> The basic unit now considered is the household. The NRDWP premises the shift from the individual to the household on the fact that ‘[a]verage per capita availability may not necessarily mean assured access to potable drinking water to all sections of the population in the habitation’.<sup>xii</sup> It does not, however, explain how the shift ensures better coverage in a given habitation.

More recently, signs that the new approach is not acceptable within the government have surfaced. In particular, the new Rural Drinking Water, Strategic Plan (2011-2022) not only reverts to a per capita measure but also provides that the goal is to achieve 70 lpcd by 2022.<sup>xiii</sup> This document constitutes an important turnaround that confirms the need to consider water needs at the individual level. At the same time, it entirely fails to mention or engage with the right to water, thus ensuring that the latest major policy statement of the government does not engage or make any contribution to the development of a legal framework for implementing the right.

## II. TOWARDS A MEANINGFUL RIGHT TO WATER

The existence of a fundamental right to water does not need to be posited. Indeed, the right to water has been repeatedly confirmed by the higher judiciary for the past two decades. At the same time, the legal instruments that take the general mandate forward do not necessarily do justice to the framework laid down by the courts. In addition, the absence of legislation giving a general direction to drinking water supply throughout the country has led to different initiatives that are either not in consonance with the implementation of a fundamental right or not in consonance with the moral imperatives brought to the fore by something as basic for survival as water. This section highlights four separate issues that warrant specific consideration to ensure that the right to water is not only an aspiration debated in the higher courts of the country but also something that makes a difference to the lives of the crores of people whose entitlements are not fully realised today.

### A. Ensuring that the Universal Entitlement is Universally Realised

The liberal conception of fundamental rights is based on the understanding that these are rights that every single individual possesses. The basic understanding is thus that everyone has a similar basic entitlement to what is protected. In conceptual terms, there is consensus that the right to water includes entitlements, which are held by every single human being to the same extent. This is crucial in a context where secondary legal instruments increasingly talk of a ‘need’ rather than a ‘right’ when referring to water.<sup>xiv</sup> This reflects two different conceptions of water, the former as a commodity and the latter as an entitlement. The right creates obligations whereas the need carries no assurance of its provision.<sup>xv</sup> Further, there is a general difference in approach between needs and rights.<sup>xvi</sup> Fundamental rights are based on a premise of universality but needs can be ‘targeted’.

An understanding of the right as a need provides a basis for ‘targeted benefits’ that are by definition distinct from universal entitlements. Policies that make limited exemptions for the poor, such as in the case of lifeline tariffs,<sup>xvii</sup> are inappropriate because targeting does not coincide with a fundamental right entitlement.<sup>xviii</sup> Further, they inappropriately single out the poorest and most marginalised. A fundamental right approach calls for the opposite, namely a universal entitlement to the provision of the basic content of the right supplemented with exceptions whereby the rich may be excluded from certain benefits.<sup>xix</sup> Should anyone be targeted, this should be focused on the quarter of the population earning more than Rs 20 a day.<sup>xx</sup>

A universal entitlement to water entails that everyone can expect the same level of realisation of the right. Since the right to water is often considered in terms of an entitlement to a certain quantity of water, the said quantity

must be the same for everyone. This appears to be an obvious statement that bears no further comment in a fundamental rights context. Yet, the water law framework has shown an extraordinary ability to distinguish between the entitlements of different holders of the right within the country. Rural and urban residents are thus generally categorised as having different entitlements. Policy documents have provided in effect that the basic level of the realisation of the right to water is equivalent to a minimum of 40 lpcd in rural areas (70 lpcd in the future) and different quantities in urban areas ranging from 70 lpcd to 150 lpcd according to the size of the city.<sup>xxi</sup>

Significant changes in the existing water regulatory framework will need to be made to effectively realise the right to water as a universal entitlement. The starting point for the entitlement should not be the different positions in which different people find themselves. Rather, the situation of the more fortunate urban residents should be the yardstick by which everyone's entitlement is defined.

## **B. Reinvigorating the Basic Entitlements: A Right to the Provision of Safe Water**

The state has a duty to ensure the realisation of fundamental rights. Indeed, the primary responsibility is with the state that alone commands the necessary economic and institutional resources necessary to ensure the realisation of the right and because the state is generally responsible for safeguarding constitutional rights.<sup>xxii</sup>

Article 47 of the Constitution does not specifically mention water but there has never been any doubt that the state has a major role to play in the realisation of the fundamental right to water, as confirmed by the case law analysed above. Until the past decade, there had in fact been little discussion around this because the government made water supply one of its key duties. This led successive governments to at least attempt to ensure the provision of water in cities by laying out the necessary infrastructure allowing individuals to access water at a cost if they had individual connections at home and freely if they accessed water through a common standpoint. Similarly, in rural areas the government attempted to provide the infrastructure, such as handpumps, that gave free access to water in the overwhelming majority of cases.

The policy reforms that have been progressively introduced over the past fifteen years seek to completely rethink the way in which the state engages in water supply. In policy terms, the shift is supposed to take water supply away from supply-led policies where the state took the lead in favour of demand-led policies where user choices are given a pre-eminent position.<sup>xxiii</sup> At a conceptual level, this does not necessarily seem to have major implications for the right to water. In practice, this is significant because demand-led presupposes that people pay and implies that the state does not 'provide' but only 'facilitate'.<sup>xxiv</sup>

The current policy context thus necessitates taking a much closer look at the actual obligations of the state in the context of the right to water. Interestingly, over the past decade, significant developments have taken place concerning fundamental rights and the Directive Principles of State Policy. With regard to fundamental rights, the implementation of the right to education through the right to education legislation has confirmed the obligations of the state with regard to the provision of free and compulsory education.<sup>xxv</sup> With regard to rights mentioned more specifically in the Directive Principles like the right to food, the public interest litigation that has been going on for a decade has already led a series of orders that have imposed on the state additional obligations to provide, such as in the case of mid-day meals in schools.<sup>xxvi</sup> This has been enshrined in the National Food Security Bill, 2011.<sup>xxvii</sup>

In the context of water, starting in the 1970s and for more than 30 years, the government put in significant effort and resources that in effect contributed to the realisation of the fundamental right to water. This was done in a context where there was little, if any, talk of a right to water. Yet, the actions of the government were motivated by the understanding that providing water to everyone was one of its primary obligations.<sup>xxviii</sup> With all its faults and shortcomings, in a span of a few decades, the ARWSP ensured that rural areas made tremendous progress towards the realisation of the basic content of the right.

In a fundamental rights context, there are strong reasons why basic water should be provided to everyone, in the same way that basic education is provided. In practical terms, the very reason why water supply was brought into the hands of the public sector in the nineteenth and twentieth century was to remedy the perceived shortcomings of private sector water supply and attendant severe disease burden borne by the population.<sup>xxix</sup> The exchequer had to bear the cost of the infrastructure, as water users would not have been able to pay the costs involved. The

situation has not changed and in most places around the world, users are still not able to pay the capital costs involved in setting up new infrastructure.

Controversies over whether the realisation of the right to water implies a duty for the state to ‘provide’ rather than simply facilitate ‘access’ is partly linked to the fact that policy and international legal instruments have tended to suggest that there is only a right to access water. Yet, in reality there is little to debate in the Indian situation. Firstly, as highlighted above, courts have established the duty of the state to provide basic water. Secondly, in practice there is no alternative to provision by the state since imposing full cost recovery of capital costs on users would end up automatically denying the fulfilment of the right to the majority of the population.<sup>xxx</sup>

### C. The Right Must Include the Provision of Free Water

The obligation to provide water needs to be further specified. This paper argues that the entitlements included in the right should also include an obligation to provide free water, at least to the extent necessary to cover basic water uses linked to life and livelihood.<sup>xxxi</sup> The proposition that the right to water includes a right to the provision of free water should not be particularly controversial since some rights like the right to education have been provided free. In addition, recent developments in the context of the right to food indicate recognition of the duty of the state to provide free food at least in some contexts.

In the case of the right to water, the government provided for decades free water supply infrastructure to everyone. In general terms, the government had carved for itself the role of provider of all the basic infrastructure necessary to access water, something which was in line with what most governments started doing during the twentieth century. Yet, much more was done. Indeed, in rural areas, access to water was free in most localities throughout the country. The main exceptions to free provision were the relatively few places where piped water with individual connections had been introduced. In urban areas, individual connections have attracted a connection fee for a number of years. Yet, a large part of the population has been provided free water for decades through handpumps or public standposts. On the whole, the government had indicated through its actions over decades that it acknowledged a duty to provide free water to the overwhelming majority of its population.

Over the past couple of decades, the international and national policy discourse has progressively moved away not only from backing government involvement in the provision of basic water but also started to emphasise the notions of affordability and willingness to pay as central tenets of all water policies. This has led to a situation where today’s mainstream policy consensus is that everyone must pay for water. Some institutions like the Asian Development Bank go as far as promoting ‘the phased elimination of direct subsidies to the poor for accessing basic water services’,<sup>xxxii</sup> while in other cases, subsidies are conceived as an exception that must be ‘well targeted and transparent’.<sup>xxxiii</sup> This is premised on the need for more ‘efficient’ use of water and the need to control increasing water scarcity.

A key justification advanced for the proposed changes is that reforms will not affect the situation of the poor but in fact make their lives better. One of the arguments is that the urban poor pay proportionally more than the rich for their water.<sup>xxxiv</sup> This is indeed the case in all cases where the water utility does not provide services and where the poor find themselves at the mercy of private vendors. Yet, it is impossible to generalise. Indeed, as witnessed in Delhi,<sup>xxxv</sup> in a given locality some lanes are fully serviced by the Delhi Jal Board (DJB), some are entirely serviced by tankers from the DJB and some have separate infrastructure paid for by the quota of the local MLA where water is provided entirely free of cost to residents.<sup>xxxvi</sup> Similarly, in resettlement or unauthorised colonies a whole range of solutions are found to cope with insufficient water provision by the utility, ranging from collective pooling of resources for installing additional water pumping infrastructure, to situations where residents benefit from free water supply whose cost is borne by the local MLA.<sup>xxxvii</sup>

In social terms, one of the main justifications to make everyone pay for water is that the poor will end up paying less than they do today. Yet, this firstly only applies to a specific segment of the urban poor population rather than to all the urban poor. Secondly, such arguments exclude rural residents who have in their overwhelming majority never paid for basic water. Thirdly, the very idea that the poor agree to pay for the cost of water or water-related infrastructure because they have a ‘willingness’ to pay is fallacious. This was acknowledged already in the 1990s by the World Bank stating that willingness to pay would be dependent on the availability of alternative and traditional sources of drinking water as well as the quality and level of service being provided before the introduction

of the reform.<sup>xxxviii</sup> The fact that the response of people suffering from insufficient access to water may not necessarily fit this proposed model was highlighted in the World Bank's call for a widespread campaign 'to communicate the message that water is a scarce resource and must be managed as an economic good'.<sup>xxxix</sup> This may also explain why some reform projects are premised on the removal of existing community-based infrastructure for accessing water.

In addition, as long as water remains a pre-condition of survival and a decent quality of life, human beings will prioritise water over less immediately urgent needs, even if these happen to have significant negative long-term impacts, as where health needs are neglected. Thus, the fact that the poor end up paying cannot be explained simply by economic factors. This is probably why some studies arguing that the poor have a willingness to pay exclude people not paying for water from their scope.<sup>xl</sup>

The reasons for the current emphasis on affordability become clearer when questions surrounding the right to water are put in the broader context of 'water sector reforms'. One of the key elements of these reforms kick-started in policy terms with the Dublin Statement has been the understanding that water is an economic good and the consequent imposition on water users to pay for every water use.<sup>xli</sup> This has provided a basis for linking the right to water with what are essentially economic reforms in the water sector. Indeed, the progressive formalisation of the right to water has interesting business consequences since it leads governments to invest more in basic water infrastructure, thus potentially increasing the number of individuals connected to a piped water network. In a context where neoliberal reforms may lead to the privatisation of water distribution, the right to water can present an interesting business opportunity. This explains why multinational water companies are not particularly opposed to the right to water language and, to an extent, actively participating in its development. Thus, already a decade ago, Suez was officially calling for the right to access water to be recognised while arguing that their business is to make this right a reality.<sup>xlii</sup> The right is 'viewed, valued and promoted for the business opportunities it creates' but this does not lead private companies to see the right as having any sort of legal effect on their work.<sup>xliii</sup> Further, the private sector industry's understanding of the right to water is one that requires users to pay for the water provided. Indeed, the main concern raised by multinational water companies with regard to the right to water is its association with the provision of free water.<sup>xliv</sup>

The proposition that the right to water is linked to a notion of affordability should be rejected. Indeed, economic reforms should not dictate the shape of the right to water, or for that matter any other right. Interestingly, the weakness of the argument for recognising an intrinsic link between the right to water and affordability is highlighted by the first constitutional discussion of the right to water in South Africa, where a limited amount of free water has been provided since 2001.<sup>xlv</sup> In the *Mazibuko* case, the Constitutional Court, accepting the City of Johannesburg's contentions, ruled that a 'universal per person allowance would administratively be extremely burdensome and costly, if possible at all'.<sup>xlvi</sup> This is an inappropriate starting point, in particular in countries like South Africa or India where the real question is one of allocation of resources rather than actual availability of resources. This ends up masking the more fundamental issues that need to be addressed.

A universal entitlement should translate into a claim for universal free basic water. This would not be novel since the government has implemented this policy for decades. Where the government implemented free water for everyone on the basis of political compulsions earlier, it is now guided in this endeavour by the formalised right to water. In other words, the legal framework has come to reinforce what was already done in practice.

The universal free basic water as an entitlement can easily be implemented in all rural or urban areas where water has been provided free through handpumps, standposts or other common infrastructure. At this juncture, one of the big challenges is that the current policy framework for rural drinking water supply advocates moving away from community based sources of water towards individual connections to such an extent that the contribution of handpumps is envisaged as declining from 70% to 10% while that of community standposts is meant to decrease from 30% to 10%.<sup>xlvii</sup> Beyond this, in cases where piped water supply is provided, the need for a new free water regulation would be necessary. It is likely that South Africa's experience would be the framework that policy-makers will try to replicate. This could be done but would probably need not only adaptation to Indian conditions but also further thinking in view of the challenges faced in South Africa. Indeed, beyond practical problems of implementation, one of the limitations of the free water policy in South Africa has been its introduction alongside commitments to market mechanisms. This has had the unfortunate consequence of indirectly providing a justification for disconnections and restrictions beyond the free water allowance.<sup>xlviii</sup> There has also been questioning of the amount free water that has been seen as some as being linked not so much to basic survival needs but rather to the fact that it constitutes the break-even point between the cost of collecting payment and the amount collected.<sup>xlix</sup>

This confirms that in an overall policy context that is still informed by neoliberal reforms, the implementation of a free water policy for piped water supply in India is likely to be an arduous task that will require significant involvement and pressure from civil society actors to ensure its success.

## **D. Towards a Comprehensive Understanding of the Right to Water**

The entitlement contained in the right to water needs to be conceived as a comprehensive entitlement that goes beyond concerns for fundamental needs for survival like drinking water. Indeed, there are a range of water needs that must be fulfilled to ensure a life of dignity as well as a range of water needs that are inseparable from other fundamental rights, such as the rights to food and health. Additionally, the links with the right to environment also need to be taken into account given that water is an intrinsic part of the environment.

Firstly, the right to water must be comprehensive in the sense of addressing all uses of water and all water bodies. Indeed, the realisation of the right (however narrow or broad its scope may be) may require the use of water from a variety of sources. In a context where water law addresses irrigation separately from drinking water and surface water separately from groundwater, the right to water cannot afford to replicate this sectoral dimension of water law. In many contexts it is impossible to distinguish irrigation from drinking water because the same sources of water are used or because one impacts the other.

Secondly, the right to water must address the different water needs necessary to realise all fundamental rights dependent on water. This includes obvious links with the right to life, as well as the rights to food and health whose realisation cannot be dissociated from water. Linking the rights to water, food and health has the disadvantage of making discussion of each individual right more complex. At the same time, sectoral perspectives do not yield adequate results.

## **III. WATER, LIFE AND THE LAW – ENSURING A LIFE OF DIGNITY**

The right to water is well established. Indeed, the higher judiciary has consistently upheld the right over the past couple of decades and no legislation or administrative direction has specifically denied the existence of the right. At the same time, there remain a number of steps that need to be taken to ensure that the right is realised for everyone: Firstly, it is not sufficient to rely on courts beyond the general recognition of the right. The courts themselves acknowledge this. Thus, in *Voice of India v Union of India*, the petitioner had prayed that water should be provided to every citizen free of cost. The Supreme Court lamented the fact that ‘even after 60 years a citizen of this country is not getting clean potable water’.<sup>1</sup> However, it found that it was unable to grant relief on an all-India basis because water supply is essentially the function of municipal corporations and other local bodies. Secondly, there is a need for a legislative framework at the state or union level that sets out the broad principles and parameters guiding all actors involved in drinking water supply, including, for instance, with regard to water quality. Thirdly, the realisation of the right to water needs to move out of the realm of administrative directions of the executive. This will ensure that the basic content of the right is not subject to administrative fiat but is governed by long-term principles laid out in legislation.

The formal structure underlying the right to water needs a lot more attention than has been given to-date. At the same time, the simple adoption of additional legal instruments will not in itself suffice to ensure the realisation of the right to water. The formal framework needs to be accompanied by a strong right to water campaign by civil society actors. There have already various anti-water privatisation campaigns in cities, some of them with positive outcomes, but a broader right to water campaign encompassing rural areas is yet to emerge. This additional pressure is necessary, for instance, to ensure that people are better aware of their rights and accountability mechanisms.

This overall process towards ensuring more effective realisation of the right needs to be guided by a series of substantive safeguards that will ensure that the right is not largely devoid of content for the majority of poor people. The questions highlighted in this paper are some of the most crucial issues for the effective realisation of the right. It is imperative that these questions be debated fully so that the increasing consensus around a right to water does not turn the right into an empty shell that makes no difference to the crores of people whose fundamental right to water is not fully realised at present.

## ENDNOTES

- i *Subhash Kumar v State of Bihar* AIR 1991 SC 420 (Supreme Court, 1991) para 7, available at [ielrc.org/content/e9108.pdf](http://ielrc.org/content/e9108.pdf).
- ii Constitution of India, art 47.
- iii *Hamid Khan v State of Madhya Pradesh* AIR 1997 MP 191 (Madhya Pradesh High Court, 1996) available at [ielrc.org/content/e9613.pdf](http://ielrc.org/content/e9613.pdf).
- iv *ibid* para 6.
- v *Vishala Kochi Kudivella Samarkshana Samithi v State of Kerala*, 2006(1) KLT 919 (High Court of Kerala, 2006) para 3, available at [ielrc.org/content/e0642.pdf](http://ielrc.org/content/e0642.pdf).
- vi *ibid* para 3.
- vii eg Bureau of Indian Standards Specification for Drinking Water (BIS 10500: 1991) and Central Public Health and Environmental Engineering Organisation, *Manual on Water Supply and Treatment* (New Delhi: Ministry of Urban Development, 1999).
- viii Constitution, Schedule 7, List II.
- ix Government of India, Accelerated Rural Water Supply Programme Guidelines [hereafter ARWSP Guidelines].
- x Ministry of Rural Development, Guidelines on Swajaldhara, 2002, available at [ielrc.org/content/e0212.pdf](http://ielrc.org/content/e0212.pdf).
- xi Department of Drinking Water Supply, National Rural Drinking Water Programme – Movement Towards Ensuring People’s Drinking Water Security in Rural India – Framework for Implementation (2010) s 4 (emphasis added) [hereafter NRDWP 2010].
- xii *ibid* s 9(1).
- xiii Department of Drinking Water and Sanitation – Rural Drinking Water, Strategic Plan (2011-2022) – Ensuring Drinking Water Security In Rural India (2011).
- xiv NRDWP 2010, n xi above, second basic principle.
- xv eg J Astle, ‘Between the Market and the Commons: Ensuring the Right to Water in Rural Communities’, 33 *Denv. J. Int’l. & Pol’y* 585, 586 (2005).
- xvi L-E Pettiti & P Meyer-Bisch, ‘Human rights and Extreme Poverty’, in J Symonides, *Human Rights: New Dimensions and Challenges – Manual on Human Rights* 157 (Aldershot: Ashgate, 1998).
- xvii eg Asian Development Bank, *Water for All – The Water Policy of the Asian Development Bank*, 2001, para 46.
- xviii eg Himanshu & A Sen, ‘Why Not a Universal Food Security Legislation?’, 46/12 *Econ. & Pol. Wkly* 38, 39 (2011).
- xix cf J Drèze & R Khera, ‘The BPL Census and a Possible Alternative’, 45/9 *Econ. & Pol. Wkly* 54 (2010) in the case of the right to food.
- xx National Commission for Enterprises in the Unorganised Sector, *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector* (New Delhi: Ministry of Small Scale Industries, Government of India, 2007) 1. This figure adapted to inflation amounts to about Rs 30 today.
- xxi For rural areas, ARWSP, n ix above and Department of Drinking Water and Sanitation 2011, n xiii above. For urban areas, eg Central Public Health and Environmental Engineering Organisation, n vii above at 11.
- xxii J Drèze, ‘Democracy and Right to Food’, 39/17 *Econ. & Pol. Wkly* 1723, 1726 (2004).
- xxiii eg Ministry of Rural Development, Guidelines on Swajaldhara, 2002, s 3(1)(i).
- xxiv *ibid* s 3(1)(vii).
- xxv Right of Children to Free and Compulsory Education Act, 2009.
- xxvi *People’s Union for Civil Liberties v Union of India* Writ Petition (Civil) No. 196 of 2001, Supreme Court Order of 28 November 2001.
- xxvii National Food Security Bill, 2011, s 5.
- xxviii eg Rajasthan Municipalities Act, 1959, s 98.
- xxix eg C Ward, *Reflected in Water – A Crisis of Social Responsibility* (London: Cassell, 1996) 96.
- xxx Concerning problems linked to the imposition of partial capital costs on users in drinking water supply, eg P Sampat, ‘«Swa»-jal-dhara or «Pay»-jal-dhara – Sector Reform and the Right to Drinking Water in Rajasthan and Maharashtra’, 3/2 *L Environment & Development J* 101 (2007) available at <http://www.lead-journal.org/content/07101.pdf>.
- xxxi The extent to which water is provided free does not necessarily exhaust the scope of the right to water and there may be other uses that fall within its scope.
- xxxii Asian Development Bank, *Water for All – The Water Policy of the Asian Development Bank*, 2001, para 45.
- xxxiii National Water Policy, 2002, s 11.
- xxxiv eg United Nations, *Water for People – Water for Life* 341 (Paris: UNESCO, 2003).
- xxxv For a willingness to pay argument in Delhi, eg S Misra & B Goldar, ‘Likely Impact of Reforming Water Supply and Sewerage Services in Delhi’, 43/43 *Economic & Political Weekly* 57 (2008). For a critical analysis of the figures proposed by Misra & Goldar, see P Cullet, *Water Law, Poverty and Development – Water Law Reforms in India* 174 (Oxford: Oxford University Press, 2009).
- xxxvi This is, for instance, the case in Garhi Jharia Maria, a locality in Delhi close to East of Kailash.
- xxxvii The former, for instance, in Bawana, North-West Delhi and the latter in an informal settlement in Okhla Phase I, South-East Delhi.
- xxxviii World Bank, *India – Water Resources Management Sector Review – Rural Water Supply and Sanitation Report* (Report No. 18323, 1998) 49.
- xxxix *ibid* 53.
- xl World Bank, *Rural Water Supply in India – Willingness of Households to Pay for Improved Services and Affordability* (Policy Paper 44790, 2008) 6.
- xli Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment, Dublin, 31 January 1992.

- xlii G Mestrallet, 'Lettre ouverte – La vraie bataille de l'eau', *Le Monde*, 26 octobre 2001, reproduced in Suez, *La vraie bataille de l'eau* (Paris: Suez, 2001).
- xliii AFS Russell, 'Incorporating Social Rights in Development: Transnational Corporations and the Right to Water', *7/1 Int'l J.L. Context* 1, 14 (2011).
- xliv *ibid* 19.
- xlv South Africa, Regulations Relating to Compulsory National Standards and Measures to Conserve Water (2001).
- xlvi *Lindiwe Mazibuko v City of Johannesburg*, Case CCT 39/09, [2009] ZACC 28 (Constitutional Court of South Africa), para 89.
- xlvii Department of Drinking Water and Sanitation 2011, n xiii above at 8.
- xlviii eg A Loftus, '«Free Water» as Commodity – The Paradoxes of Durban's Water Service Transformations', in DA McDonald & G Ruiters eds, *The Age of Commodity – Water Privatization in Southern Africa* 189 (London: Earthscan, 2005).
- xliv JA Smitha and JM Green, 'Free Basic Water in Msunduzi, KwaZulu-Natal: Is it Making a Difference to the Lives of Low-income Households?', *7 Water Policy* 443 (2005).
- 1 *Voice of India v Union of India*, Writ Petition (Civil) No. 263 of 2010, Supreme Court, Order of 20 September 2010, para 3.

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