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DRINKING WATER REFORMS

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VIII. Drinking water reforms

Philippe Cullet

INTRODUCTION

Drinking water is one of the most crucial components of any water law and policy framework. This is due to the intrinsic link with the realization of the human right to water. It also deserves separate treatment in the context of water law reforms because it has not been given significant attention in the new laws examined in other chapters of this section of the book. This is not because other specific laws have been adopted for drinking water in recent years, but because drinking water has in fact not been a real priority in ongoing law reforms. While all documents linked to water sector reforms reiterate the position that drinking water is the first priority of the water sector, the laws that have been and are being adopted are not specifically concerned with drinking water. Yet, this does not mean that no reforms have been undertaken concerning drinking water. On the contrary, since at least the middle of the 1990s, sweeping reforms have been introduced for drinking water supply in rural areas. The reform of the policy context for the provision of drinking water in rural areas has, however, never been discussed in the context of any legislation. There has thus been no parliamentary oversee of the process. In the case of urban areas, reform of water supply services has been proposed at the level of individual cities. This may be part of a stand-alone project focusing on the privatization of water services or be part of a broader urban reform project.¹

A. Policy framework for drinking water

Access to safe water sources has dramatically improved over the past few decades. It has been estimated that coverage in rural areas increased from 18 per cent in

¹ Two of the most important schemes are the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) for big cities and the Urban Infrastructure Development Scheme for Small and Medium Towns (UIDSSMT).

1974 to 43 per cent in 1996 and 94 per cent by 2004.² The latest figures given by the UNDP put the percentage of people with sustainable access to an improved water source at 86 per cent.³ Yet, the extent of the progress remains unclear. Thus a background document for the eleventh plan puts the figure at 95 per cent coverage, but acknowledges that nearly 20 per cent of residences have slipped back to being only partially covered under the norms in force.⁴ This is acknowledged as one of the biggest problems in the rural drinking water sector and can be due to a variety of reasons from a decrease in groundwater level to new quality concerns or new habitations resulting in reduced per capita availability.⁵ Additionally, another 15 per cent of habitations suffer from problems with water quality, among which 4 per cent suffer from serious salinity, arsenic and fluoride contamination.⁶ These figures may underestimate the problem as a survey undertaken in 2003 found that 16.9 per cent of habitations were not covered and an additional 25.8 per cent were only partially covered.⁷ Even under the lower figures, since water quality is one of the criteria used to assess coverage, this means that at least 35 per cent of habitations are not receiving 40 litres per capita per day (lpcd) or are suffering from water quality problems that cannot be categorized as being fully covered under existing norms. Additionally, existing norms clearly indicate the definition of coverage only implies a basic minimum, which is a first step towards expanded targets. In other words, partially covered habitations are those that are not covered according to the norms in force, but have some water supply.

These figures need to be put in perspective. Indeed a covered habitation is one that has a drinking water source within 1.6 km or 100-metre elevation in hilly areas. These may be either private or common sources of water.⁸ Additionally, the definition of a habitation is not that of a house. The official definition is of a locality within a village where a cluster of around twenty families (or 100 people) reside.⁹ This indicates that even when 100 per cent coverage of habitations is achieved, more isolated houses may still remain uncovered. This has

2 Maggie Black with Rupert Talbot, *Water – A Matter of Life and Health* (New Delhi: Oxford University Press, 2005), A.J. James, 'From Sector Reform to Swajaldhara – Scaling up in India', 23/2 *Waterlines* 11 (2004) and World Bank, Staff Appraisal Report – Uttar Pradesh Rural Water Supply and Environmental Sanitation Project (Report No. 15516-IN, 1996).

3 United Nations Development Programme, *Human Development Report 2006 – Beyond Scarcity: Power, Poverty and the Global Water Crisis* 307 (New York: UNDP, 2006).

4 Planning Commission, *Towards Faster and More Inclusive Growth: An Approach to the Eleventh Five-Year Plan 2007–2012* at 69 (New Delhi: Government of India, 2006).

5 Agenda Note for Conference of State Ministers In-charge of Rural Water Supply and Sanitation, Sustainable Drinking Water Supply Sanitation for All 2012 (New Delhi: Rajiv Gandhi National Drinking Water Mission, 2007).

6 Planning Commission, *Towards Faster and More Inclusive Growth: An Approach to the Eleventh Five-Year Plan 2007–2012* at 69 (New Delhi: Government of India, 2006).

7 Department of Drinking Water Supply, National Habitation Survey 2003 (New Delhi: Government of India, 2003).

8 Accelerated Rural Water Supply Programme Guidelines, s. 2(3).

9 Norms for Providing Potable Drinking Water in Rural Areas, available at <http://megphed.gov.in/knowledge/standards/guidesrural.pdf>.

been recognized as a problem and under the eleventh plan, an effort is being made in the case of SC/ST habitations to cover them under the Accelerated Rural Water Supply Programme (ARWSP) even if there are fewer than 100 people. Additionally, it has been proposed to reduce distance criteria to 0.5 kilometres and a 30-metre elevation.¹⁰

An additional issue is that of the quality of the water that can be accessed. Indeed, the definition of drinking water implies that water must be salubrious from the chemical, physical and microbiological points of view. This is still problematic. Approximately 217,000 habitations suffer from water quality problems: 118,088 habitations suffer from excess iron, 31,306 from excess fluoride, 23,495 from excess salinity, 13,958 from excess nitrate and 5,029 from excess arsenic.¹¹ In Gujarat, for instance, water in as many as 38 per cent of habitations did not comply with WHO guidelines with respect to fluoride content and 23.6 per cent were above the maximum permissible limit.¹²

Access to water has rapidly changed over time. In rural areas, groundwater provides around 85 per cent of domestic water supply.¹³ In urban areas, groundwater is the main source of water for about a quarter of households but most (70 per cent) depend on municipal water supply.¹⁴ Yet the majority (about 61 per cent) do not have access to water within their dwelling and have to transport it from the main source. Of households that have access to tap water, 54 per cent usually depend on a tap which is not inside the house.¹⁵

1. Law and policy context

Drinking water supply is of primary importance in the context of water regulation.¹⁶ Yet, neither the Union nor the states have been particularly proactive in developing legal frameworks that elaborate on the right of individuals and groups to have access to water, the quantities involved and the quality. In fact, the provision of domestic water is, from a regulatory point of view, a patchwork of policy documents at different levels and rules and regulations often adopted in the context of specific legislation defining the rights and duties of specific municipal corporations.

Different issues arise in the regulation of drinking water. Water quality is key to ensuring the delivery of water that is not harmful to health. Existing standards are

10 Rural Water Supply and Sanitation, Eleventh Five-Year Plan – Approach Paper 13 (2006).

11 Planning Commission – Government of India, *Eleventh Five-Year Plan 2007–12 – Volume II – Social Sector* 164 (New Delhi: Oxford University Press, 2008).

12 Indira Hirway, 'Ensuring Drinking Water to All: A Study in Gujarat', in K.V. Raju (ed.) *Elixir of Life – The Socio-Ecological Governance of Drinking Water* 74, 78 (Bangalore: Books for Change, 2007).

13 Rajiv Gandhi National Drinking Water Mission Department of Drinking Water Supply, Submission to the National Advisory Committee (2005).

14 P. Bajpai and L. Bhandari, 'Ensuring Access to Water in Urban Households', 36/39 *Economic & Political Weekly* 3774 (2001).

15 *Ibid.* 3775.

16 *Delhi Water Supply and Sewage Disposal Undertaking v. State of Haryana* (1996) 2 SCC 572 (Supreme Court of India, 1996).

in principle applicable to all water supplies. These include, for instance, criteria for bacteriological examination whose result must yield no *E. coli*.¹⁷ These standards are, however, not absolute since they are only compulsory in the case of piped supply of water.¹⁸ Since there is a broad dichotomy between rural and urban areas with regard to piped supply, the implication is that standards applicable in rural areas differ more often than not from the ones applicable in cities. Additionally, existing standards are not generally binding. Rather, they constitute best practices and desirable aims for all agencies concerned with drinking water supply. Thus, while water quality standards are central to the supply of potable water, the regulatory framework remains sketchy. Standards exist and practitioners all seem to have a reference point set by the Bureau of Indian Standards, the Central Public Health and Environmental Engineering Organization (CPHEEO) or the WHO. It would be difficult to hold actors accountable for the violation of a specific standard. This important gap has been recognized by policy-makers who have made a first attempt at introducing a binding framework for water quality. The existing proposal is to make state water supply authorities responsible for ensuring that water intended for human consumption does not constitute a danger to public health and complies with Indian Standard 10500 highlighted above.¹⁹

Whereas quality standards are generally similar for all areas, drinking water policies differ between urban and rural areas. As a result, the framework for water supply in urban and rural water is examined separately.

2. *The situation in urban areas*

Cities have generally been considered separately from rural areas. This is partly due to the fact that cities were until relatively recently the exception to the norm, which was life in rural areas. Cities have also always been centres of power from the local to the national level and the introduction of a different set of measures for the provision of drinking water in urban areas is thus relatively unremarkable in the policy context in which they developed. Yet, the separate – and more favourable – treatment of cities raises a number of questions. This has become even more important because of rapid urbanization and the increasing pressure that cities put on the environment and natural resources in general, and water in particular.

Water consumption in cities is generally much higher than in rural areas. Thus, a study of some large and medium-sized cities found that people consumed an average of 91.6 litres per day, with a range among the cities studied going from 77 in Kanpur, Uttar Pradesh to 116 in Kolkata.²⁰ While this is very high in

17 Indian Standard – Drinking Water – Specification (First Revision) (New Delhi: Bureau of Indian Standards, IS 10500: 1991) s. 3(2)(1).

18 *Ibid.*, s. 3(2)(2).

19 Department of Drinking Water Supply, Draft Guidelines for Preparation of Legislation for Framing Drinking Water Regulations (2007) ss. 45–6. See further Chapter XIII in this volume.

20 Abdul Shaban and R.N. Sharma, 'Water Consumption Patterns in Domestic Households in Major Cities', 42/23 *Economic & Political Weekly* 2190, 2192 (2007).

comparison with the rest of India, it is lower than the recommended 100 to 300 litres proposed by the WHO for optimal access.²¹ With a 100-litre benchmark, the same study found that 65 per cent of households were water deficient.²² Water deficiency in cities clearly correlates with socio-economic status and the level of education. The water consumption activities of households show that water is used for a variety of basic purposes. These include bathing (28 per cent of daily use), followed by toilet use (20 per cent), clothes washing (18.6 per cent), cleaning utensils (16.3 per cent) and drinking and cooking (less than 10 per cent).²³

As against these figures collected from surveys, the policy framework of the Government of India has recognized 70 lpcd as the absolute minimum level that needs to be provided even in times of drought and in the poorest colonies.²⁴ This is divided into 10 litres for cooking and drinking, 30 litres for bathing and sanitation and 30 litres for washing utensils and clothes. Besides the minimum level of 70 lpcd, a gradation has been provided among different kinds of towns. Small towns with piped water supply but without a sewerage system should receive 70 lpcd. Cities with a sewerage system should receive 135 lpcd, while big metropolitan cities should receive 150 lpcd.²⁵ The CPHEEO Manual makes it clear that these figures only apply to households with individual piped connections. Where water is provided through public standposts (e.g., in villages) the norm is 40 lpcd.²⁶ Further, different norms are proposed by different bodies. Thus, the Bureau of Indian Standards suggests that 200 lpcd should be provided in cities with full flushing systems while the National Commission for Integrated Water Resource Development Plan suggested that by 2050 cities should receive 220 lpcd and rural areas 150 lpcd.²⁷ Additionally, different states interpret these norms differently. In Karnataka, for instance, the water policy provides that towns should get 70 lpcd, municipal council areas should get 100 lpcd and the biggest city corporations 135 lpcd.²⁸

The delivery of water by the government in urban areas is premised on two different principles. On the one hand, urban dwellers benefiting from individual connections have been charged a fee for the service that is provided.²⁹ In most

21 Guy Howard and Jamie Bartram, *Domestic Water Quantity, Service Level and Health* 22 (Geneva: World Health Organization, 2003).

22 Shaban and Sharma, note 20 above, 2193.

23 *Ibid.*

24 Government of India, *Report of the National Commission on Urbanization – Volume II* at 294 (1988).

25 National Commission for Integrated Water Resource Development Plan, *Report 63* (New Delhi: Ministry of Water Resources, 1999).

26 Central Public Health and Environmental Engineering Organization, *Manual on Water Supply and Treatment 11* (New Delhi: Ministry of Urban Development, 1999).

27 Shaban and Sharma, note 20 above, 2191 and National Commission for Integrated Water Resource Development Plan, *Report 64* (New Delhi: Ministry of Water Resources, 1999).

28 Karnataka State Water Policy, 2002, s. 4.

29 Lyla Mehta, 'Problems of Publicness and Access Rights: Perspectives from the Water Domain', in Inge Kaul *et al.* (eds.) *Providing Global Public Goods – Managing Globalization* 556, 562 (Oxford: Oxford University Press, 2003).

cases, the fee charged does not cover the overall cost of providing the water, but this is changing fast in the context of ongoing reforms. On the other hand, free community taps and/or hand-pumps have been provided in a variety of places. In fact, some acts specifically provide that the relevant authority has the power to provide public standposts free of charge.³⁰

Water supply in cities is in principle the responsibility of urban local bodies. These are regulated in a variety of ways. Certain major cities such as Kolkata have their own water supply and sanitation act. In other cases such as Uttar Pradesh, water supply in cities is regulated in part by the Water Supply and Sewerage Act (UP Water Act) and in part by the specific regulations applying to the type of cities, usually categorized according to population size. There is thus no uniformity in the treatment of water supply in cities throughout the country.

The central obligation that is imposed on municipalities is to provide drinking water. For example, in Uttar Pradesh municipalities have a duty to provide 'sufficient supply of pure and wholesome water'.³¹ In addition, they must also maintain public wells.³² The main responsibility for water delivery in cities is in the hands of city-specific jal sansthan whose main task is to provide 'wholesome water' to city dwellers.³³ While the obligation to provide water is central to the functions of municipalities with regard to drinking water, it is not necessarily absolute. Thus, in New Delhi, while the Council has a similar obligation to provide a sufficient supply of pure and wholesome water, this is qualified by the fact that it must only do what is practicable and at a reasonable cost.³⁴

Water supply providers are funded at least in part through cost recovery from water users. In Uttar Pradesh, jal sansthan are funded through two different routes. Firstly, they charge a water tax on each property (e.g., this is 8 per cent in Aligarh).³⁵ The only exceptions to this rule are for properties which are not within a specified distance, often 200 metres, from the nearest standpost or other waterworks maintained by the jal sansthan.³⁶ Secondly, a water rate for actual consumption of water is also imposed. This is, for instance, Rs 100 per month in Aligarh. The power to charge water users is associated with a number of duties. These include the obligation to maintain a system of water supply through pipes and to provide water at a prescribed pressure during prescribed hours.³⁷

An important feature of a number of regulatory frameworks is the possibility for the authority in charge to disconnect a private water supply. In Uttar Pradesh,

30 Calcutta Metropolitan Water Supply and Sanitation Authority Act, 1966, s. 45(2) and New Delhi Municipal Council Act, 1994, s. 154.

31 Uttar Pradesh Municipalities Act, 1916, s. 7(j).

32 *Ibid.*, s. 7(jj).

33 Uttar Pradesh Water Supply and Sewerage Act, 1975, s. 24.

34 New Delhi Municipal Council Act, 1994, ss. 11 and 147.

35 Personal communication with Mr Dwivedi, Mukhya Nagar Adhikari, Municipal Corporation, Aligarh.

36 Uttar Pradesh Water Supply and Sewerage Act, 1975, s. 55.

37 Uttar Pradesh Municipalities Act 1916, s. 228.

jal sansthans have the power to cut water off where users fail to pay their bills. While there is no uniformity in the answer that officials give concerning the carrying out of disconnections, the act provides that the jal sansthan has the power to cut off water to anyone who fails to pay a bill within 15 days of receiving it and it appears to be enforced at least in some places.³⁸ This possibility takes additional significance in a context where households with an individual piped connection are prohibited from taking water away from the premises unless water supply is charged by meter, thereby preventing solidarity among neighbours.³⁹ The power to disconnect private water supply is a regular feature in other acts.⁴⁰

In addition to state-specific or city-specific regulation, certain cities are governed by more than one legal regime concerning water supply. A situation which is covered by a central act is that of cantonment areas. A remnant of an older colonial legislation, the new Cantonments Act 2006 still provides for the separate governance of cantonment areas by a cantonment board. Under the Act, one of the duties of the board is to provide or arrange for the provision of water supply.⁴¹ This includes a duty to ensure 'as far as possible' that the supply is continuous throughout the year and that the water is 'fit for human consumption'.⁴² Surprisingly, the 2006 Act which reproduces nearly word for word certain sections of the colonial Act has dispensed with an important adjective which imposed on the board a duty to provide water that is 'pure and fit for human consumption'.⁴³ While no definition of purity was given under the old act, this can be assumed to mean potable since in the first sub-section of section 186, the new act has replaced pure with potable. This omission would tend to indicate that the duties of the board are being narrowed down over time. They are also limited to the extent that the board is not liable for any failure of supply arising from accidents or so-called unavoidable circumstances such as drought.⁴⁴

The existence of different legal regimes governing different parts of the same city, which like in Delhi includes three distinct areas, is problematic in principle and in practice. Firstly, drinking water being a fundamental right, there is no justification for treating different urban residents of the same city differently. Secondly, in an immense city like Delhi, sub-dividing the responsibility for water supply by area could in principle be useful. The current scheme is, however, not based on a rational decision to improve water supply delivery for the poorest or the areas of the city suffering from much lower access to water. Thirdly, the existence of a separate framework for the New Delhi area, which benefits from

38 Uttar Pradesh Water Supply and Sewerage Act 1975, s. 72.

39 Uttar Pradesh Municipal Corporations Adhiniyam 1959, s. 270(2).

40 See, e.g., New Delhi Municipal Council Act 1994, s. 169 and Mumbai Municipal Corporation Act, s. 279.

41 Cantonments Act, 2006, s. 186.

42 *Ibid.*, s. 186(2).

43 Cantonments Act, 1924, s. 217(2).

44 Cantonments Act, 2006, s. 194.

much higher per capita availability of water than any other area of the city, can only reinforce existing inequalities in access to water. These inequalities in consumption are, for instance, highlighted by the fact that the New Delhi Municipal Council area is supplied with 462 lpcd while the neighbouring wealthy area of South Delhi has a supply of 148 lpcd.⁴⁵

3. *The situation in rural areas*

The provision of drinking water in rural areas has been a priority for governments for several decades. This is due both to the fact that at independence, the drinking water situation was comparatively worse in villages than in towns and that an overwhelming percentage of the population lived in rural areas. In terms of coverage, there have been dramatic improvements over time even though many issues remain to be solved, from uncovered habitations to habitations that slip back to being uncovered or only partially covered, and the fact that partially covered habitations are for all practical purposes not covered as the minimum level for identification as partially covered is only 10 lpcd.

The provision of drinking water is primarily the responsibility of states. Yet, the central government has played a very important role in fashioning the policies that states apply and has provided significant funding to ensure access to water in rural areas. The most important body at the national level is the Rajiv Gandhi National Drinking Water Mission (RGNDWM) that functions within the Department of Drinking Water Supply established in 1999 under the Ministry of Rural Development. It 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 ARWSP – which is funded both by the Government of India and state governments – plays a central role. The ARWSP was first introduced in 1972. Apart from an interruption during the 1970s, it 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 central 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.⁴⁶ The Guidelines provide several key policy elements. Firstly, they define the different levels of coverage. Non-covered habitations are defined as having access to less than 10 lpcd. Partially covered habitations are those having access to 10 to 40 lpcd. Covered habitations are defined as having access to 40 lpcd. The figure of 40 lpcd is used to determine the minimum level of coverage necessary to define a habitation as covered. It has been determined through an amalgamation of figures for different basic minimum uses of water. These include three litres for drinking, five

45 Government of Delhi, *Economic Survey of Delhi 2001–2002*, 115.

46 Government of India, *Accelerated Rural Water Supply Programme Guidelines (1999–2000)* (hereafter the ARWSP Guidelines).

litres for cooking, fifteen litres for bathing, seven litres for washing utensils and the house and ten litres for ablutions.

Quantity itself 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 hand-pump should not be used to serve more than 250 people.

The ARWSP Guidelines also acknowledge the direct link between drinking water for human beings and water for cattle. Consequently, in a certain number of states especially affected by drought, the guidelines mandate that an additional 30 lpcd should be provided for cattle.⁴⁷

The minimum level of 40 lpcd is acknowledged by the RGNDWM as a minimum 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.⁴⁸ Further, some states have long-term objectives which go far beyond these minimums. Thus, Gujarat's Vision 2010 envisages the supply of 80 lpcd in rural areas, 120 lpcd in urban towns without underground drainage and 180 lpcd for cities with drainage.⁴⁹

B. Drinking water reforms in rural areas

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 analyzed separately – and this section highlights two particular initiatives, the Swajal project and the Swajaldhara guidelines – the pattern which emerges is overwhelmingly consistent. In other words, while there are different problems in different parts of the country, while different actors have been involved in policy changes, the response given by policy makers at all levels is substantially the same. This implies that at the level of formal policy making, there is in large part a consensus of the basic problems affecting drinking water in rural areas and basic solutions that need to be brought.

Changes in rural drinking water policies have been brought in a number of ways. These include changes in the Government of India's existing policies, adoption of new policies at the Union and state level as well as development projects

47 ARWSP Guidelines, note 46 above s. 2(2)(2).

48 Rajiv Gandhi National Drinking Water Mission Department of Drinking Water Supply, Submission to the National Advisory Committee (2005).

49 K.V. Raju, Keshab Das and S. Manasi, 'Emerging Trends in Rural Water Supply: A Comparative Analysis of Karnataka and Gujarat', in K.V. Raju (ed.) *Elixir of Life – The Socio-Ecological Governance of Drinking Water 1* (Bangalore: Books for Change, 2007).

such as World Bank projects. This section first highlights some general changes in rural water policy and then specifically examines the case of the Swajal project and the Swajaldhara guidelines, two landmarks in the development of a new rural water policy framework that is still unfolding today.

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 Accelerated Rural Water Supply Programme Guidelines. They specifically highlight that one of the reasons for the existence of villages still uncovered includes the non-involvement of people in operation and maintenance.⁵⁰ The revision of the guidelines was specifically undertaken with a view to achieving full coverage of all rural habitations during the ninth plan (1997–2002). Three of the guiding principles are worth highlighting. 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 per cent 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 a socio-economic good to ensure its effective use.⁵¹

The guidelines put significant emphasis on the need for people participation as a way to move away from supply-led to demand-led schemes. A number of key conditions for the introduction of demand-led projects are identified. These include ownership of assets and involvement in the setting up of the infrastructure. More significantly, the guidelines recognize 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.⁵² The message has recently been reinforced with the eleventh five-year plan specifically calling for state support to panchayats for operation and maintenance as a 'hand-holding support for the first few years before the local bodies become self-sustainable'.⁵³

The sector reforms put in place require all state and district authorities to impose at least 10 per cent capital cost payment by villagers.⁵⁴ Additionally, the ARSWP 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 now have to pay at least 20 per cent of the capital cost on top of all operation and maintenance expenses.⁵⁵ 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.⁵⁶

50 ARWSP Guidelines, note 46 above, s. 1(3).

51 *Ibid.*, s. 3(1).

52 *Ibid.*

53 Planning Commission – Government of India, *Eleventh Five-Year Plan 2007–12 – Volume II – Social Sector* 166 (New Delhi: Oxford University Press, 2008).

54 Planning Commission, Report of Working Group on Tenth Plan for Drinking Water Supply & Sanitation 2002–2007 at 4.

55 ARWSP Guidelines, note 46 above s. 2(3)(1).

56 See, 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 BPL, SC and ST families are excluded.

The ARSWP guidelines have significant influence on the policies followed in states, partly because the states need to put their own money in projects funded under the ARSWP. Yet, some states have gone further than others in adopting reforms in this field. Thus, Maharashtra has been particularly eager in this context. The Government of Maharashtra was thus the first state to adopt demand-driven and participatory approaches for all its rural water supply and sanitation service delivery already in 2000.⁵⁷ Besides, it also took the decision to phase out all government subsidies to local bodies for operation and maintenance of water supply.⁵⁸ The Government of Maharashtra has also gone much further than the ARWSP Guidelines in requiring not only 10 per cent capital cost contribution for a level of service of 40 lpcd (5 per cent for tribal settlements) but also 100 per cent contribution from the villagers for an increase to 55 lpcd, including for tribal settlements.⁵⁹ Maharashtra has also imposed that even the rehabilitation of existing drinking water supply schemes attracts a 10 per cent community contribution up to 40 lpcd and 100 per cent above that level. Other states have taken similar initiatives. Uttar Pradesh has, for instance, implemented the handing over of operation and maintenance of all drinking water schemes to gram panchayats. Rajasthan also has long-term plans to transfer ownership and responsibilities for the management of public water and sanitation assets to panchayati raj institutions as well as imposing 100 per cent responsibility for operation and maintenance by users by 2012.⁶⁰

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 also the World Bank has been closely associated with the policy changes taken at the state and union levels. It advocated, for instance, already a decade ago that '[s]ubsidized water and highly centralized 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.⁶¹ 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'.⁶² It also specifically called for the

57 World Bank, Project Appraisal Document – Maharashtra Rural Water Supply and Sanitation 'Jalswarajya' Project 5 (Report No. 26247-IN, 2003).

58 *Ibid.*, at 9.

59 *Ibid.*, at 9.

60 Government of Rajasthan, Sector Policy for Rural Drinking Water and Sanitation (Draft, August 2005).

61 World Bank, India – Water Resources Management Sector Review – Initiating and Sustaining Water Sector Reforms 25 (Report No. 18356-IN, 1998).

62 World Bank, India – Water Resources Management Sector Review – Rural Water Supply and Sanitation Report viii (Report No. 18323, 1998).

immediate imposition of operation and maintenance to users and the progressive implementation of capital cost recovery with the introduction of a 10 per cent contribution during what it saw as a transition period towards full cost recovery.⁶³

1. The Swajal project

Since the mid-1990s, a number of initiatives have been taken to foster better water supply and access to water in rural areas by following a new policy framework. It has by now been implemented in the context of several different schemes. While the instruments to deliver the new policy framework have evolved, the basic principles introduced in the mid-1990s continue to guide the overall policy framework for drinking water today.

One of the first formal steps towards introducing a new policy framework for drinking water in rural areas was the implementation of the World Bank Uttar Pradesh Rural Water Supply and Environmental Project (Swajal project). This 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. With funding of \$63 million, it covered about 1,200 villages in nineteen districts between 1996 and 2002.⁶⁴

The Swajal project was based around a string of important policy propositions. It sought to introduce a demand-driven approach to replace the supply-driven approach deemed to result in ‘inefficient service delivery and poor quality of construction’.⁶⁵ The Swajal project thus sought to introduce participation by ‘users’ allowing them to determine their own contributions to the scheme and to manage operation and maintenance.⁶⁶ Under Swajal, participation by villagers should not be understood in the sense of democratic governance at the local level. Indeed, participation was conceived both in terms of ensuring people’s control over schemes at the local level and in terms of introducing new obligations and responsibilities that villagers need to shoulder. This is linked to the fact that participation cannot be seen in isolation from another basic principle – cost recovery – introduced under Swajal.⁶⁷ Thus, decentralization comes in the form of people’s control over some aspects of locally implemented schemes together with the imposition on villagers of the need to shoulder 10 per cent of the capital costs of new projects and the full costs of the operation and the maintenance of those schemes.

The ultimate rationale of the principle of cost recovery is that all projects should be fully self-sufficient. At the outset, project proponents determined that the full

63 *Ibid.*, at viii.

64 Note that the project size was reduced from an original \$71 million after the 1999 mid-term review.

65 World Bank, Staff Appraisal Report – Uttar Pradesh Rural Water Supply and Environmental Sanitation Project 6 (Report No 15516-IN, 1996).

66 *Ibid.*, at 7.

67 *Ibid.*, at 7–8.

cost recovery should only be imposed with regard to operation and maintenance. This was linked to the perception that there would be sufficient 'demand' for this service while poverty might preclude demand for new expensive schemes in favour of maintaining or repairing existing infrastructure. In the meantime, the transfer of the responsibility of operation and maintenance to villagers has been mainstreamed and gram panchayats are now responsible for the operation and maintenance of the whole drinking water infrastructure.

With regard to capital costs, a different strategy was adopted. In view of the political and practical impossibility to impose the full cost recovery on villagers, it was decided to proceed incrementally. Thus, under the Swajal project a community contribution of 10 per cent of the capital costs was made mandatory. This contribution was divided into two components. The first was a 2 per cent cash contribution (1 per cent in the hill districts of Uttarakhand). The rest of the contribution could be in the form of labour, cash or a combination of the two. Anyone seeking an individual connection had to pay a cash contribution of Rs 1,000, half of which had to be paid upfront.⁶⁸ This 10 per cent contribution was an arbitrary figure chosen as a way to introduce the principle of cost recovery rather than as a goal in itself. Thus, by 2002 a report prepared for the Planning Commission suggested that in all government projects 50 per cent of capital costs should be recovered.⁶⁹

Another important facet of the Swajal project is that it sought to create new institutional capacity at the village level through the setting up of Village Water Supply and Sanitation Committees (VWSCs). These were first set up as sub-committees of the gram panchayat to which the panchayat had to delegate its powers to allow the committee to fulfil its responsibilities under the project.⁷⁰ The membership of the VWSC was in principle from seven to twelve members, but the number was not fixed in the relevant government order. As a result, in the first phase of the Swajal project, while the VWSCs were legally set up in the framework of the panchayati raj institutions, in practice they were independent from the gram panchayat. This was linked to the fact the World Bank did not think that panchayati raj institutions had the 'capacity and inclination to facilitate a demand-responsive approach'.⁷¹ Rather, it was proposed that the project beneficiaries should be the ones directly involved in the schemes.⁷² Efforts were made to ensure the representation of diverse constituencies by imposing, for instance, 20 per cent representation of SC/ST members and 30 per cent of women.

68 World Bank, Staff Appraisal Report – Uttar Pradesh Rural Water Supply and Environmental Sanitation Project 142 (Report No. 15516-IN, 1996).

69 G.N. Kathpalia and R. Kapoor, *Water Policy and Action Plan for India 2020: An Alternative 24* (Delhi: Alternative Futures, 2002).

70 Government of Uttar Pradesh, Order on Village Water and Sanitation Committee, No: 4430/33-1-95-373/95, 15 December 1995.

71 World Bank, India: The Swajal Project, Uttar Pradesh 2 (on file with the author, 2003).

72 World Bank, Staff Appraisal Report – Uttar Pradesh Rural Water Supply and Environmental Sanitation Project 15 (Report No. 15516-IN, 1996).

However, on the whole, communities were to determine how to organize themselves.⁷³ The process of excluding the panchayati raj institutions and letting villagers organize themselves is problematic. Thus, allowing communities to determine how they want to organize themselves is more likely than not a way to reproduce existing patterns of power which tend to go along with caste and wealth. In a context marked by vast and even extreme inequalities, letting communities fend for themselves is likely to lead to further marginalizing of the weaker and poorer communities. Further, sidelining the panchayati raj institutions is also problematic because project beneficiaries are the people who have been able to pay the 10 per cent contribution at the outset. In practice, this largely restricts the number of project beneficiaries to the better-off members of the village. Nevertheless, it is the setting up of VWSCs that was the visible face of participation in the first phase of the Swajal project.

The relationship between the VWSCs and the panchayati raj institutions calls for further comments. Indeed, while there was at first an attempt to link the VWSCs to the panchayati raj institutions, in 1998 the Panchayat Act was amended and the VWSCs were then derecognized. This was partly linked to the perception that only committees made of elected panchayat members should fall under the panchayat and partly to the fact that the project proponents thought the user committees would function better if they were completely independent from elected bodies. Severing all links between the VWSCs and panchayati raj institutions quickly proved odd. Indeed, the constitutional mandate of the 73rd Amendment provides that panchayats have control over water supply at the local level.⁷⁴ In furtherance of this mandate, the Panchayat Raj Act was amended in 1994 and the functions of the gram panchayat now include the '[c]onstruction, repair and maintenance of public wells, tanks and ponds for supply of water for drinking, washing, bathing purposes and regulation of sources of water supply for drinking purposes'.⁷⁵ A water management committee has been provided to foster the realization of these functions. Since this did not leave any legitimacy for the committees constituted under the Swajal project, an additional layer of institutional complexity was added by allowing 'special invitees' to become *de facto* part of the relevant committee even though they are not formally elected. There can be up to seven invitees which brings the total number of people sitting in the committee to fourteen.⁷⁶ These invitees do not have the right to vote.⁷⁷ In other words, the non-elected user committees indirectly become part of the

73 Government of Uttar Pradesh – UP Rural Water Supply and Environmental Sanitation Project (The Swajal Project), Description of Activities (DOA) of Support Organizations for the Batch 2 Planning Phase (on file with the author, undated) para. 6(3).

74 Constitution, Art. 243G and Eleventh Schedule.

75 Uttar Pradesh Panchayat Raj Act 1947, s. 15(xi).

76 Uttar Pradesh Panchayat Raj (Constitution of Committees of Gram Panchayats for Assistance in Performance of their Functions) Rules 2002, UP Gazette, Extra., Part 4, Section (Kha) (13 September 2002) s. 5.

77 *Ibid.*, s. 5(2).

constitutionally sanctioned water committees of the panchayat. This is justified by the fact that 'users' are more directly involved in the relevant issues than the elected members of the panchayat committee. This is the same line of argument which is used to restrict WUAs to landowners, but does not have any legitimacy in the context of drinking water supply, which is without doubt the concern of each and every individual living in the panchayat. A similar position has been adopted in the ARWSP Guidelines that request the setting up of VWSCs for each water project in reform mode made of members of the panchayat as well as co-opted members and other stakeholders.⁷⁸ The Guidelines also specify that this is a committee of the gram panchayat, regardless of its membership.

Swajal also initiated the progressive move towards reducing the government's contribution in drinking water schemes from being a provider to being a facilitator. Under Swajal, two initiatives were taken. Firstly, the Swajal project decided not to use existing government departments to implement the project but rather to use a Project Management Unit (PMU), an autonomous body established specifically to coordinate and monitor its implementation.⁷⁹ Secondly, the main interface between the PMU and the VWSC was so-called support organizations. The non-governmental organizations chosen to function as support organizations took on the tasks of facilitating specific schemes and working in individual villages. In practice, the support organizations played a determining role in the implementation of the Swajal project.

Official assessments of demand-led reforms were generally positive.⁸⁰ From the Union Government's perspective, this can be assessed through two related initiatives. In 1999 the Union Government had decided to broaden the Swajal experiment throughout the country. It started the so-called Sector Reform Project which sought to implement in sixty-seven districts of the whole country the key principles of the Swajal Project.⁸¹ This was then extended to the whole country in the guise of the Swajaldhara Guidelines immediately after the completion of the Swajal project. Subsequently, Sector Reform Project schemes were clubbed together with Swajaldhara projects.⁸² From the point of view of the World Bank, the Implementation Completion Report stated, for instance, that the establishment of the VWSC has allowed 'the village communities to fully participate in the process and gain a sense of ownership of the infrastructure schemes constructed

78 ARWSP Guidelines, note 46 above, s. 4(2)(3)(iii).

79 Memorandum of Association and Rules – Uttar Pradesh Rural Water Supply and Environmental Sanitation Project Management Unit (PMU), in World Bank, Staff Appraisal Report – Uttar Pradesh Rural Water Supply and Environmental Sanitation Project 101 (Report No. 15516-IN, 1996).

80 See, e.g., Ministry of Rural Development, All India Evaluation Study – Sector Reforms Projects in Rural Drinking Water Supply (2005) which provides recommendations on how to improve demand-driven rural water supply but does not call for a paradigm shift.

81 World Bank, Implementation Completion Report – Uttar Pradesh and Uttaranchal Rural Water Supply and Environmental Sanitation (Swajal) Project 4 (Report No: 27288, 2003).

82 Rajiv Gandhi National Drinking Water Mission Department of Drinking Water Supply, Submission to the National Advisory Committee 21 (2005).

under the Project'.⁸³ This success has led the Bank to implement several other projects based on the Swajal project philosophy in the past few years.⁸⁴ Yet, even according to official assessments, a number of problems surfaced in the first phases of the reforms. Thus, in Uttar Pradesh, while the Swajal Project was deemed successful, jal nidhi (the name given to the Sector Reform Project in Uttar Pradesh) proved unsuccessful. This has been explained as being due to the fact that in the plain districts where jal nidhi was implemented, demand for the schemes could not be created.

2. The Swajaldhara Guidelines

The Union Government's positive assessment of the Sector Reform Project and the Swajal project led to the formulation of the Swajaldhara Guidelines which extended the key principles of the Swajal project to the whole country during the Tenth plan. Twenty per cent of funds allocated to the ARWSP were directed to reform projects under the Swajaldhara Guidelines during this period.⁸⁵

The Ministry of Rural Development spearheaded the introduction of Swajaldhara through the adoption of the Guidelines on Swajaldhara. The conceptual background is directly derived from the Swajal project. It first sets out to demonstrate that while water has been perceived as a social right, it should, in fact, be seen as a socio-economic good. Additionally, 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 thus calls for a demand-led approach seeing water as an economic good.⁸⁶ 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'.⁸⁷ 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 are remarkably similar to the ones introduced under the Swajal project. Firstly, 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. Secondly, the guidelines seek a form of decentralization and request that drinking water assets should be owned by

83 World Bank, Implementation Completion Report – Uttar Pradesh and Uttaranchal Rural Water Supply and Environmental Sanitation (Swajal) Project 4 (Report No. 27288, 2003).

84 See, e.g., World Bank, Project Appraisal Document, Maharashtra Rural Water Supply and Sanitation 'Jalswarajya' Project (Report No. 26247-IN, 2003).

85 Ministry of Rural Development, Guidelines on Swajaldhara, 2003, s. 15(1).

86 Ministry of Rural Development, Guidelines on Swajaldhara, 2003, s. 1(1).

87 *Ibid.*, s. 1(2).

the relevant panchayat and that the communities should have the power to plan, implement and operate all drinking water schemes. Thirdly, the participation and decentralization 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 per cent for a service level of 40 lpcd but,⁸⁸ in a number of situations, this percentage has already been exceeded. Under Swajaldhara, at least half of the 10 per cent contribution must be in cash, a significant increase over the 20 per cent under the Swajal project.⁸⁹ Exceptions have, for instance, been provided for scheduled tribes' areas where the cash contribution was first reduced to one-quarter of the community contribution.⁹⁰ Subsequently, in 2006 an amendment to the guidelines provided that the contribution in the case of villages where scheduled tribes or scheduled castes constituted more than half of all habitations could be in any form without any stipulation of a contribution in cash.⁹¹ Fourthly, 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. The Union decided to proceed in two ways. Firstly, it decided to provide full funding for the scheme, a departure from the usual ARWSP norm where the centre and the states each share half of the costs. Secondly, it proposed that the states interested in taking up Swajaldhara funding should sign up to a Memorandum of Understanding with the Centre. The intent of the model Memorandum circulated to states was to ensure that the reform principles would be, as far as possible, mainstreamed.⁹² Apart from this general commitment to reforms of the drinking water sector, the states were, for instance, also called upon to hand over all existing drinking water schemes to gram panchayats for operation and maintenance.⁹³

The process of decentralization 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

88 Ministry of Rural Development, Guidelines on Swajaldhara, 2003, s. 5(1).

89 *Ibid.*, s. 5(3).

90 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.

91 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.

92 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.

93 *Ibid.*, s. 8.

government does not make its people available.⁹⁴ 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 sub-standard quality. On the other hand, the same set of reforms propose 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 tariffs is fraught with difficulties.⁹⁵ 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 marginalized communities will be further marginalized 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. As identified in the context of the Swajaldhara project, where the communities are left to collect tariffs themselves, public taps are rapidly switched off. Whether the real reason is the one given by the 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 geographical areas is bound to fail from an equity perspective.

C. Swajaldhara and its aftermath

The implementation of the Swajaldhara Guidelines in its first few years of operation led the Government to rethink the scheme for the eleventh plan. This led to a series of documents proposing different ways to take the reforms forward.

In the first place, it was suggested that the Swajaldhara scheme would be discontinued at the end of 2007. This decision did not imply that the principles underlying the reforms were being abandoned. In fact, it had been proposed since at least 2005 to extend the reform principles of Swajaldhara to ARWSP from 2007 onwards.⁹⁶ In other words, the idea was to progressively mainstream the reform principles beyond the Swajaldhara projects to all rural drinking water projects. At the same time the break with Swajaldhara signalled a desire to rethink parts of the reforms in view of some perceived failures and resistance to the reforms. Indeed, official assessments of Swajaldhara found that it had been plagued by ‘constraints’

94 *Ibid.*, s. 20.

95 *Ibid.*, s. 8(vii).

96 Rajiv Gandhi National Drinking Water Mission – Department of Drinking Water Supply, Submission to the National Advisory Committee 26 (2005).

because government officials were slow to adopt reforms and because panchayats lack finances and skills to take up the responsibility immediately.⁹⁷ The government also conceded that difficulties in collecting the community contribution were a factor impeding the success of Swajaldhara.⁹⁸

The combination of these two different assessments led to suggesting a revamped reform effort that sought to address some of the shortcomings identified by the Government in the implementation of demand-led reforms. Firstly, while the principles of Swajaldhara were to be upheld, the financing of projects was to change to the pattern implemented under ARWSP where states and the Union each contribute 50 per cent of the funding.⁹⁹ Further, the states were to be given the discretion to determine how and whether to foster community contribution. The incentives given to the states were that the community contribution would be deducted from the share of the state. Another relaxation concerned the community contribution. In villages where more than half the population is SC/ST, the stipulation of a cash contribution was to be abandoned.¹⁰⁰ An indirect way to relax the element of community contribution is to, for instance, allow MPs and MLAs to use development funds at their disposal for this purpose.¹⁰¹

The gist of the new scheme was to tone down the reform rhetoric and to demand only 'an element of token community contribution and involvement of user groups/panchayats in the selection and implementation of the schemes and for subsequent [operation and maintenance]'.¹⁰² The government also indicated that it was ready to exempt communities from making a contribution in 'exceptional cases of hardship'.¹⁰³ Further, communities could choose the mode of contribution. This removed the previous insistence on a cash contribution.¹⁰⁴

One explanation for these suggested changes was the fact that Swajaldhara had failed at two different levels. Firstly, the demand-led mode has not functioned as hoped by its promoters. This is in part due to the fact that they have not been able to create enough demand. Indeed, where people have adequate access to water, they are loath to adopt the proposed reforms. Thus, it is in the areas where there is least availability of water that people are most responsive to the new scheme. This explains, for instance, why the pilot areas chosen for the Swajal project were areas facing tremendous drinking water problems. Secondly, there has been resistance from within the government to the new schemes. These have been perceived as eroding the power of existing departments. Thus, Swajaldhara was, for instance,

97 Rural Water Supply and Sanitation, Eleventh Five-Year Plan – Approach Paper 3 (2006).

98 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.

99 Department of Drinking Water Supply, DO No. W-11012/15/2007/DWS-III, 30 August 2007.

100 Office Memorandum – Amendment to Swajaldhara Guidelines, No W-11021/2/2003-TM.IV (SW), 15 May 2006.

101 See, e.g., Uttar Pradesh State Rural Drinking Water Policy, s. 3(2).

102 Rural Water Supply and Sanitation, Eleventh Five-Year Plan – Approach Paper (2006) 7.

103 *Ibid.*

104 *Ibid.*

disliked because it seemed to make the technical expertise of government departments irrelevant since their services are not necessarily required on a compulsory basis in the choice and design of schemes.¹⁰⁵ One of the new proposed features in reaction to this was that a Junior Engineer would be specifically charged with providing three to four gram panchayats with technical assistance.¹⁰⁶

This rethinking of the reform principles has eventually not been carried forward. This is illustrated by the fact that the commitment to demand-led reforms during the eleventh plan is more or less intact.¹⁰⁷ Indeed, the government has not shown any inclination to abandon the reforms at this stage. The idea is in fact to ensure that further reform measures are taken during the eleventh plan. The concept of a minimum community contribution of 10 per cent is, for instance, reasserted as something that needs to be part of all drinking water supply schemes.¹⁰⁸ Similarly, the operation and maintenance of all new single village schemes is to be borne by the community and further states' governments are to progressively transfer all existing schemes to gram panchayats.¹⁰⁹ This has now been translated in instructions from the Union Government that seek to carry Swajaldhara forward as originally defined. In other words, the government is back to suggesting that 20 per cent of projects should be implemented under Swajaldhara principles and these projects are financed entirely by the Union Government rather than shared between the state and the Union.¹¹⁰ This does indicate that the time is not yet ripe for mainstreaming Swajaldhara to all ARWSP projects, but also shows that the commitment to a community contribution is maintained. Indeed, the report of a meeting of State Secretaries on rural drinking water states that from 2008 onwards, 'the Swajaldhara scheme is going to be expedited drastically'.¹¹¹

This happens to coincide with a similar commitment to the principles of the Swajal project by the World Bank. Thus, the Uttaranchal Rural Water Supply and Sanitation Project is, for instance, premised on the 'success of demand-driven community participatory approach'.¹¹² The Bank anticipates that the current project can contribute to the replication of the model in other states and the mainstreaming of the approach by the Union Government that the Bank could then support.¹¹³ This project seeks to go beyond Swajal in strengthening the involvement

105 Remarks of RM Tripathi, Executive Engineer, Jal Nigam 29 August 2007.

106 Rural Water Supply and Sanitation, Eleventh Five-Year Plan – Approach Paper 7 (2006).

107 Planning Commission – Government of India, *Eleventh Five Year Plan 2007–12 – Volume II – Social Sector* 163 (New Delhi: Oxford University Press, 2008).

108 *Ibid.*, at 48.

109 *Ibid.*

110 Rajiv Gandhi National Drinking Water Mission, Allocation of funds under Accelerated Rural Water Supply Programme (ARWSP) during 2008–2009, No. G–11011/5/2008–DWS.I (2008).

111 Minutes of the State Secretaries' Conference on Rural Drinking Water and Sanitation held on 13 and 14 May 2008, Surajkund, Haryana, 4.

112 World Bank, India – Uttaranchal Rural Water Supply and Sanitation Project, Project Appraisal Document 2 (Report No. 35464-IN, 2006).

113 *Ibid.*, at 3.

of the panchayati raj institutions whose limited involvement in the earlier scheme was seen as detrimental to the sustainability of the schemes.¹¹⁴ In the context of this World Bank project, the cost-sharing principle has not been abandoned and communities will bear 10 per cent of the cost of all new investments. The only relaxation is that only 2 per cent of the cost must be in the form of cash while the other 8 per cent can be in the form of labour or cash.¹¹⁵

CONCLUSION

Drinking water supply policy has witnessed the introduction of dramatic changes over the past fifteen years. This includes, in particular, a complete rethink of the basic principles underlying public sector activities in this sector. These changes are linked to the broader paradigm shift brought about in the context of water sector reforms, in particular the introduction of the notion that water is an economic good. In the context of drinking water, the politically sensitive nature of the problem and the immediate social consequences of any changes have ensured that the basic reform principles proposed as part of water sector reforms have not (yet) been fully implemented. Thus, while the policy goal is to impose full capital costs on drinking water users in villages, this is currently politically and economically impractical. This explains that rural communities are made to pay in a first phase – and for a minimum level of supply – 10 per cent of the capital costs even though policy documents clearly indicate that the eventual objective is much higher.

The new policy framework, which provides that supply-led drinking water management should be changed for a demand-led paradigm, has significant social consequences. In particular, the poor who cannot afford the 10 per cent upfront capital contribution are left out of the new schemes altogether and thus only have access to existing infrastructure. This is without negative consequences for them as long as this existing infrastructure is repaired. Policy reforms include, however, the decentralization of operation and maintenance to the panchayat level. Once this is fully implemented, if operation and maintenance funds are preferentially allocated to the new schemes implemented, for instance, under Swajaldhara, the poor will then directly suffer because the infrastructure they use to access water may not be functional any more. If this happens, the reforms will raise human rights issues with regard to the fulfilment of the human right to water.

One of the concerns raised by ongoing reforms is the process that leads to their adoption. Indeed, drinking water policy reforms are the only significant reforms in the water sector that have not been introduced through the adoption of legislation. While there has been a spate of water users association legislation and groundwater legislation, drinking water is mostly conspicuous by its invisibility in legislative assemblies or Parliament. Indeed, the single biggest reform introduced

¹¹⁴ *Ibid.*, at 7.

¹¹⁵ *Ibid.*, at 14.

over the past decade in the drinking water sector, the Swajaldhara Guidelines, was never considered by elected representatives of the people. This is all the more cause for concern when the policy framework that is adopted is directly derived from a pilot World Bank project, the Swajal project.

Policy reforms in the drinking water sector warrant significant consideration because of the far-reaching impacts they are likely to have. Yet, this should not detract the attention from two broader issues that are not specifically linked to ongoing reforms. Firstly, regardless of any policy reforms, the primary duty of the government is the realization of the human right to water. This is completely independent of any policy changes that the executive may want to introduce. Secondly, beyond the issue of the consideration of significant policy reforms by elected representatives, the broader issue that arises is the lack of drinking water legislation. In a context where water law has developed and will continue to develop in a sectoral manner, it is at the very least surprising that drinking water, which is the acknowledged first priority, would be the only major sector of water law that has never been provided with a legislative framework. Ongoing reforms that seek to completely change operative principles make the adoption of a legislation setting down all the basic legal principles guiding the provision of drinking water much more urgent.